INDEX TO DOCUMENTATION OF COUNTRY CONDITIONS REGARDING PERSECUTION OF LGBTQ INDIVIDUALS IN JAMAICA

<table>
<thead>
<tr>
<th>TAB</th>
<th>JAMAICAN LEGAL AUTHORITY</th>
<th>SUMMARY</th>
</tr>
</thead>
</table>
| 1.  | Government of Jamaica, Offences Against the Person Act (1864, Last Amended 2010), available at http://moj.gov.jm/sites/default/files/laws/Offences%20Against%20the%20Person%20Act_0.pdf | • “Unnatural Offences 76. Whosoever shall be convicted of the abominable crime of buggery, committed either with 'mankind or with any animal, shall be liable to be imprisoned & Kept to hard labour for a term not exceeding ten years.” (p. 26)  
• “Attempt 77. Whosoever shall attempt to commit the said abominable crime, or shall be guilty of my assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.” (p. 26)  
• “Outrages on Decency 79. Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
[CITY, STATE]
of, any act of gross indecency with another male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding two years, with or without hard labour.” (p. 26)

<table>
<thead>
<tr>
<th>GOVERNMENTAL SOURCES</th>
</tr>
</thead>
<tbody>
<tr>
<td>• “The law criminalizes consensual same-sex sexual relations and anal sex between men. Physical intimacy between men, in public or private, is punishable by two years in prison, and anal sex between men is punishable by up to 10 years. There is no comprehensive antidiscrimination legislation.” (p. 14)</td>
</tr>
<tr>
<td>• “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.” (p. 15)</td>
</tr>
<tr>
<td>• “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 … 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.” (p. 15)</td>
</tr>
<tr>
<td>• “Government agencies were involved in acts of discrimination” (p. 15)</td>
</tr>
<tr>
<td>• “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.” (p. 19)</td>
</tr>
<tr>
<td><strong>SUMMARY</strong></td>
</tr>
<tr>
<td>-----------------</td>
</tr>
<tr>
<td>• “The Bertelsmann Stiftung 2018 Jamaica country report observed: […] Discriminatory action on the basis of sexual orientation is given a key reason that LGBT people are afraid to report incidents of assault against them, as they fear further abuse from police officers while in police custody.” (p. 22)</td>
</tr>
<tr>
<td>• “The Bertelsmann Stiftung 2018 Jamaica country report noted: […] Regarding the discrimination of sexual orientation and HIV/AIDS that exists in Jamaica, the report noted that ‘there are a number of legal provisions against discrimination (e.g., constitution of Jamaica and the Charter of Rights), but their implementation is highly deficient, with gaps in access and consistency of opportunities to exercise their full citizenship rights.’” (p. 27)</td>
</tr>
<tr>
<td>• “Despite the diverse ethnic and religious background of its population, Jamaica has the reputation for being one of the least accepting countries for the LGBTI community. Public displays of affection between same sex couples are uncommon, and the law still criminalizes consensual sex between males with up to 10 years in prison... Several highly popular Jamaican music entertainers have featured song lyrics that contain anti-homosexual messages and condone violence against homosexuals. Negative attitudes towards LGBTI issues are widespread in Jamaica. There are continued reports of serious discrimination and abuse against LGBTI individuals, including assault, “Corrective rape” of women accused of being lesbians, arbitrary detention, mob attacks, stabbings, harassment of LGBTI patients by hospital and prison staff, and blackmail.” (p. 3)</td>
</tr>
<tr>
<td>• “The law criminalizes consensual same-sex sexual relations and anal sex between men. Physical intimacy between men, in public or private, is punishable by two years in prison, and anal sex between men is punishable by up to 10 years. There is no comprehensive antidiscrimination legislation.” (p. 14)</td>
</tr>
<tr>
<td>• The NGO J-FLAG (formerly Jamaica Forum for Lesbians, All-Sexuals, and Gays) reported that through June it received 17 reports of instances of discrimination on the basis of sex, sexual orientation, or gender identity against LGBTI individuals, compared with 15 reports in the previous year. It was difficult to obtain exact statistics, as observers believed these types of human rights violations were underreported. (p. 15)</td>
</tr>
</tbody>
</table>
Government agencies were often involved in acts of discrimination. In one instance a transgender woman reported being stopped by security officials at the capital’s international airport. Customs agents loudly and confrontationally questioned her gender. Security officers (two female and one male) then summoned her to a search area where they observed as she stripped naked. The officers made her hold various poses that exposed her genitals from different angles. The woman had been traveling to the country as an executive director of an NGO that focuses on transgender issues in the Caribbean.”

Laws and regulations do not prohibit discrimination on the grounds of sexual orientation or gender identity. There were limited reports of cases filed for discrimination in employment or occupation during the year, but these instances were likely to be underreported … Those who were subject to workplace discrimination had little confidence that legal recourse was available to them.”

The law prohibits ‘acts of gross indecency’ (generally interpreted as any kind of physical intimacy) between persons of the same sex, in public or in private, and provides for a penalty of two years in prison for the offense.”

The NGO Jamaica Forum for Lesbians, All-Sexuals, and Gays reported that through September it received 23 reports of human rights violations against LGBTI individuals according to its criteria, including 19 incidents of physical assault, five mob attacks, one case of employment discrimination, and six cases in which police failed to respond adequately to reports.”

The most significant human rights issues included numerous reports of arbitrary and other unlawful killings by government security forces; entrenched government corruption within some government agencies; violence against women; sexual assault and incest committed against young girls by gang members; criminalization of same-sex sexual activity…; and societal violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.”

“Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity – The law prohibits “acts of gross indecency” (generally interpreted as any kind of physical intimacy) between persons of the same sex, in public or in private, and provides for a penalty of two years in prison for the offense. There is also an “antibuggery” section in the law that criminalizes consensual and nonconsensual anal intercourse, punishable by up to 10 years in prison… Homophobia was widespread in the country. The NGO Jamaica Forum for Lesbians, All-Sexuals, and Gays reported that
through September it received 23 reports of human rights violations against LGBTI individuals according to its criteria, including 19 incidents of physical assault, five mob attacks, one case of employment discrimination, and six cases in which police failed to respond adequately to reports.” (p. 13)

• “HIV and AIDS Social Stigma – The overall prevalence of HIV reached 2.8 percent among sex workers and 32.8 percent among men who have sex with men, according to UNAIDS data for 2016. Members of these groups were highly stigmatized and had difficulties accessing HIV testing and treatment services.” (p. 13)

• “Discrimination with Respect to Employment and Occupation – Laws and regulations do not prohibit discrimination on the grounds of sexual orientation or gender identity.” (p. 16)


• “Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity – The law prohibits “acts of gross indecency” (generally interpreted as any kind of physical intimacy) between persons of the same sex, in public or in private, and provides a penalty of two years in prison for the offense. There is also an “antibuggery” law that criminalizes consensual and nonconsensual anal intercourse, punishable by up to 10 years in prison.” (p. 15)

• “Homophobia was widespread in the country. The NGO J-FLAG reported that through June there were 53 incidents of physical and verbal assault against 35 LGBTI persons, including 24 cases of physical assault, 11 of verbal assault, 12 involving threats and intimidation, one case of arson, and one case of harassment by a police officer. The JCF reports that most incidents involving the LGBTI population are not reported to police.” (p. 15)

• “Discrimination with Respect to Employment and Occupation – Laws and regulations prohibit discrimination on the grounds of race, sex, gender, place of origin, social status, color, disability, religion, or political opinions. The law does not prohibit discrimination based on sexual orientation or gender identity or HIV-positive status.” (p. 18)


• Societal Treatment: “Jamaica is a deeply homophobic society and there are reports of LGBT persons facing a high level of both physical and sexual violence from nonstate agents (and some rogue state agents) and many live in constant fear. LGBT persons are
targeted for mob violence, ‘corrective rape’, extortion, harassment, forced displacement and discrimination, and are taunted, threatened, fired from their jobs, thrown out of their homes, and suffer ill treatment including being beaten, stoned, raped, or killed.” (p. 5)

- **Protection**: “However, in spite of the procedures the Government has put in place, it has so far has failed to prevent and protect against violence and discrimination, or to punish the perpetrators of crimes against LGBT persons. In some cases rogue police officers themselves are perpetrators of violence and extortion against LGBT people. They have also failed to intervene when attacks are happening, arrest suspects or investigate homophobic crimes. There remains a prevalence of homophobic attitudes within the police force and some police protection remains inadequate” (p. 7)

- “A Jamaican gay man has dropped his court case challenging the antibuggery law because of what he says are fears for his safety. Javed Jaghai, who had brought the case to the Supreme Court, had argued that the antisodomy laws violated his and constitutional rights and those of other people too. But he says he dropped the case because of personal threats, the burden that the litigation was putting on his family, and continuing incidents of violence against Jamaica’s lesbian, gay, bisexual and transgender, the LGBT community.” (p. 12)

- “AMG [Antillean Media Group] noted in an article titled ‘With anti-gay laws, the state is complicit in violence against LGBT people’ dated 1 June 2016… ‘The mere idea of dispensing with the [anti-gay] law last saw thousands of Jamaicans rallying in the streets in protest.”’ (p. 14)

- “Jamaican law provides police great discretion in detaining individuals… Jamaican laws are also used as pretext by police to detain men who do not conform to gender roles, and women who have sex with women are also targeted for arrest. There are accounts that the laws are actively enforced against men engaged in homosexual behaviour. Thus, members of the LGBT community face arrest, detention, and prosecution for their sexuality under the law.” (p. 16)

- “The Human Rights First report ‘The World as it Should Be” Advancing the Human Rights of LGBT People in Jamaica’ updated in July 2015 stated that: ‘Members of the Jamaica Constabulary Force (JCF) often contribute to stigmatization and discrimination against LGBT people. Some police use the sodomy law as leverage to extract bribes, threatening to arrest or release the names of members of the LGBT community to the media. ‘While most Jamaicans expressed support for the sodomy laws in a 2014 poll, over 80 percent admit that gay men are not treated fairly by the police or justice system. Just under 80 percent of Jamaicans believe the same holds true for lesbians. Jamaican Public Defender Arlene Harrison Henry notes reports of general police inaction in cases of violence or discrimination against LGBT people. Many activists say such inaction is rooted in homophobia among the police force.”’ (p. 18)
“The prevalence of homophobic attitudes within the police force, combined with the general inefficiency of the justice system, result in an overall lack of investigation into violence or discrimination against LGBT people.” (p. 18)

“[I]t is difficult to investigate mob killings or attacks given that a mob attack often involves large numbers of persons. It is therefore challenging in those circumstances to determine which persons were actively involved and, in the case of a death, which person or persons landed the fatal blow. In cases of mob attacks, it is also challenging to find witnesses who are willing to give evidence. [In Jamaica] [t]here is no legislation which specifically addresses mob attacks against LGBT persons or those perceived as such.” (p. 23)

“While HIV medicine is available, many in the LGBT community are reluctant to access this essential treatment because of prior experiences of discrimination, ridicule, and/or rejection in healthcare centres. A lack of privacy and anonymity for those seeking treatment, particularly in small rural communities, is another discouraging factor to LGBT people seeking treatment.” (p. 27)

“Although the country has universal health care, members of the LGBTI community relied mainly on the Jamaica AIDS Support for Life clinic, claiming that the staff in the government’s health system did not understand their needs and was unwelcoming.” (p. 27)

9. Immigration and Refugee Board of Canada, Jamaica: Treatment of Sexual Minorities, including Legislation, State Protection and Support Services (Feb. 12, 2016), available at http://www.refworld.org/country,,,,JAM,,56d7fdfe4,0.html

“Human Rights First, “a nonprofit, nonpartisan international human rights organization based in New York and Washington D.C.” (July 2015), indicates that the Jamaican Charter of Fundamental Rights and Freedoms does not provide protection from discrimination based on sexual orientation (July 2015, 4-5).” (p. 2)

“Human Rights First quotes a senior US official in Jamaica as stating that mob violence against sexual minorities is a "severe problem" in the country.” (p. 3)

“Amnesty International (AI) reports that violence and harassment against sexual minorities continue to be a problem in Jamaica (AI 2015, 2014). Human Rights Watch similarly states that physical and sexual violence is "part of the lived reality" for many members of sexual minorities and that "the level of brutality leads many to fear what could happen if their sexual orientation or gender identity is disclosed" (Human Rights Watch 2014, 21). According to J-FLAG, 63 incidents of violence against sexual minorities were reported to the organization in 2013 (J-FLAG 2014, 16). Half of the incidents reported took place in the Kingston and St Andrew, and St James area, with
incidents in St Catherine, Clarendon and Manchester constituting a "significant portion" of the remaining cases (ibid.). In 2014, 80 incidents of violence were reported to J-FLAG, including physical assault, threats and intimidation, blackmail, sexual violence, kidnapping, discrimination and displacement (ibid. 2015, 14).” (p. 4)

- “Incidents of reported mob attacks against LGBT people include the following:
  - On 15 April 2015, customers of a shopping venue in Kingston "decided to 'cleanse out' the premises of gays" (Erasing 76 Crimes 16 Apr. 2015) (p. 5)

- “Sources report that sexual violence such as "corrective rape" has been used on bisexual (The Gleaner 3 Dec. 2014) and lesbian women (ibid.; Jamaica Observer 28 Apr. 2015). J-FLAG received reports of 8 cases of sexual violence in 2013, of which 7 were submitted by women (J-FLAG 2014, 16). According to an online survey conducted by Quality of Citizenship Jamaica (QCJ), an NGO that works with women belonging to sexual minority groups to provide them with support and help them "navigate the Jamaican society" (QCJ n.d.), of 103 participants surveyed, 47 percent of respondents were either threatened with or experienced acts of sexual violence or harassment by men, including acts intended to "straighten them out" (The Gleaner 3 Dec. 2014). The survey also indicates that 77 percent of victims did not report the incidents to the police (ibid).” (p. 5)

### INTER-GOVERNMENTAL SOURCES


- “… the Committee notes with concern reports of incidents of discrimination, harassment and violent attacks against lesbian, gay, bisexual and transgender persons and the alleged failure of the State party to prevent and investigate such attacks.” (p. 3)

### NON-GOVERNMENTAL SOURCES


- “Discrimination on the basis of sexual orientation is given as a key reason that LGBT people are afraid to report incidents of assault against them, as they fear further abuse from police officers while in police custody. A 2016 study commissioned by J-FLAG found that many LGBT people continue to suffer in silence … Close to one in four (24.6% of respondents) feared a homophobic response from the police, while close to one in five (19.1%) felt too ashamed or embarrassed to report harassment. Meanwhile, 18.6% of respondents dealt with the matter themselves, 15% feared a reprisal attack from the
<table>
<thead>
<tr>
<th>TAB</th>
<th>SUMMARY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>offender and close to one in 10 were discouraged from reporting the matter (8.5% of respondents).” (p. 11-12)</td>
</tr>
<tr>
<td>12.</td>
<td>“Discrimination based on sexual orientation and HIV/AIDS status also exists. There are legal provisions against discrimination (e.g., Jamaica’s constitution and the Charter of Fundamental Rights and Freedoms), but their implementation is highly deficient and uneven with gaps in access and consistency.” (p. 26)</td>
</tr>
<tr>
<td>Human Dignity Trust, Jamaica (2020), available at <a href="https://www.humandignitytrust.org/country-profile/jamaica/">https://www.humandignitytrust.org/country-profile/jamaica/</a></td>
<td>Persecution and Discrimination:</td>
</tr>
<tr>
<td></td>
<td>• 2020: “On 7 January, Jason Williams, a 21 year old gender non-conforming Jamaican was hauled off a bus by the driver, conductor and fellow passengers after the driver said he didn’t want a “battyman” on his bus. Jason was then assaulted and left bleeding on the pavement, and was subsequently treated at Kingston Public Hospital for injuries to his lip, eye and back.” (p. 3)</td>
</tr>
<tr>
<td></td>
<td>• 2017: “The NGO J-FLAG reported that it received 19 reports of physical assault, five mob attacks, six cases in which police failed to respond to adequately to reports and one case of employment discrimination towards LGBT individuals.” (p. 3)</td>
</tr>
<tr>
<td></td>
<td>• 2015: &quot;In September, a gay man was rescued by police after an angry mob cornered him inside a bank parking lot in Half Way Tree in Jamaica. He was reportedly attacked by a mob while he was walking with three friends in the area. […] Homeless gay teens thrown out by their families were reportedly chased out of a shelter by a mob in Kingston in April. The mob attacked them in a popular shopping venue in Kingston in order to “cleanse” the premises. […] A YouTube video in March appeared to show the public execution of a young man stoned in the street by a crowd chanting anti-gay slurs.” (p. 3)</td>
</tr>
<tr>
<td></td>
<td>• “In August 2017, Jamaican fashion designer, reality TV star and gay LGBTI activist Dexter Pottinger was found stabbed to death in his Kingston home. A neighbour reported hearing “Help!” and “Murder!” screams from the victim’s house, but did not immediately notify the police.” (p. 413)</td>
</tr>
</tbody>
</table>
### SUMMARY

- “A number of popular dancehall songs, many of which originate in Jamaica, contain strong homophobic language and inflammatory lyrics. This music circulates through the islands and is emblematic of the daily stigmatization and denigration of LGBT people.” (p. 24)

- “Human Rights Watch has published two reports on Jamaica: “Hated to Death” (2004) and “Not Safe at Home” (2014). Both document the negative impact of Jamaica’s anti-LGBT laws, including their role in facilitating discrimination, violence, and barriers to health care.” (p. 23)


- “Lesbian, gay, bisexual and transgender people continued to face discrimination in law and in practice. Gay and bisexual prisoners continued to be at heightened risk for HIV.” (p. 214)

- “RIGHTS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE – There remained no legal protection against discrimination based on real or perceived sexual orientation or gender identity. As a result, LGBT people continued to face harassment and violence. Consensual sex between men remained criminalized, and there was limited protection against intimate-partner violence for people in same-sex relationships. NGOs recommended that laws be amended to ensure that rape is treated as a gender-neutral offence. As transgender people continued to be unable to change their legal name and gender, LGBTI organizations were concerned that the proposed national identification system could undermine the privacy of transgender people and expose them to stigma and discrimination, including from potential employers.” (p. 215)

“RIGHT TO HEALTH – In June, the NGO Stand up for Jamaica released Barriers Behind Bars, a report which analysed the high risk of sexual violence, human rights violations, and consequently HIV, faced by gay and bisexual men in Kingston’s General Penitentiary, in which gay and bisexual men are segregated from the general prison population. The report aimed to generate discussion about best practices for reducing HIV in prisons.” (p. 215-216)


- “There remained no legal protection against discrimination based on real or perceived sexual orientation or gender identity. As a result, LGBT people continued to face harassment and violence.” (p. 209)
<table>
<thead>
<tr>
<th></th>
<th>SUMMARY</th>
</tr>
</thead>
<tbody>
<tr>
<td>“A key informant explained how the stigma of HIV as a “gay” issue could exacerbate internalized stigma: ‘If they (LGBT youth) have rejection of self, they often succumb to some sort of fatalism where they think that no matter what they do, they are bound to get HIV.’” (p. 5)</td>
<td></td>
</tr>
<tr>
<td>“In Jamaica, there remains no legal protection against discrimination based on real or perceived sexual orientation or gender identity. Consensual sex between men remains criminalized. Between January and July, the Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG) received 47 reports of human rights violations against LGBTI people. Homelessness and displacement of LGBTI youths remain a concern. Young people pushed out of their homes because of their sexual orientation or gender identity continue to live in storm drains and abandoned buildings. Local NGOs support homeless LGBTI youths, while the state does little to help.” (p. 208)</td>
<td></td>
</tr>
</tbody>
</table>
   | “LGBT Jamaicans continue to face challenges, inclusive of legal barriers, to the equal protection of their human rights. LGBT Jamaicans still exist within a legal context that enables their exclusion. Incidents of harassment and violence against members of the LGBT community continue to occur, often times with impunity, and stigma and discrimination still feature prominently in the lives of many LGBT Jamaicans.” (p. 11)  
   | “The Jamaica Charter of Fundamental Rights and Freedoms does not protect against discrimination on the basis of sexual orientation or gender identity. The effect of this is that discriminatory treatment in employment, education, healthcare and housing at the hands of non-state actors is allowed to occur with impunity. Jamaica still does not have any anti-discrimination legislation and therefore the only protection against discrimination lies within the Charter. Targeted forms of violence against the LGBT community are not defined within Jamaican criminal laws. The absence of hate-crime legislation means that homophobic and transphobic violence and the incitement of same is not recognized within Jamaican laws.” (p. 12)  
   | “There are no state laws or policies which address explicitly homophobic and transphobic bullying and harassment in schools and the workplace. This means that LGBT Youth have
little legal protection against the targeted physical and verbal abuse they have come to experience in schools.” (p. 12)

- “Family law legislation excludes same-sex unions from all the legal benefits that are given to both married and unmarried heterosexual unions. The Domestic Violence Act of Jamaica, 2005 also fails to equally protect LGBT persons in same-sex unions from other forms of intimate partner violence.” (p. 12)


- “On 6 March 2016, a transgender woman was severely beaten and left for dead in a gully. After attending an event at the National Stadium in Kingston, the victim and her friends had stopped at a gas station in New Kingston. As they left the gas station, a vehicle carrying a group of men stopped in front of them, blocking them from driving off. Almost immediately, another vehicle blocked them from behind. The men in the front car alighted from their vehicle and pulled the transgender woman from her car. They beat her severely, then took her to an inner city community where she was beaten again. The attackers then threw her body in the Sandy Park Gully in St. Andrew and left her for dead.” (p. 4)

- “Gay men as well as lesbians have been victims of sexual assault. For example, on 9 February 2015, a 22-year-old gay man suffered a brutal sexual assault. When the victim and his friend arrived at the friend’s home for the night, three men were waiting for them armed with machetes. Saying, ‘Batty man love do nastiness, so you don’t mind doing it to us,’ one of the assailants forced the victim to perform oral sex and then anally penetrated him. The victim experienced heavy bleeding and passed out. Later, he learned that he had contracted two sexually transmitted infections from his assailant.” (p. 5)

- “Referring to a lesbian who was raped by relatives and neighbors to “cure” her of her homosexuality, “[t]his woman is not the only lesbian who is being forced by threats of rape and death to seek asylum outside of Jamaica. An increasing number of LGBT persons flee Jamaica to escape repeated threats of rape and murder.” (p. 5)

- “On 6 October 2013 in New Kingston, a gay man was severely beaten in the parking lot at his workplace by three male co-workers. This attack continued for fifteen minutes in the presence of the company’s security guard. Despite several cries for help, the guard made no effort to assist the abused victim. The attackers taunted the individual with homophobic slurs, such as “Battyboy fi dead!” The victim suffered severe muscle damage in his right
A significant portion of this report is devoted to examples of police as perpetrators of violence against LGBTQ persons, police failing to intervene to stop an attack, and inaction and abuse by police when LGBT individuals attempt to report crimes.

- “In January 2013, a gay man who had been beaten by a large crowd was handcuffed by the police and placed in a police car. While the man was handcuffed in the car, a police officer hit him with his baton, saying ‘Hey, you’re a fish [a pejorative term in Jamaica for men who have sex with men], and you are a battyman.’ At one point the police stopped the car and the two officers continued to hit him. At the station, another police officer told him, ‘Fish don’t last long in St. Ann,’ and ‘Everyone who comes in comes out dead.’ He was held in handcuffs overnight, and released in the morning with the admonition that he should go to church.” (p. 5)

- “In January 2013, the police watched and did nothing for about twenty minutes while a mob of about 30 people attacked a gay man. Armed with knives, machetes and sticks, the attackers shouted homophobic insults as they beat the man. When the police finally intervened and placed the victim in a police car to separate him from the mob, they handcuffed and beat him.” (p. 6)

- “In February 2013, a gay 17-year-old was beaten severely by his brother because of his sexual orientation. When he went to the Montego Hills police station to report the crime, he was made to wait for four hours, and even then, the police did nothing, saying ‘That’s the reason he is being beaten. He’s a battyman, a fish.’” (p. 6)

- “A 2015 survey of 316 LGBT Jamaicans found high rates of harassment and discrimination. The survey found that 71% of males who identify as gay had experienced some form of harassment or discrimination in the last 12 months… 43% [of LGBT Jamaicans] reported being threatened with physical violence in the last five years… Consequently, many LGBT people report avoiding public places like squares and roadways and public transportation, public establishments, and faith-based organizations.” (p. 10)


- “Some homophobic school counselors completely shun LGBT students. The head of the teachers union Norman Allen brandished the sodomy law as a shield to justify discrimination. He said that the Jamaican Teachers Association cannot call for counselors
to be trained to work with LGBT youth because sodomy is illegal in the country. Allen went even further, implying that LGBT students should be reported to government agencies.” (p. 1)

- “This is just one of the few ways the sodomy law is used to justify daily violence and discrimination that LGBT people face in Jamaica. LGBT youth - like many other LGBT Jamaicans, experience violence, discrimination in access to services, and bullying in schools.” (p.1)


- Study focusing on portrayal of LGBT community on Jamaican media. The portrayal is mostly negative, such as articles written in the nation’s most popular newspapers in 2014 brandishing gays as ‘thugs’ and rapists.’ (p. 35) Many radio talk shows focused on a “gay agenda” controversy instead of the merits of sexuality education programs in the context of HIV/AIDS and teenage pregnancy issues. (pp. 35-36) “Cross-dressers” from New Kingston were frequently highlighted in the media as a menace to society, specifically to straight men, and as alleged perpetrators of robberies because they were homeless. (p. 37)

- Jamaican media “at times becomes a tool to ‘out’ people…” (p. 34) The media often publishes names of men charged with consensual buggery and gross indecency, such as exposes in the *Jamaican Observer* and *The Star*. (p. 34) This put the exposed at a high risk of violence.


- “Many Jamaicans speak “patois” or Jamaican Creole in addition to Caribbean Standard English. The following patois words and phrases appear in this report: Battyman/Battybwoy: “Batty” is a slang term for “buttocks.” Battyman or Battybwoy is a pejorative term for men who have sex with men, as anal sex is seen as the act that defines them. “Battyman fi dead”: Gay men should be dead/killed; gay men must die. Fish: Effeminate man who has sex with men. Sodomite / Sodomite gal: Derogatory term for a woman who has sex with women.” (p. 8, 34)

- “Between 2009 and 2012, J-FLAG, a Jamaican LGBT rights organization, recorded 231 incidents of attacks against LGBT people, including home invasions, physical assaults, and mob attacks.” (p. 2)

- “Between April and June 2013, Human Rights Watch interviewed 71 self-identified LGBT people. These interviews elicited 56 accounts of physical violence that took place between
<table>
<thead>
<tr>
<th>SUMMARY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>2006 and 2013 experienced by 44 LGBT people, the vast majority of which appeared to be directly as a result of their sexual orientation or gender identity.</strong>” (p. 21)</td>
</tr>
<tr>
<td>• The following incidents of violence and alleged attacks, reported during a four-month period in 2013, illustrate the regularity with which violence against LGBT people occurs:</td>
</tr>
<tr>
<td>o “On July 21, 2013, 16-year-old Dwayne Jones attended a dance party in Montego Bay, Jamaica, dressed in women’s clothing. When partygoers at the bar in Irwin, St. James, realized she was biologically male, they subjected her to almost every form of physical violence imaginable—beating, stabbing, and shooting her before running her over with a car. No one helped her during the assault. When police arrived, they found her body dumped in bushes along the main road. Dwayne had been homeless since age 12, rejected by her family because of her gender identity. Her family initially refused to claim her corpse from the morgue.” (p. 1)</td>
</tr>
<tr>
<td>o “On August 1, an angry mob surrounded the home of two gay men in the parish of St. Catherine, “intent on getting rid of the men.” The crowd was yelling, “Dem fi cum out a ya (they must leave our community).”” ” (p.22)</td>
</tr>
<tr>
<td>o “On August 22, community members barricaded five gay men inside their home in the parish of Manchester and threatened them with bats and sticks.” (p.22)</td>
</tr>
<tr>
<td>o “On September 16, Edwin M., a young gay Jamaican man from Hanover parish, was chased with his friend and stoned by a mob shouting homophobic insults. He suffered head injuries.” (p.22)</td>
</tr>
<tr>
<td>o “On October 25, Keshema Tulloch, a Jamaican lesbian, was punched in the face by a man who called her a “sodomite.” When Tulloch chased her attacker with a knife, police shot her in the arm and chest. J-FLAG, which has followed the case, told Human Rights Watch that Tulloch has since been charged with assault. Her male attacker has not been charged.” (p.22-23)</td>
</tr>
<tr>
<td>• “Human Rights Watch interviewed LGBT people who said that when they tried to report a crime, police made derogatory comments and failed or refused to take a report, even well after the Policy on Diversity was established.” (p. 27)</td>
</tr>
<tr>
<td>o “Genie O., a potential murder witness, said he did not report the shooting of his friend in Greenpond in 2010 because he, too, feared the consequences: ‘I didn’t call the police… Once you are found to be associated [with gay men], your life would be at risk and you could be stigmatized as one of them.”” (p. 17)</td>
</tr>
<tr>
<td>o “Winnie R. told Human Rights Watch of her complete distrust of the police after having been groped by a police officer, and on separate occasions, after trying to make criminal reports to the police after being raped and robbed.” (p. 17)</td>
</tr>
</tbody>
</table>
• “...the Jamaican government still offers little in practical terms to prevent and protect against violence and discrimination, or to punish the perpetrators of crimes against LGBT people. Jamaica has neither comprehensive anti-discrimination legislation, nor specific legislation prohibiting discrimination on the grounds of sexual orientation or gender identity. Serious rights abuses based on sexual orientation and gender identity continue, and justice for these crimes remains elusive.” (p. 4)

• “The laws have been used by police to extort money from adults engaged in consensual homosexual sex; by public television stations to justify refusal to air public service announcements making positive statements about LGBT persons; and by landlords to justify refusal to rent apartments to them ... gay men who are “outed” through arrest risk violence and other abuse by community members.” (p. 10)

• “Religion, particularly protestant Christianity, has strong influence in Jamaica. Politicians often describe the country as a “Christian nation” and Jamaicans as “a God-fearing people.” Some Christians combine religious rhetoric with homophobia. The Jamaican Coalition for a Healthy Society (JCHS)—an evangelical Christian network with the stated vision that a “healthy Jamaican society” is based on the Bible—has been proactive in lobbying the government to preserve Jamaica’s sodomy laws. Established in January 2012, the JCHS has risen to some public prominence in Jamaica through an aggressive media campaign, public protests, and rallies.” (p. 11)


• “Rogerrie D. Harris is a 29-year-old gay man living in Kingston, Jamaica. Growing up, Rogerrie has suffered multiple assaults for most of his life because of his sexual orientation. These have ranged from homophobic slurs to physical attacks, and have come from police, community members, school mates, and complete strangers. Rogerrie has been diagnosed with post-traumatic stress disorder (PTSD) because of these unrelenting attacks.” (p. 1)

• “The most recent jarring incident occurred on the morning of Feb. 23. At around 1:15 a.m. Rogerrie and two friends were sitting and chatting near the popular Emancipation Park in the heart of the business district of New Kingston. They were facing the landmark Pegasus Hotel when suddenly a large stone landed at their feet! Startled, they looked up and realized that the missile came from the hotel’s entrance. It was quickly followed by a shower of stones from the same direction.” (p. 1)

• “Rogerrie and his friends jumped up but instead of backing down they rushed to the source of the attack as they were tired of being subjected to this kind of unprovoked violence simply for existing. When they entered the hotel’s gates, they saw two hotel
security guards scurrying from the area where the stones were thrown. The guards tried to
elude Rogerrie and his friends by quickly making their way to the hotel’s main lobby.
When Rogerrie and his friends attempted to report the matter to another guard at the lobby
entrance, they were met with aggression and expletives. But still livid that someone would
try to hurt them for just sitting in public, Rogerrie and his friends refused to leave and
eventually a supervisor for the guards came over to speak to them. They made the
supervisor aware of the guards’ dangerous and unwarranted actions but instead of
sympathising with Rogerrie and his attacked companions, the supervisor sided with the
guards and said that ‘being a gay man violates Jamaican norms.’” (p. 1-2)

• “…The guards then proceeded to call Rogerrie and his friends “battymen” and hurl other
homophobic expletives at them before ordering them to leave the hotel compound.” (p. 2)

• “Initially, Rogerrie and his friends resisted. The supervisor then instructed two security
guards to physically throw the young men out unto the street. The supervisor also called
for five or six more nearby guards to assist their colleagues to forcibly eject Rogerrie and
his friends…” (p. 2)

• “The guards chased Rogerrie and his friends down Knutsford Boulevard to the Oxford
Road intersection all the while throwing stones and even their batons at the fleeing
youth.” (p. 2)

• “Rogerrie was severely traumatized by the incident and stayed barricaded in his home for
four days. He then went to the New Kingston police station to report the attack, but the
police were rude and discriminatory and offered him no help...He now just wants to leave
Jamaica as he sees no future or justice here for queer youth like himself.” (p. 2-3)

25. **Erasing 76 Crimes, No arrests after brutal anti-gay attack in Jamaica (Jan. 9, 2020),
available at https://76crimes.com/2020/01/09/no-arrests-after-brutal-anti-gay-attack-in-
jamaica/**

• “21-year-old Jamaica Jason walks with a swish. He always has. His prominent hips, slight
figure and delicate gestures made him the subject of violent bullying and vulgar name-
calling in school and his community. After trying unsuccessfully for years to change his
walk and mannerisms so that he could “be normal” Jason finally gave up. To compensate
he developed a thick skin and a sharp tongue to defend himself. Most times these worked.
However, this week they failed miserably, and Jason was nearly slaughtered at the hands
of a homophobic mob. On the evening of Jan. 7, Jason caught a bus to downtown
Kingston. However, when he boarded the conductor started grumbling about not wanting
any battyman *[homosexual]* on his bus and ordered Jason off. Jason tried to ignore him
and refused to budge. But the bus driver abruptly stopped the bus and with the help of the
conductor and some other passengers they hauled Jason off the vehicle and savagely beat
him leaving him with a busted lip, swollen eye, bruised back, and several other injuries.”
(p. 1)
• “This happened in the full view of passersby, but no one stopped to assist. When the bloodlust of Jason’s attackers was satisfied, they causally re-boarded the bus while still hurling threats at Jason as he lay bleeding on the pavement. As the bus drove off Jason noted the licence plate number before limping to the nearby police station where he reported the attack. He then went to the Kingston Public Hospital where he was admitted.” (p. 1)

• “Jason shared his story on social media and, although there was sympathy, there have been no arrests.” (p. 1)

• “As our Prime Minister and Minister of Tourism tout how safe Jamaica is for gay tourists (as long as they remain behind high resort walls), gay Jamaicans experience this kind of brutality almost daily.” (p. 2)


• “Maurice Newman was thriving in Jamaica, fulfilling his dreams. He was teaching the fifth grade and also traveling for the government, training fellow teachers. He was building his life, living in the upper-middle class with an apartment and nice car. Then his life flipped around in an instant when police discovered his sexuality.” (p. 1)

  ○ “All that changed when people find out you're gay. Because in Jamaica, it's a very homophobic country. By law, being gay is illegal. You can go to prison for 10 years maximum with hard labor,’ Newman recalled in an interview. ‘That's not even scary. The scariest part is the community in which you live, in which you invested, in which you helped to develop, if those people find out that you're gay, they themselves will try to kill you and that's exactly what happened to me.”” (p. 1)

  ○ “Newman, 26, said Jamaican police saw him in his car with another man. It led to a chase, where Newman said he was able to evade police. With his sexual orientation now known, Newman avoided work the day after police discovered the truth. When he returned to work the following day, he saw a large crowd gathering and he knew authorities were after him, Newman recalled. "I started driving out of the schoolyard when they just started throwing stones, bricks whatever they could at my car," Newman revealed.” (p. 1)

• “He was certain he would be sent to jail and was worried he might even be killed. But luckily, he was able to get away. News travels fast in Jamaica, according to Newman. "My family started calling me, (saying), 'What did we hear? We don't want you around. Don't come back to us,'” Newman said. "My own mom told me that 'you can't come back to my house' ... it just broke me down. I knew I just had to leave." He stayed with a friend overnight and then fled Jamaica.” (p. 1)
<table>
<thead>
<tr>
<th>TAB</th>
<th>SUMMARY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• “The man who killed fashion designer Dexter Pottinger had his murder charge reduced to manslaughter after he told Jamaican authorities that he stabbed Pottinger 25 times after Pottinger appeared to him naked and aroused.” (p. 1)</td>
</tr>
<tr>
<td></td>
<td>• “Pottinger was a fashion designer, video director and LGBT rights activist who was named Jamaica’s “Face of Pride” in 2016.” (p. 1)</td>
</tr>
<tr>
<td></td>
<td>• “He further told police that he did not know that Pottinger was gay and was surprised by the act, subsequently using a knife to stab Pottinger 25 times.” (p. 2)</td>
</tr>
<tr>
<td></td>
<td>• “While Jamaica advertises itself as “welcoming to all,” homosexual intercourse is punishable by up to ten years in prison, which can include hard labor. (Any other sexual contact between men is punishable by up to seven years in prison.)” (p. 7)</td>
</tr>
<tr>
<td></td>
<td>• “Other Caribbean countries have stricter penalties, but anti-LGBT violence is endemic in Jamaica: Gay men have been beaten, shot and stoned to death. In 2017, LGBT activist Dexter Pottinger, dubbed the “face of Pride,” was murdered in his home. Some young queer Jamaicans are even forced to live in the sewers after being rejected by their families.” (p. 7)</td>
</tr>
<tr>
<td></td>
<td>• “Efforts towards change are met with fierce opposition: In 2005, the European Parliament called on Jamaica, to repeal its sodomy ban and actively combat homophobia... [In 2012], LGBT rights campaigner Maurice Tomlinson filed suit at the Inter-American Commission on Human Rights to get the ban lifted. But he was forced to flee the country after news of his marriage to another man hit local media.” (p. 7-8)</td>
</tr>
<tr>
<td></td>
<td>• “[There is] a history of rampant homophobia in the former British colony [of Jamaica], where consensual homosexual sex is still a crime and anti-LGBT violence is endemic: Gay men have been beaten, shot and stoned to death because of their orientation. Just this year, LGBT activist Dexter Pottinger, dubbed the ‘face of Pride,’ was murdered in his home.” (p. 2)</td>
</tr>
<tr>
<td>TAB</td>
<td>SUMMARY</td>
</tr>
<tr>
<td>-----</td>
<td>---------</td>
</tr>
<tr>
<td>•</td>
<td>“Some young queer Jamaicans rejected by their families are forced to live in the sewers.” (p. 3)</td>
</tr>
<tr>
<td></td>
<td>•</td>
</tr>
<tr>
<td></td>
<td>•</td>
</tr>
<tr>
<td></td>
<td>•</td>
</tr>
<tr>
<td></td>
<td>•</td>
</tr>
</tbody>
</table>
| | •  | “So Jamaica’s story has evolved, but Malcolm—who was bullied as a boy—and taunted as a teen—says as he grew older, Jamaica got worse for him. Fast forward a couple years, and Malcolm is where we met him at the top of this story—with a gun to his head and singled out for being gay. “He put the gun in my face and I was trying to get away,” he said. “I’m not really entirely sure what happened after that. He gun butted me and then he
shot me.” Knocked unconscious and bleeding from his leg, Malcolm eventually came to lying on the side of the street. He spent several weeks recovering from the gunshot wound and a brain injury. Depressed, he felt he might take his own life, or eventually someone else would. So Malcolm left Jamaica.” (p. 5)


- “Kaci was always what she calls a ‘girlie boy.’ . . . Kaci now lives in one of Kingston’s storm drains or gullies, along with several other dozen gay and transgender people who call themselves ‘Gully Queens.’ Most share the same story of family rejection.” (p. 1)
- “In Jamaica, where hostility toward lesbian, gay, bisexual, transgender or queer (LGBTQ) people is common, being homeless and poor leaves ‘Gully Queens’ especially vulnerable.” (p. 2)
- “Tayshawn Beltre, a 24-year-old transgender woman, has been homeless off and on since her mother kicked her out 10 years ago. She often makes her home in Kingston’s gullies, which are open-air, paved channels that snake through the city… But living out in the open means that “Gully Queens” can be victims of random violence. Beltre says she was once was stabbed in the back with a knife by a stranger.” (p. 3)
- “Many LGBTQ people do not feel protected by authorities and say they are targeted by police because of their sexual orientation. Minutes after Beltre spoke to the Thomson Reuters Foundation, the gully where she lives was raided by the police. She and other transgender women said they were beaten, had their phones confiscated and their clothing burned.” (p. 4)


- “This week, two gay men were murdered in the Flanker community of St. James in Jamaica. Media reports indicate that the men, reputed to be lovers, had earned the ire of thugs in the community, who stormed the victims’ house on Tuesday before unleashing a barrage of gunshots. Apathy reigned in the wake of the vicious attack. According to a resident quoted in the Jamaica Gleaner, ‘we don’t know nothing about it… a just two fish (homosexuals) get fry over there.’ Residents of the community have wallied up and said little to police about the crime, its motives or the people involved. ‘This is going to be one of those unsolved murders because the police will not get any information from anybody,’ a man told the Gleaner. ‘You must write that is a fish kill, but we don’t know what cause it.’” (p. 1)
- “The state and the law: Jamaica has notorious ‘buggery laws’ which criminalize sex and all physically-intimate acts between men. In 2011, the Portia Simpson-Miller government promised a parliamentary conscience vote to repeal the law, but due to intense pushback,
the vote never occurred. The newly-installed government of Prime Minister Andrew Holness has similarly rejected recent recommendations from the United Nations to repeal the law.” (p. 2)

- “Within this context, gay men must keep an integral component of who they are hidden for fear of adverse ramifications. Criminalization arguably contributes to a political and social climate that fosters antipathy and hatred toward gay men.” (p. 3)

- “By outlawing homosexual behavior, successive Jamaican (and other Caribbean) governments establish homosexuality as a form of deviance, and suggest that the LGBT community should understand itself as abnormal. They are also viewed as abnormal by other members of the public, putting them at a higher risk for violence. The law itself… remains dangerous when acts of violence against homosexuals are legitimized in its name.” (p. 4)

---


- “There was yet another double murder in St James on Tuesday, but this one is somewhat mysterious as according to sources in the Providence Heights area of Flanker, where the killing took place, the victims were labelled gay lovers, who had earned the wrath of thugs in the community.” (p. 1)

- “It would appear that there was a general lack of sympathy for the men as most residents seemed to support the view that they were gay and were not welcome in the community.” (p. 2)

---


- “Almost half of Jamaicans say they would throw their children out of their homes for being gay, resurrecting the issue of homelessness reportedly affecting members of the lesbian, gay, bisexual and transgender (LGBT) community in Jamaica. The finding is contained in the 2015 Awareness, Attitude & Perception Survey about Issues Related to Same Sex Relationships.” (p. 1)

- The survey of employers, politicians, and members of the general public was done between June and July last year by Market Research Services for Jamaica's leading gay lobby, the Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG). Forty-seven per cent of the 942 people who made up the general public cohort indicated that they would not allow their child to live in their houses if he or she was gay or lesbian. Seventeen per cent was indifferent, and the remaining 36 per cent said they would allow their gay child to remain
<table>
<thead>
<tr>
<th>TAB</th>
<th>SUMMARY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• “In the latest instance of Jamaica’s dangerously pervasive homophobic climate, a 41-year-old allegedly gay man was reportedly stabbed to death, his car stolen, and his house set on fire while his body was still inside on Aug. 28.” (p. 1)</td>
</tr>
<tr>
<td></td>
<td>• “Additionally, a mob attempted to attack two men they perceived to be gay following a minor car accident on Aug. 23 in Jamaica.” (p. 1)</td>
</tr>
<tr>
<td></td>
<td>• “Jamaica—historically understood to be one of the most anti-gay countries on the planet—has seen a disturbingly high number of instances of violence targeting the LGBT community this month alone.” (p. 2)</td>
</tr>
<tr>
<td></td>
<td>• “In the last five years, 32% of gays reported being threatened with physical violence and 12% reported being physically attacked. 23.7% reported being threatened with sexual violence and 19% reported being sexually assaulted.” (p. 51)</td>
</tr>
<tr>
<td></td>
<td>• “Almost 1 in 5 of the assaults occurred in public spaces such as town squares or roadways.” (p. 55)</td>
</tr>
<tr>
<td></td>
<td>• “A young gay man was murdered in Jamaica this month, when a mob shouting anti-gay threats tied him up in wire and stoned and kicked him to death. Disturbing video footage of the mob stoning the victim’s lifeless body has surfaced (Watch it at your own discretion). At one point, an attacker shouts “Batty man yuh fi dead!” or “Gay man, you should die.” The identity of the victim is unknown, but its believed the incident took place in Montego Bay in the last few weeks. In 2013, a gender-nonconforming Jamaican was stabbed to death in the same area—with no charges ever filed.” (p. 1)</td>
</tr>
</tbody>
</table>

Dated: [DATE]  
Respectfully submitted,  
[CITY, STATE]
[FIRM]
Pro Bono Counsel for Respondent

By: _______________________

[NAME]
[FIRM]
[ADDRESS]
[PHONE NUMBER]
[FAX NUMBER]
TAB 1
ARRANGEMENT OF SECTIONS

1. Short title.

   Homicide

2. Murder.

3. Sentence for murder.
   Sentence of death not to be passed on pregnant woman.
   Procedure where woman convicted of capital offence alleges she is pregnant.

3A. Procedure regarding murder charge.

3B. [Repealed by Act 1 of 2005.]

3C. Provisions as to appeals in relation to repeated and multiple murders.

3D. Provisions as to procedure regarding two or more murders tried together.

4. Abolition of “constructive malice”.

5. Persons suffering from diminished responsibility.

6. Provocation.

7. Suicide pact.

8. Conspiring or soliciting to commit murder.

9. Manslaughter.

10. Excusable homicide.

11. Petit treason.

12. Provision for trial of certain cases of murder or manslaughter.

   Attempts to Murder

13. Administering poison, or wounding with intent to murder.

14. Destroying or damaging building with intent to murder.

15. Setting fire to ship, etc., with intent to murder.

16. Attempting to administer poison, etc., with intent to murder.

17. By other means attempting to commit murder.

   Letters Threatening to Murder

18. Letters threatening to murder.

[The inclusion of this page is authorized by L.N. 123/2011]
Acts Causing or Tending to Cause Danger to Life, or Bodily Harm

19. Preventing person endeavouring to save his life in shipwreck.
20. Shooting or attempting to shoot or wounding with intent to do grievous bodily harm.
21. What shall be deemed loaded arms.
22. Unlawful wounding.
23. Attempting to choke, etc., in order to commit indictable offence.
24. Administering drug with intent to commit indictable offence.
25. Administering poison so as to endanger life or inflict grievous bodily harm.
26. Administering poison with intent to injure or annoy.
27. Jury may acquit of felony, and find guilty of misdemeanour.
28. Abandoning or exposing child whereby life endangered.
29. Causing bodily injury by explosion of gunpowder.
30. Causing gunpowder to explode, etc., with intent to do grievous bodily harm.
31. Placing wood on railway, etc., with intent to endanger safety of passengers.
32. Doing anything to endanger safety of passengers on railway.
33. Genocide.

Assaults

34. Obstructing clergyman in the performance of his duties.
35. Assaulting magistrate when preserving wreck.
36. Assault with intent to commit felony, or on constable, etc.
37. Hindering seaman from working at his trade, etc.
38. Using violence to deter person from buying or selling.
39. Summary jurisdiction to try common assaults.
40. Aggravated assaults on women or children.
41. Justices may dismiss complaint, certifying dismissal.
42. Certificate or conviction to be a bar to further proceedings.
43. Punishment for common and aggravated assaults.
44.
45.
46. \{Repealed by Act 12 of 2009.\}
47.
48.

[The inclusion of this page is authorized by L.N. 123/2011]
49. [Repealed by Act 12 of 2009.]
50. [Repealed by Act 12 of 2009.]
51. [Repealed by Act 12 of 2009.]
52. [Repealed by Act 12 of 2009.]
53. [Repealed by Act 12 of 2009.]
54. [Repealed by Act 12 of 2009.]
55. [Repealed by Act 12 of 2009.]
56. [Repealed by Act 12 of 2009.]
57. [Repealed by Act 12 of 2009.]
58. [Repealed by Act 12 of 2009.]
59. [Repealed by Act 12 of 2009.]
60. [Repealed by Act 12 of 2009.]
61. [Repealed by Act 12 of 2009.]
62. [Repealed by Act 12 of 2009.]
63. [Repealed by Act 12 of 2009.]
64. [Repealed by Act 12 of 2009.]
65. [Repealed by Act 12 of 2009.]
66. [Repealed by Act 12 of 2009.]
67. [Repealed by Act 12 of 2009.]

Suppression of Brothels

68. Search warrants.

Child Stealing

69. Child stealing.

70. Kidnapping.

Bigamy

71. Bigamy.

Provision as to evidence.

Attempts to Procure Abortion

72. Administering drugs or using instruments to procure abortion.

73. Procuring drugs, etc., to procure abortion.

Concealing the Birth of a Child

74. Concealment of birth.

Infanticide

75. Offence of infanticide.
OFFENCES AGAINST THE PERSON

Unnatural Offences

76. Unnatural crime.
77. Attempt.

Proof of Carnal Knowledge

78. Proof of carnal knowledge.

Outrages on Decency

79. Outrages on decency.

Other Matters

80. Apprehension without warrant.
81. Punishment of principals in second degree and accessories.
82. Fines and sureties for good behaviour.
83. Conviction not to be quashed for want of form, etc.
84. Costs on prosecution for assault.
85. Recovery of costs by distress.
THE OFFENCES AGAINST THE PERSON ACT

1. This Act may be cited as the Offences against the Person Act.

Homicide

2.—(1) Subject to subsection (3), every person to whom section 3(1A) applies or who is convicted of murder committed in any of the following circumstances shall be sentenced in accordance with section 3(1)(a), that is to say—

(a) any murder—

(i) committed by a person if, in the course or furtherance of, arising out of, or ancillary to, that murder, the person commits an offence referred to in subsection (1A); or

(ii) committed by a person in the course or furtherance of, arising out of, or ancillary to, an offence referred to in subsection (1A), whether or not the individual murdered was an individual that the offender intended to murder in committing the offence;

(b) the murder of—

(i) a member of the security forces acting in the execution of his duties or of a person assisting a member so acting;


[1864.]

[The inclusion of this page is authorized by L.N. 92c/2012]
(ii) a correctional officer acting in the execution of his duties or of a person assisting a correctional officer so acting;

(iii) a judicial officer acting in the execution of his duties; or

(iv) any person acting in the execution of his duties, being a person who, for the purpose of carrying out those duties, is vested under the provisions of any law in force for the time being with the same powers, authorities and privileges as are given by law to members of the Jamaica Constabulary Force,

or the murder of any such member of the security forces, correctional officer, judicial officer or person for any reason directly attributable to the nature of his occupation;

(c) the murder of any person for any reason directly attributable to—

(i) the status of that person as a witness or party in a pending or concluded civil cause or matter or in any criminal proceedings; or

(ii) the service or past service of that person as a juror in any criminal trial;

(d) the murder of a Justice of the Peace acting in the execution of his judicial functions;

(e) any murder committed pursuant to an arrangement whereby money or anything of value—

(i) passes or is intended to pass from one person to another or to a third party at the request or direction of that other person; or

(ii) is promised by one person to another or to a third person at the request or direction of that other person,
OFFENCES AGAINST THE PERSON

as consideration for that other person causing or assisting in causing the death of any person or counselling or procuring any person to do any act causing or assisting in causing that death;

(f) any murder committed by a person in the course or furtherance of an act involving the use of violence by that person which, by reason of its nature and extent, is calculated to create a state of fear in the public or any section of the public.

(1A) For the purposes of subsection (1)(a), the offences referred to in this subsection are—

(a) burglary or housebreaking;
(b) arson in relation to a dwelling house;
(c) robbery; or
(d) any sexual offence.

(2) Subject to subsection (3), every person convicted of murder other than a person—

(a) convicted of murder in the circumstances specified in subsection (1)(a) to (f); or
(b) to whom section 3(1A) applies,

shall be sentenced in accordance with section 3(1)(b).

(3) If in the case of any murder referred to in subsection (1) (not being a murder referred to in paragraph (e) of that subsection), two or more persons are convicted of that murder—

(a) the provisions of section 3(1)(a) shall apply to any of those persons who—

(i) by his own act caused the death of, or inflicted or attempted to inflict grievous bodily harm on, the person murdered; or

(ii) himself used violence on that person in the course or furtherance of an attack on that person; and

[The inclusion of this page is authorized by L.N. 80A/2008]
(b) any other persons convicted of the murder shall be sentenced in accordance with section 3(1)(b).

(4) [Deleted by Act 1 of 2005.]

(5) In this section—
“correctional officer” has the same meaning as in the Corrections Act;
“judicial officer” means—
(a) a Judge of the Supreme Court or the Court of Appeal, the Master in Chambers or any person for the time being performing the functions of a Judge of the Supreme Court or Court of Appeal or of the Master in Chambers;
(b) the Registrar or Deputy Registrar of the Supreme Court, the Revenue Court or the Court of Appeal or any person for the time being performing the functions of Registrar or Deputy Registrar;
(c) a Resident Magistrate or any person for the time being performing the functions of a Resident Magistrate;
(d) a person employed in a court's office who carries out prosecution of offences or in the Office of the Director of Public Prosecutions or engaged to carry out functions on behalf of the Director of Public Prosecutions;

“member of the security forces” means a member of—
(a) the Jamaica Constabulary Force;
(b) the Jamaica Defence Force to the extent that such member has been assigned to act in aid of the Police;
(c) the Island Special Constabulary Force;
(d) the Rural Police.

3.—(1) Every person who is convicted of murder falling within—

[The inclusion of this page is authorized by L.N. 80/2008]
(a) section 2(1)(a) to (f) or to whom subsection (1A) applies, shall be sentenced to death or to imprisonment for life;
(b) section 2(2), shall be sentenced to imprisonment for life or such other term as the court considers appropriate, not being less than fifteen years.

(1A) This subsection applies to a person who is convicted of murder and who, before that conviction, has been convicted in Jamaica—

(a) whether before or after the 14th October, 1992, of another murder done on a different occasion; or
(b) of another murder done on the same occasion.

(1B) Where a court pronounces a sentence of death pursuant to subsection (1)(a)—

(a) the form of the sentence shall be to the effect only that the person is to “suffer death in the manner authorized by law”;
(b) every person so sentenced shall, after sentence, be confined to some safe place within the correctional institution, apart from all other inmates; and
(c) the sentence may be carried into execution as heretofore has been the practice.

(1C) In the case of a person convicted of murder, the following provisions shall have effect with regard to that person’s eligibility for parole, as if those provisions had been substituted for section 6(1) to (4) of the Parole Act—

(a) where a court imposes a sentence of imprisonment for life pursuant to subsection (1)(a), the court shall specify a period, being not less than twenty years, which that person should serve before becoming eligible for parole; or
(b) where, pursuant to subsection (1)(b), a court imposes—

(i) a sentence of imprisonment for life, the court shall specify a period, being not less than fifteen years; or
(ii) any other sentence of imprisonment, the court
shall specify a period, being not less than ten years,

which that person should serve before becoming eligible for parole.

(1D) A person shall not be sentenced to death under this section by reason of a previous conviction for murder referred to in subsection (1A) unless—

(a) at least seven days before the trial, notice is given to him that it is intended to prove the previous conviction; and

(b) before he is sentenced, his previous conviction for murder is admitted by him or is found to be proven by the trial Judge.

(1E) Before sentencing a person under subsection (1), the court shall hear submissions, representations and evidence, from the prosecution and the defence, in relation to the issue of the sentence to be passed.

(2) Where a woman is convicted of murder falling within section 2(1)(a) to (f) or to whom subsection (1A) applies is found in accordance with the provisions of this section to be pregnant, the sentence to be passed on her shall be any sentence of imprisonment that may be imposed under subsection (1)(b) instead of sentence of death.

(3) Where a woman convicted of murder falling within section 2(1)(a) to (f) or to whom subsection (1A) applies alleges that she is pregnant, or where the court before whom a woman is so convicted thinks fit so to order, the question whether or not the woman is pregnant shall, before sentence is passed on her, be determined by a jury.

(4) Subject to the provisions of this subsection, the said jury shall be the trial jury, that is to say the jury to whom she was given in charge to be tried for the offence, and the members of the jury need not be re-sworn:

Provided that—

[The inclusion of this page is authorized by L.N. 80A/2008]
OFFENCES AGAINST THE PERSON

(a) if any member of the trial jury, after the conviction, dies or is discharged by the court as being through illness incapable of continuing to act or for any other cause, the inquiry as to whether or not the woman is pregnant shall proceed without him; and

(b) where there is no trial jury, or where a jury have disagreed as to whether the woman is or is not pregnant, or have been discharged by the court without giving a verdict on that question, the jury shall be constituted as if to try whether or not she was fit to plead, and shall be sworn in such manner as the court may direct.

(5) The question whether the woman is pregnant or not shall be determined by the jury on such evidence as may be laid before them either on the part of the woman or on the part of the Crown, and the jury shall find that the woman is not pregnant unless it is proved affirmatively to their satisfaction that she is pregnant.

(6) Where on proceedings under this section the jury find that the woman in question is not pregnant the woman may appeal under the Judicature (Appellate Jurisdiction) Act, to the Court of Appeal and that Court, if satisfied that for any reason the finding should be set aside, shall quash the sentence passed on her and instead thereof pass on her any sentence of imprisonment that may be imposed under subsection (1)(b):

Provided that the operation of the provisions of this subsection shall be deemed to be coincident with the operation of the Judicature (Appellate Jurisdiction) Act.

3A.—(1) On an indictment charging a person with murder falling within section 2(1), he may be found not guilty of such murder but guilty of murder falling within section 2(2).

(2) For the purpose of any appeal against conviction, murder falling within section 2(1) shall be treated as a distinct offence from murder falling within section 2(2).

(3) Where on an appeal against a conviction of murder—
(a) falling within section 2(1)(a) to (f); and
(b) for which the appellant has been sentenced to death, the Court substitutes a verdict of guilty of murder falling within section 2(2), the Court shall nevertheless determine whether a sentence of death is the appropriate sentence by virtue of section 3(1A) and shall confirm that sentence if it is so found to be appropriate.

(4) Subject to the foregoing provisions of this section, murder falling within section 2(1) shall not be treated, for any purpose, as a different offence from murder falling within section 2(2).

3B. [Repealed by Act 1 of 2005.]

3C.—(1) Where a person is sentenced to death by virtue of subsection (1A) of section 3, he shall have the like right of appeal against the sentence as if the appeal were against a conviction involving sentence of death.

(2) On any such appeal against sentence, the Court shall have the same powers as to allowing or dismissing the appeal as on an appeal against a conviction; and where the Court allows the appeal, and it appears to the Court that, having regard to the decision on the appeal, the sentence is not warranted in law, the Court shall quash the sentence and pass the appropriate sentence in substitution for it.

(3) Where a person is sentenced to death under subsection (1A) of section 3 (which relates to more than one conviction for murder) and afterwards one of the convictions is set aside on appeal—

(a) that person may apply to the Court of Appeal to set aside the sentence of death on the ground that it is no longer warranted in law having regard to the decision on appeal; and

(b) whether or not an application is made under paragraph (a), the Registrar of the Court of Appeal shall notify the Court that the sentence is one which should be set aside on the ground referred to in that paragraph,
and the Court if satisfied that the sentence is no longer warranted in law, shall set it aside and pass the appropriate sentence in substitution for it.

(4) Where a person is sentenced to death as aforesaid then, unless he is so sentenced on being convicted of murder falling within section 2(1), the sentence shall not in any case be executed so long as the other conviction can be set aside on appeal or by any other legal process.

3D.—(1) Subject to subsection (2), where sentence of death is passed on a person convicted of two or more murders tried together it shall be treated as passed in respect of each of the convictions.

(2) If one of the convictions as aforesaid is and any other is not set aside on appeal, the Court deciding the appeal, unless satisfied that the sentence remains warranted in law in respect of any other conviction, shall set the sentence aside and pass the appropriate sentence in substitution for it.

4.—(1) Where a person kills another in the course of furtherance of some other offence, the killing shall not amount to murder unless done with the same malice aforethought (express or implied) as is required for a killing to amount to murder when done in the course of furtherance of another offence.

(2) For the purposes of the foregoing subsection, a killing done in the course or for the purpose of resisting an officer of justice, or of resisting or avoiding or preventing a lawful arrest, or of effecting or assisting an escape or rescue from legal custody, shall be treated as a killing in the course or furtherance of an offence.

5.—(1) Where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in...
doing or being a party to the killing.

(2) On a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section not liable to be convicted of murder.

(3) A person who but for this section would be liable, whether as principal or as accessory, to be convicted of murder shall be liable instead to be convicted of manslaughter.

(4) The fact that one party to a killing is by virtue of this section not liable to be convicted of murder shall not affect the question whether the killing amounted to murder in the case of any other party to it.

6. Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked (whether by things done or by things said or by both together) to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did shall be left to be determined by the jury, and in determining that question the jury shall take into account everything both done and said according to the effect which, in their opinion, it would have on a reasonable man.

7.—(1) It shall be manslaughter, and shall not be murder, for a person acting in pursuance of a suicide pact between him and another to kill the other or be a party to the other killing himself or being killed by a third person.

(2) Where it is shown that a person charged with the murder of another killed the other or was a party to his killing himself or being killed, it shall be for the defence to prove that the person charged was acting in pursuance of a suicide pact between him and the other.

(3) For the purposes of this section "suicide pact" means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life, but nothing done by a person who enters into a suicide pact shall be treated as
done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

8. All persons who shall conspire, confederate, and agree to murder any person, whether he be a subject of Her Majesty or not, and whosoever shall solicit, encourage, persuade, or endeavour to persuade, or shall propose to any person to murder any other person, whether he be a subject of Her Majesty or not, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable, to be imprisoned for a term not exceeding ten years, with or without hard labour.

9. Whosoever shall be convicted of manslaughter shall be liable to be imprisoned for life, with or without hard labour, or to pay such fine as the court shall award in addition to or without any such other discretionary punishment as aforesaid.

10. No punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony.

11. Every offence which, before the fourth day of March, 1837, would have amounted to petit treason, shall be deemed to be murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or accessories, shall be dealt with, indicted, tried, and punished as principals and accessories in murder.

12. Where any person, being feloniously stricken, poisoned, or otherwise hurt upon the sea, or at any place out of this Island, shall die of such stroke, poisoning, or hurt in this Island, or being feloniously stricken, poisoned or otherwise hurt at any place in this Island, shall die of
OFFENCES AGAINST THE PERSON

such stroke, poisoning or hurt upon the sea, or at any place out of this Island, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or manslaughter, or of being accessory to murder or manslaughter, may be dealt with, enquired of, tried, determined, and punished in the parish in which such death, stroke, poisoning, or hurt shall happen, in the same manner in all respects as if such offence had been wholly committed in that parish.

Attempts to Murder

13. Whosoever shall administer to, or cause to be administered to, or to be taken by any person, any poison or other destructive thing, or shall, by any means whatsoever, wound, or cause any grievous bodily harm to any person, with intent, in any of the cases aforesaid, to commit murder, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

14. Whosoever, by the explosion of gunpowder or other explosive substance, shall destroy or damage any building, with intent to commit murder, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

15. Whosoever shall set fire to any ship or vessel or any part thereof, or any part of the tackle, apparel or furniture thereof, or any goods or chattels being therein, or shall cast away or destroy, or attempt to destroy, any ship or vessel, with intent in any of such cases to commit murder, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

[The inclusion of this page is authorized by L.N. 480/1973]
16. Whosoever shall attempt to administer to, or shall attempt to cause to be administered to, or be taken by any person, any poison or other destructive thing, or shall shoot at any person, or shall by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, with intent, in any of the cases aforesaid, to commit murder, shall, whether any bodily injury be effected or not, be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

17. Whosoever shall, by any means other than those specified in any of the preceding sections of this Act, attempt to commit murder, shall be guilty of felony, and, being convicted thereof shall be liable to be imprisoned for life, with or without hard labour.

Letters Threatening to Murder

18. Whosoever shall maliciously send, deliver, or utter or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing threatening to kill or murder any person, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding ten years, with or without hard labour.

Acts Causing or Tending to Cause Danger to Life, or Bodily Harm

19. Whosoever shall unlawfully and maliciously prevent or impede any person being on board of, or having quitted any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, in his endeavour to save his life, or shall unlawfully or maliciously prevent or impede any person in his endeavours to save the life of any such person as in this section first aforesaid, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

20.—(1) Subject to subsection (2), whosoever, shall unlawfully and maliciously, by any means whatsoever, wound, or cause any grievous bodily harm to any person, or shoot at any person, or, by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person, with intent in any of the cases aforesaid, to maim, disfigure or disable any

[The inclusion of this page is authorized by L.N. 92c/2012]
OFFENCES AGAINST THE PERSON

person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer or any person, shall be guilty of felony, and, being convicted thereof, shall be liable, to be imprisoned for life with or without hard labour.

(2) A person who is convicted before a Circuit Court of—

(a) shooting with intent to do grievous bodily harm or with intent to resist or prevent the lawful apprehension or detainer of any person; or

(b) wounding with intent, with use of a firearm,

shall be liable to imprisonment for life, or such other term, not being less than fifteen years, as the Court considers appropriate.

(3) In this section, “firearm” has the meaning assigned to it by section 2 of the Firearms Act.

21. Any gun, pistol, or other arms which shall be loaded in the barrel with gun powder, or any other explosive substance, and ball, shot, slug, or other destructive material, shall be deemed to be loaded arms within the meaning of this Act, although the attempt to discharge the same may fail from want of proper priming, or from any other cause.

22. Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding three years, with or without hard labour.

23. Whosoever shall, by any means whatsoever, attempt to choke, suffocate, or strangle any other person, or shall by any means calculated to choke, suffocate, or strangle, attempt to render any other person insensible, unconscious, or incapable of resistance, with intent in any of such cases thereby to enable

[The inclusion of this page is authorized by L.N. 92c/2012]
himself, or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony, and, being convicted thereof, shall be liable to imprisoned for life, with or without hard labour.

24. Whosoever shall unlawfully apply or administer to, or cause to be taken by, or attempt to apply or administer to, or attempt to cause to be administered to or taken by, any person, any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent, in any of such cases, thereby to enable himself, or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

25. Whosoever shall unlawfully and maliciously administer to, or cause to be administered to or taken by any other person, any poison or other destructive or noxious thing so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding ten years, with or without hard labour.

26. Whosoever shall unlawfully and maliciously administer to, or cause to be administered to or taken by any other person, any poison or other destructive or noxious thing, with intent to injure, aggrieve, or annoy such person, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding three years, with or without hard labour.
27. If, upon the trial of any person for any felony mentioned in section 25, the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any misdemeanour mentioned in section 26, then and in every such case, the jury may acquit the accused of such felony, and find him guilty of such misdemeanour and thereupon he shall be liable to be punished in the same manner as if convicted upon an indictment for such misdemeanour.

28. Whosoever shall unlawfully abandon or expose any child, being under the age of two years, whereby the life of such child shall be endangered, or the health of such child shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding three years, with or without hard labour.

29. Whosoever shall unlawfully and maliciously by the explosion of gunpowder or other explosive substance, burn, maim, disfigure, disable, or do any grievous bodily harm to any person, shall be guilty of felony and, being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

30. Whosoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to, or cause to be taken or received by any person any explosive substance, or any other dangerous or noxious thing, or put or lay at any place, or cast or throw at or upon, or otherwise apply to any person, any corrosive fluid, or any destructive or explosive substance, with intent, in any of the cases aforesaid, to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, shall, whether any bodily injury be effected or not, be guilty of felony, and, being
convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

31. Whosoever shall unlawfully and maliciously put or throw upon or across any railway or tramway any wood, stone, or other matter or thing, or shall unlawfully and maliciously take up, remove or displace any rail, sleeper, or other matter or thing belonging to any railway or tramway, or shall unlawfully and maliciously turn, move or divert any points or other machinery belonging to any railway or tramway, or shall unlawfully and maliciously make or show, hide or remove any signal or light upon or near to any railway or tramway, or shall unlawfully and maliciously do or cause to be done any other matter or thing, with intent, in any of the cases aforesaid, to endanger the safety of any person travelling or being upon such railway or tramway, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

32. Whosoever, by any unlawful act, or by any wilful omission or neglect, shall endanger or cause to be endangered, the safety of any person conveyed by or being in or upon a railway or tramway, or shall aid or assist therein, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding two years, with or without hard labour.

33.—(1) Whosoever shall advocate or promote genocide is guilty of an indictable offence and shall be liable to be imprisoned for a term not exceeding ten years, with or without hard labour.

(2) In this section “genocide” means any of the following acts committed with intent to destroy, in whole or in part, any national, ethnical, racial or religious group, as such—

[The inclusion of this page is authorized by L.N. 480/1973]
(a) killing members of the group;
(b) causing serious bodily or mental harm to members of the group;
(c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) imposing measures intended to prevent births within the group;
(e) forcibly transferring children of the group to another group.

Assaults

34. Whosoever shall, by threats or force, obstruct or prevent, or endeavour to obstruct and prevent, any clergyman or other minister in or from celebrating divine service, or otherwise officiating in any church, chapel, meeting-house, or other place of divine worship, or in or from the performance of his duty in the lawful burial of the dead in any church-yard or other burial place, or shall strike, or offer any violence to, or shall, upon any civil process, or under the pretence of executing any civil process, arrest any clergyman or other minister who is engaged in or to the knowledge of the offender is about to engage in, any of the rites or duties in this section aforesaid, or who, to the knowledge of the offender, shall be going to perform the same or returning from the performance thereof, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding two years, with or without hard labour.

35. Whosoever shall assault and strike or wound any magistrate, officer, or other person whatsoever lawfully authorized, in or on account of the exercise of his duty in or concerning the preservation of any vessel in distress,
or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.

36. Whosoever shall assault any person with intent to commit felony or shall assault, resist, or wilfully obstruct any constable or peace officer in the due execution of his duty, or any person acting in the aid of such officer, or shall assault any person with intent to resist or prevent the lawful apprehension of himself or any other person for any offence, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding two years, with or without hard labour.

37. Whosoever shall unlawfully, and with force, hinder or prevent any seaman or person labouring on board any vessel from working at or exercising his lawful trade, business, or occupation, or shall beat or use any violence to any such person, with intent to hinder or prevent him from working at or exercising the same, shall, on summary conviction, be liable to imprisonment with hard labour for a term not exceeding three months.

38. Whosoever shall beat, or use any violence or threat of violence to any person, with intent to deter or hinder him from buying, selling, or otherwise disposing of, or to compel him to buy, sell, or otherwise dispose of any poultry, hogs, grain, fruit, or fish, or other provisions or food in any market or other place, or shall beat, or use any such violence or threats to any person having the care or charge of any poultry, hogs, grain, fruit or fish, or other provisions, whilst on the way to or from any city, market, town or other place in this Island, with intent to stop the

[The inclusion of this page is authorized by L.N. 95/1997]
conveyance of the same, shall, on summary conviction, be liable to imprisonment with or without hard labour for a term not exceeding three months.

39. Where any person shall unlawfully assault or beat any other person, two Justices, upon complaint by or on behalf of the party aggrieved, may hear and determine such offence, and the offender shall, upon summary conviction, be liable to imprisonment with or without hard labour, for a term not exceeding two months, or else shall forfeit and pay such fine not exceeding, together with costs (if ordered) the sum of one thousand dollars; and if such fine as shall be so awarded, together with the costs, if ordered, shall not be paid either immediately after conviction, or within such period as shall at the time of the conviction be appointed, the offender may be committed to imprisonment with or without hard labour, for a term not exceeding two months unless such fine and costs be sooner paid.

40. When any person shall be charged before a court of summary jurisdiction with an assault or battery upon any male child whose age shall not, in the opinion of such court, exceed fourteen years, or upon any female either upon the complaint of the party aggrieved or otherwise, the said court, if the assault or battery is of such an aggravated nature that it cannot, in their opinion, be sufficiently punished under the provisions hereinbefore contained as to common assaults and batteries, may proceed to hear and determine the same in a summary way, and if the same be proved, may convict the prisoner accused; and every such offender shall be liable to imprisonment with or without hard labour for a term not exceeding six months, or to pay a fine not exceeding (together with costs) the sum of two thousand dollars, and, if the court shall so think fit, in any of the said cases, shall be
OFFENCES AGAINST THE PERSON

bound to keep the peace, and be of good behavior for a period not exceeding six months from the expiration of such sentence.

41. If the court, upon the hearing of any such case of assault and battery upon the merits, where the complaint was preferred by or on behalf of the party aggrieved under either section 39 or section 40 shall deem the offence not to be proved, or shall find the assault or battery to have been justified, or so trifling as not to merit any punishment, and shall accordingly dismiss the complaint, the court shall forthwith make out a certificate, stating the facts of such dismissal, and shall deliver such certificate to the party against whom the complaint was preferred.

42. If any person against whom such complaint as is mentioned in either section 39, 40 or 41 shall have been preferred by or on behalf of the party aggrieved shall have obtained such certificate, or, having been convicted, shall have paid the whole amount adjudged to be paid, or shall have suffered the imprisonment, or imprisonment with hard labour awarded; in every such case, he shall be released from all further or other proceedings, civil or criminal, for the same cause:

Provided, that in case the court shall find the assault or battery complained of to have been accompanied by any attempt to commit felony, or shall be of opinion that the same is from any other circumstance, a fit subject for a prosecution by indictment, they shall abstain from any adjudication thereupon, and shall deal with the case in all respects in the same manner as if they had no authority finally to hear and determine the same:

Provided also that nothing herein contained shall authorize any Justices to hear and determine any case of assault or battery in which any question shall arise as to

[The inclusion of this page is authorized by L.N. 123/2011]
the title to any land, tenements, or hereditaments, or any interest therein, or accruing therefrom, or as to any bankruptcy or any execution under the process of any court of justice.

43. Whosoever shall be convicted upon an indictment of any assault occasioning actual bodily harm shall be liable to be imprisoned for a term not exceeding three years, with or without hard labour; and whosoever shall be convicted upon an indictment for a common assault shall be liable, to be imprisoned for a term not exceeding one year, with or without hard labour.

44. [Repealed by Act 12 of 2009.]
45. [Repealed by Act 12 of 2009.]
46. [Repealed by Act 12 of 2009.]
47. [Repealed by Act 12 of 2009.]
48. [Repealed by Act 12 of 2009.]
49. [Repealed by Act 12 of 2009.]
50. [Repealed by Act 12 of 2009.]
51. [Repealed by Act 12 of 2009.]
52. [Repealed by Act 12 of 2009.]
53. [Repealed by Act 12 of 2009.]
54. [Repealed by Act 12 of 2009.]
55. [Repealed by Act 12 of 2009.]
56. [Repealed by Act 12 of 2009.]
57. [Repealed by Act 12 of 2009.]
58. [Repealed by Act 12 of 2009.]
59. [Repealed by Act 12 of 2009.]
60. [Repealed by Act 12 of 2009.]
61. [Repealed by Act 12 of 2009.]
Suppression of Brothels

68.—(1) If it is made to appear to a Justice by information on oath that there is reason to suspect that any premises or part thereof is used as a brothel or for the purposes of habitual prostitution, the Justice may issue a warrant authorizing any constable to enter and search the premises, at any time of the day or night and with such assistance and by such force as may be necessary, and to seize any article found therein which there is reasonable ground for believing will afford evidence as to the commission of any offence of an obscene or immoral nature and to arrest any person found therein who there is reasonable cause to suspect is committing, or has committed, any offence against this Act.

(2) Every person so arrested shall be detained in custody until he can be brought before, or shall give bail for his appearance to, the Resident Magistrate of the parish. Every article so seized shall be produced in evidence at the trial, if any person be charged in relation thereto, and may be disposed of in such manner as to the court may seem fit. If there be no such trial such article may be disposed of in such manner as a Resident Magistrate may think fit.

Child Stealing

69. Whosoever shall unlawfully, either by force or fraud, lead or take away, or decoy or entice away, or detain any child under the age of fourteen years, with intent to deprive any parent, guardian, or other person having the lawful care or charge of
such child, of the possession of such child, or with intent to steal any article upon or about the person of such child to whomsoever such article may belong; and whosoever shall, with any such intent, receive or harbour any such child, knowing the same to have been by force or fraud led, taken, decoyed, enticed away, or detained as in this section before-mentioned, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour:

Provided, that no person who shall have claimed any right to the possession of such child, or shall be the mother, or shall have claimed to be the father of an illegitimate child, shall be liable to be prosecuted by virtue hereof on account of the getting possession of such child out of the possession of any person having the lawful charge thereof.

Kidnapping

70.—(1) Whosoever shall kidnap a person with intent—

(a) to hold him against his will for ransom, whether by way of money or valuables or any promise to do or refrain from doing anything or any other consideration;

or

(b) to cause him to be unlawfully sent or transported out of Jamaica against his will; or

(c) to hold him for service against his will,

shall be guilty of a felony and, being convicted thereof, shall be liable to imprisonment for life with or without hard labour.

(2) Whosoever conspires to commit an offence against subsection (1) or solicits, encourages, persuades or endeavours to persuade any person to commit such an offence shall be guilty of a misdemeanour and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding ten years with or without hard labour.

(3) In proceedings under this section where the person in relation to whom the offence is alleged to have been committed is a child under the age of fourteen years any action shall
be deemed to be against his will if it is against the will of his parent or guardian, or other person having the lawful care or charge of such child.

(4) For the purposes of this section a person "kidnaps" when he unlawfully, either by force or fraud, leads or takes away, decoys or entices away, or detains or secretes any other person, so, however, that the fact that a person in relation to whom the offence is alleged to have been committed did not resist is not a defence unless the accused proves that the failure to resist was not caused by fraud or by threats, duress, force or exhibition of force.

Bigamy

71.—(1) Whosoever, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in this Island or elsewhere, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding four years, with or without hard labour; and any such offence may be dealt with, inquired of, tried, determined and punished in any parish of this Island where the offender shall be apprehended, or be in custody, in the same manner in all respects as if the offence had been actually committed in that parish:

Provided, that nothing in this section contained shall extend to any second marriage contracted elsewhere than in Jamaica by any Commonwealth citizen, or to any person marrying a second time whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time, or shall extend to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

(2) The wife or husband of a person charged with bigamy may be called as a witness either for the prosecution or
OFFENCES AGAINST THE PERSON

defence and without the consent of the person charged.

Attempts to Procure Abortion

72. Every woman, being with child, who with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent; and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

73. Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding three years, with or without hard labour.

Concealing the Birth of a Child

74. If any woman shall be delivered of a child, every person who shall by any secret disposition of the dead body of the said child, whether such child died before, at, or after the birth, endeavour to conceal the birth thereof, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding two years, with or without hard labour:

Provided, that if any person tried for the murder of any child shall be acquitted thereof, it shall be lawful for the jury by whose verdict such person shall be acquitted to find, in case it shall so appear in evidence, that the child had recently been born, and that such person did, by some secret disposition of the

[The inclusion of this page is authorized by L.N. 123/2011]
dead body of such child, endeavour to conceal the birth thereof, and thereupon the court may pass such sentence as if such person had been convicted upon an indictment for the concealment of the birth.

Infanticide

75.—(1) Where a woman by any wilful act or omission causes the death of her child being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then, notwithstanding that the circumstances were such that but for this Act the offence would have amounted to murder, she shall be guilty of felony, to wit, of infanticide, and may for such offence be dealt with and punished as if she had been guilty of the offence of manslaughter of the child.

(2) Where upon the trial of a woman for the murder of her child, being a child under the age of twelve months, the jury are of opinion that she by any wilful act or omission caused its death, but that at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then the jury may, notwithstanding that the circumstances were such that but for the provisions of this Act they might have returned a verdict of murder, return in lieu thereof a verdict of infanticide.

(3) Nothing in this section shall affect the power of the jury upon an indictment for the murder of a newly-born child to return a verdict of manslaughter, or a verdict of guilty but insane, or a verdict of concealment of birth, in pursuance of section 74.

(4) The said section 74 shall apply in the case of the acquittal of a woman upon indictment for infanticide as it applies upon the acquittal of a woman for murder, and upon the trial of any person over the age of sixteen for infanticide it shall be lawful for the jury, if they are satisfied that the
accused is guilty of an offence under section 9 of the Child Care and Protection Act, to find the accused guilty of such an offence, and in that case that section shall apply accordingly.

_Unnatural Offences_

76. Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.

77. Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.

_Proof of Carnal Knowledge_

78. Whenever upon the trial of any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.

_Outrages on Decency_

79. Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding two years, with or without hard labour.

_Other Matters_

80. Any constable may take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, that is to say the interval between 7 o'clock in the evening and 6 o'clock in the morning of the next succeeding day, and whom he shall have good cause to suspect of having committed, or being about to
commit any felony in this Act mentioned, and shall take such person, as soon as reasonably may be, before a Justice, to be dealt with according to law.

81. In the case of every felony punishable under this Act every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act (except murder) shall be liable to be imprisoned for a term not exceeding two years, with or without hard labour; and every accessory after the fact to murder shall be liable to be imprisoned for life, with or without hard labour; and whosoever shall counsel, aid, or abet the commission of any indictable misdemeanor punishable under this Act shall be liable to be proceeded against, indicted, and punished as a principal offender.

82. Whenever any person shall be convicted of any indictable misdemeanor punishable under this Act, the court may, if it shall think fit, in addition to or in lieu of any punishment by this Act authorized, fine the offender, and require him to enter into his own recognizances, and to find sureties, both or either for keeping the peace and being of good behaviour; and, in case of any felony punishable under this Act otherwise than with death, the court may, if it shall think fit, require the offender to enter into his own recognizances, and to find sureties both or either for keeping the peace, in addition to any punishment by this Act authorized:

Provided, that no person shall be imprisoned for not finding sureties under this section for any period exceeding one year.

83. No summary conviction under this Act shall be quashed for want of form, or be removed by certiorari into the Supreme Court; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.
84. Where any person shall be convicted on any indictment of any assault, whether with or without battery and wounding, or either of them, such person may, if the court thinks fit, in addition to any sentence which the court may deem proper for the offence, be adjudged to pay to the prosecutor his actual and necessary costs and expenses of the prosecution, and such moderate allowance for the loss of time as the court shall, by affidavit or other inquiry and examination, ascertain to be reasonable; and, unless the sum so awarded shall be sooner paid, the offender shall be imprisoned for any term the court shall award not exceeding three months, in addition to the term of imprisonment (if any) to which the offender may be sentenced for the offence.

85. The court may, by warrant under hand and seal, order such sum as shall be so awarded to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and that the surplus, if any, arising from such sale shall be paid to the owner; and, in case the sum shall be so levied, the imprisonment awarded until payment of such sum shall thereupon cease.
TAB 2
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.


**Anti-Semitism**

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

**Trafficking in Persons**


**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.
TAB 3
Country Policy and Information Note
Jamaica: Actors of Protection

Version 1.0
August 2019
Preface

Purpose
This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in the basis of claim section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

Assessment
This section analyses the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment on whether, in general:

- A person is reasonably likely to face a real risk of persecution or serious harm
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- Claims are likely to justify granting asylum, humanitarian protection or other form of leave, and
- If a claim is refused, it is likely or unlikely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must, however, still consider all claims on an individual basis, taking into account each case’s specific facts.

Country of origin information
The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the Common EU [European Union] Guidelines for Processing Country of Origin Information (COI), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation’s (ACCORD), Researching Country Origin Information – Training Manual, 2013. Namely, taking into account the COI’s relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a terms of reference which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the ‘cut-off’ date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available, and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion.
Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the bibliography.

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the Country Policy and Information Team.

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. The IAGCI may be contacted at:

Independent Advisory Group on Country Information
Independent Chief Inspector of Borders and Immigration
5th Floor
Globe House
89 Eccleston Square
London, SW1V 1PN
Email: chiefinspector@icinspector.gov.uk

Information about the IAGCI’s work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s pages of the gov.uk website.
## Contents

**Assessment** ...................................................................................................................... 5

1. Introduction .................................................................................................................. 5
   1.1 Basis of claim ......................................................................................................... 5

2. Consideration of issues ............................................................................................... 5
   2.1 Credibility ............................................................................................................ 5
   2.2 Exclusion ............................................................................................................. 5
   2.3 Protection ............................................................................................................. 5

**Country information** .................................................................................................. 8

3. Security apparatus ....................................................................................................... 8
   3.1 Overview ............................................................................................................. 8
   3.2 Jamaica Constabulary Force ............................................................................... 8
   3.3 Armed forces ...................................................................................................... 10
   3.4 Private security ................................................................................................... 11

4. Arrest and detention ................................................................................................. 13
   4.1 Legal rights .......................................................................................................... 13
   4.2 Arbitrary detention ............................................................................................. 14
   4.3 Prison and detention center conditions ............................................................... 15

5. Capabilities of the security forces ........................................................................... 16
   5.1 Effectiveness ....................................................................................................... 16
   5.2 Corruption .......................................................................................................... 18
   5.3 Human rights violations ..................................................................................... 19
   5.4 Surveillance and tracking systems ..................................................................... 23

6. Rule of law and the judiciary .................................................................................... 24
   6.1 Structure ............................................................................................................. 24
   6.2 Trial procedures ................................................................................................. 24
   6.3 Independence ...................................................................................................... 25
   6.4 Effectiveness of the judiciary ............................................................................. 25
   6.5 Legal aid and other assistance ........................................................................... 26

**Terms of Reference** .................................................................................................. 29

**Bibliography** ............................................................................................................. 30

Sources cited ....................................................................................................................... 30
Sources consulted but not cited ....................................................................................... 32

**Version control** ......................................................................................................... 33
Assessment

Updated: 19 August 2019

1. Introduction

1.1 Basis of claim

2.1.1 Whether, in general, those at risk of persecution or serious harm from non-state actors and/or rogue state actors are able to seek effective state protection.

2. Consideration of issues

2.1 Credibility

2.1.1 For information on assessing credibility, see the instruction on Assessing Credibility and Refugee Status.

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the Asylum Instruction on Language Analysis).

2.2 Exclusion

2.2.1 Decision makers must consider whether one (or more) of the exclusion clauses is applicable. Each case must be considered on its individual facts and merits.

2.2.2 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instruction on Exclusion: Article 1F of the Refugee Convention.

2.3 Protection

2.3.1 The government has established and operates a functioning criminal justice system. The Jamaica Constabulary Force (JCF) has primary responsibility for internal security in Jamaica and has powers of arrest without a warrant during states of emergency. However, the JCF’s effectiveness is undermined by being underpaid, poorly trained, understaffed and lacking in resources generally. A Witness Protection Programme provides support for people whose safety is at risk, but is reported to have problems. While local police assistance is available throughout the country, and the police continue to make arrests for criminal acts, they are unable to patrol and protect all neighbourhoods. In addition, corruption and impunity for abuses committed by the police has led to mistrust amongst citizens (see Security apparatus and Capabilities of the security forces).

2.3.2 Private security forces play a large role in supporting local law enforcement and national security. Most wealthy Jamaicans employ private security
companies at their residencies. However, it is reported that guards themselves are unreliable and susceptible to crime. The private security industry is predicted to be larger than the JCF and the Jamaica Defence Force (JDF) combined, with an estimated 20,000 guards (see Security apparatus).

2.3.3 However, ‘private’ (i.e. non-state) security forces in Jamaica should not be considered an ‘actor of protection’.

2.3.4 There are reports that the JCF committed arbitrary arrests and lengthy detentions, without giving detainees an explanation of charges or legal counsel, especially when a state of emergency is declared or in a Zone of Special Operations (ZOSO). Conditions in detention are reported by the USSD to be generally harsh and life threatening because of overcrowding, physical abuse, limited and nutritionally poor food as well as poor sanitary conditions and medical care, although prisons were slightly better than police ‘lock-ups’. Inadequate administration also makes it difficult for lawyers to reach their clients (see Arrest and detention).

2.3.5 Corruption is prevalent amongst the JCF and some officers are reported to take bribes in exchange for making an arrest (see Capabilities of the security forces and Arrest and detention).

2.3.6 The government has committed to reducing corruption within the security services and improving policing and has implemented mechanisms to tackle this, such as the Major Organised Crime and Anti-corruption agency (MOCA). Since these reforms have been put into place, crime has fallen in Jamaica. Furthermore, a single anti-corruption agency was created in January 2017, which has the legal power to investigate, detect, prevent and prosecute acts of corruption amongst politicians (see Arrest and detention and Capabilities of the security forces).

2.3.7 Avenues of redress exist for those who make complaints against the police. The Independent Commission of Investigations (INDECOM) undertakes investigations concerning actions by members of the security forces and other agents of the state that result in death or injury to persons or the abuse of the rights of persons. In recent years, INDECOM has intensified its efforts to hold police accountable for their actions (see Human rights abuses).

2.3.8 The law provides for an independent judiciary and Jamaica has an established legal system, including prosecution, courts, sentencing and imprisonment. However, the system’s effectiveness is hampered by a large backlog of cases, underfunding, lack of witness co-operation, shortage of judges and corruption. As a result, there are significant delays in processing cases. Some convictions rates, for example for murder at 29%, are relatively low (see Rule of law and the judiciary).

2.3.9 In the country guidance case of AB (Protection-criminal gangs-internal relocation) Jamaica CG [2007] UKAIT 00018 (heard on 19 December 2006 and promulgated on 22 February 2007) the Tribunal, considered whether more generally the authorities are willing and able to provide effective protection and found that there is in general a sufficiency of state protection in Jamaica (see para 150). The Tribunal then went on to consider whether
the Jamaican authorities can protect persons who face a real risk in the form of targeting by criminal gangs,

2.3.10 The government has taken reasonable steps to establish an effective criminal justice system, albeit its effectiveness is undermined by a number of structural and operational weaknesses. It has instituted a number of reforms which have led to some improvements in security and the availability of state protection since the promulgation of AB (see Rule of law and the judiciary).

2.3.11 The Home Office does not consider that there are grounds supported by cogent evidence to depart from the findings in AB.

2.3.12 In general, a person fearing non-state agents (including rogue state officials) is likely to be able to obtain effective state protection. The onus is on the person to demonstrate otherwise, with case determined on its facts.

2.3.13 For information and an assessment of risk in the context of organised crime, see CPIN on Fear of Organised Criminal Gangs and for information about crime generally, see Background note. For further guidance on protection generally see Asylum Instructions on Assessing Credibility and Refugee Status and Gender Issues in the Asylum Claim.

Back to Contents
3. **Security apparatus**

3.1 Overview

3.1.1 The United States Department of State 2018 Human Rights report noted:

“The prime minister has general authority over the Jamaican Defense Board and, as Chairman of the Board, has ministerial responsibility for defense-related matters including the command, discipline, and administration of forces. He is the de facto Minister of Defense. The Ministry of National Security, however, functions as the ministerial home of the Jamaica Defense Force (JDF) and directs policy over the security forces. The JCF, with units for community policing, special response, intelligence gathering, and internal affairs, has primary responsibility for internal security. The JDF’s mandate is to maintain the integrity of Jamaica’s waters and airspace and to provide aid to the civil authorities when appropriate. The JDF, including the Coast Guard, has responsibility for national defense and maritime narcotics interdiction. When the prime minister and parliament declare a state of emergency, the JDF has arrest authority and operational partnership alongside the JCF…”

3.1.2 There is a Witness Protection programme which aims to protect and provide support for those whose safety is at risk. The 2017 USSD report stated that “While the JCF reported that no participant in the witness protection program was ever killed, the program suffered from a number of problems.”

For more information, see the Country Policy and Information Note on Jamaica: Fear of Organised Criminal Gangs and the Country Background Note.

3.2 Jamaica Constabulary Force

3.2.1 The Ministry of National Security Jamaica stated on its website:

“The Jamaica Constabulary Force (JCF) is the police force of Jamaica. The current head of the JCF is Commissioner Major General Antony Anderson. The JCF’s mission is “to serve, protect and reassure with courtesy, integrity and respect for the rights of all.” The JCF falls under the authority of the Ministry of National Security.

“The national roles of the JCF are:

- To maintain law and order
- To assist in the prevention and detection of crime
- To investigate alleged crimes

---

3 USSD 2017 Human Rights report – Jamaica, (para 1e), 20 April 2018, url
• To protect life and property
• To enforce all criminal laws as defined by the Jamaican penal code
• To provide general assistance to the public

3.2.2 Regarding its strategic vision and its value statement, the website noted that, ‘The vision of the Jamaica Constabulary is to become a high quality professional service that is valued and trusted by all the citizens of Jamaica… The Jamaica Constabulary is committed to the quality of its service delivery and the satisfaction of its internal and external customers.’

3.2.3 The Jamaica Constabulary Force has 9,930 staff, as well as 55 auxiliary positions, making it a total of 9,985.

3.2.4 The USSD 2018 Jamaica Human Rights report noted that, ‘The JCF, with units for community policing, special response, intelligence gathering, and internal affairs, has primary responsibility for internal security.’

3.2.5 The USSD 2018 further reported ‘When a public state of emergency (SOE) is declared, the police and military have search, seizure, and arrest authority without a warrant. A state of emergency expires in 14 days unless parliament agrees to extend it. Additionally, the government can identify zones of special operations (ZOSOs), which confers the same authority to security forces, albeit within much smaller physical boundaries.

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

3.2.7 The Inter-American Development Bank report noted that:
‘The Island Special Constabulary Force was merged into the JCF to create a single command and implementation structure to eliminate duplication in administrative services, expand the skill set of police personnel, and rationalize and centralize training. The merger was first recommended by the Wolfe Report (1991) and subsequently reiterated in five independent reports.[…] Prior to the merger, each auxiliary force had separate legislative authority and specific areas of control and geographic areas of responsibility.’

3.2.8 On 31 March 2019, Jamaica Information Service (JIS) reported that the government was transforming the JCF into ‘a force for good’. The Prime Minster, Andrew Holness stated:

---

7 USSD, ‘Jamaica 2018 human rights report’ (section 1d), 13 March 2019, [url]
8 USSD, ‘Jamaica 2018 human rights report’, (section 1d), 13 March 2019, [url]
9 USSD, ‘Jamaica 2018 human rights report’, (section 1e), 13 March 2019, [url]
10 IADB, ‘Crime and Violence in Jamaica’ (p50), June 2016, [url]
“The transformation that we are moving the JCF towards is of an organization that can use force without violence, that can use force proportionately and that uses it as a last resort. That means, we’re going to have to change all type of systems, give you new tools, techniques and technology but the first thing we have to do is to change the mindset of the society and the JCF.”

3.2.9 The article further noted:

‘During this financial year, the Government has allotted a record $40 billion dollars (£24 thousand pounds) to the JCF from the $96.8 billion-dollar budget of the Ministry of National Security. The Government has so far rebuilt or refurbished 70 police stations across the island. He also announced that Cabinet recently approved the contract of acquisition of over 3000 bulletproof vest and other safety gear and additional firearms for the JCF.’

3.3 Armed forces

3.3.1 The Ministry of National Security Jamaica stated on its website:

‘The Jamaica Defence Force (JDF) comprises the Army, Air Wing and Coast Guard, together forming the military of Jamaica. The Jamaica Defence Force is constituted under the provisions of Section 4 of the Defence Act. Under this Act, the JDF has responsibility for the defence and protection from external forces or threat to the sovereignty of Jamaica. The JDF also supports the maintenance of order in Jamaica as well as any other duties that may occasionally be defined by the Defence Board.

‘The Defence Board is under the general authority of the Prime Minister who has Ministerial responsibility for defence matters of the land including command, discipline and administration. The Ministry of National Security functions as the ministerial home of the JDF.

‘The JDF’s mandate is to maintain the integrity of Jamaica’s waters and airspace and to provide aid to the Civil Authorities, relating to:

- Restoration/maintenance of law and order
- Counter-narcotics operations
- Search and Rescue (SAR)
- Casualty Evacuation
- Humanitarian and disaster relief operations
- Defence diplomacy
- Nation building projects
- Contingency planning

---

11 JIS, ‘Transformation of the JCF into a force for good underway – PM Holness’, 31 May 2019, url
12 Xe currency converter, undated, url
13 JIS, ‘Transformation of the JCF into a force for good underway – PM Holness’, 31 May 2019, url
3.3.2 The USSD report of 2018 observed that the, 'Ministry of National Security functions as the ministerial home of the Jamaica Defense Force (JDF) and directs policy over the security forces.'

3.3.3 The report further added ‘The JDF’s mandate is to maintain the integrity of Jamaica’s waters and airspace and to provide aid to the civil authorities when appropriate. The JDF, including the Coast Guard, has responsibility for national defense and maritime narcotics interdiction. When the prime minister and parliament declare a state of emergency, the JDF has arrest authority and operational partnership alongside the JCF.’

3.3.4 Janes, a British publishing company that specialises in military, aerospace and transportation topics, observed in a March 2019 article:
‘The Jamaica Defence Force (JDF) is aiming to grow from 6,000 troops up to 10,000 in order to expand the service's footprint on the island.
‘In addition to growing the size of the force, Kingston is building new facilities for the JDF. The Ministry of National Security announced in late January that new barracks have been constructed in Montego Bay, which now houses the JDF’s Second Battalion.’

3.4 Private security

3.4.1 The Ministry of National Security in Jamaica stated on its website ‘The PSRA (Private Security Regulation Authority) is a statutory body under the Ministry of National Security. It was established under the PSRA Act of 1992. Following the rapid growth in the number of organizations and individuals operating in the Private Security Industry, it became highly desirable that a system be introduced to hold these organizations and individuals accountable to some form of regulation and monitoring.’

For more information, see The Ministry of National Security Jamaica official website and The Private Security Regulation Authority official website.

3.4.2 Private security forces are predicted to be larger than the Jamaica Constabulary Force and the Jamaica Defence Force, with an estimated twenty thousand employed guards in over two hundred registered security companies.

3.4.3 According to the Jamaica Information Service, ‘as at December 2018, there were more than 23,000 registered security practitioners and 290 registered security companies in Jamaica.’

3.4.4 On 16 May 2019, The Jamaica Observer reported:

---

16 USSD, ‘Jamaica 2018 human rights report’, (section 1d), 13 March 2019, url
17 Jane’s, ‘JDF aims to increase personnel, build new facilities’, 25 March 2019, url
19 TandF, […], ‘Old Boys and Badmen: Private security in (post)colonial Jamaica, 19 March 2019, url
20 JIS, ‘Only hire licensed security guards – PSRA’, 15 March 2019, url
Prime Minister Andrew Holness says that, in addition to creating jobs for over 23,000 Jamaicans, the private security industry has become an essential component of the national security framework. “Like the State’s security personnel, private security officers are exposed to high risks and continue to make selfless sacrifices for the nation. The country is, therefore, heavily invested in the private security industry, and likewise the industry is heavily invested in Jamaica,”

“He said that the sector has proven its capability to do so in terms of providing value, including protection of access control points, employees, clients, communities, homes, and corporate assets.”

3.4.5 The Commonwealth Network, an online guide to doing business in Commonwealth countries, stated:

“The past few decades have witnessed a massive expansion of the security industry in Jamaica. As of 2012, according to the Private Security Regulation Authority (PSRA), there were more than 200 registered private security companies (PSCs) in Jamaica. In terms of the number of registered guards, the largest of these include Guardsman Limited with 2,777, Marksman Limited with 2,653 and Ranger Protection and Security Company Limited with 1,456.

‘Jamaica’s PSCs provide services in a wide range of contexts and to a wide range of clients, including for specific events (public and private), for residential areas, for banks and for airlines. Services on offer include guarding (for people, premises, goods, cash in transit)…”

3.4.6 A March 2019 article by academics Rivke Jaffe and Tessa Diphoorn, published on Taylor and Francis online, an international academic publisher, stated that ‘a number of politicians own security businesses on the side’. The article further noted that those in charge of larger security companies were part of the country’s business elite and ‘almost all…had a background in the Jamaica Defense Force, and this military experience and the contacts this facilitated were strong assets in developing their business career.’

3.4.7 The same article stated that a ‘military background works as a type of social and cultural capital in the industry’ and that ‘contracting private companies for … services … was cheaper than direct employment and made it easier to dismiss guards suspected of theft or other security breaches…’

3.4.8 In addition, the source observed that ‘Everybody in the industry knows everybody’, as almost all have gone to the same elite schools as politicians.

---

23 Taylor and Francis group, ‘About Taylor and Francis group’, 2019, url
24 TandF, […]. ‘Old Boys and Badmen: Private security in (post)colonial Jamaica’, 19 March 2019, url
25 TandF, […]. ‘Old Boys and Badmen: Private security in (post)colonial Jamaica’, 19 March 2019, url
26 TandF, […]. ‘Old Boys and Badmen: Private security in (post)colonial Jamaica’, 19 March 2019, url
27 TandF, […]. ‘Old Boys and Badmen: Private security in (post)colonial Jamaica’, 19 March 2019, url
28 TandF, […]. ‘Old Boys and Badmen: Private security in (post)colonial Jamaica’, 19 March 2019, url
and high-ranking beaureucrats and ‘maintain strong alumni networks through what are known unironically as Old Boys events’ 29. Furthermore:

‘The shared military background also ensured that, while the private security industry is characterized by fierce competition, at the top, relations were often friendly. Senior managers and owners collaborate in professional security associations to lobby the government and self-police the industry to keep out undesirable businesses. Beyond these professional interests, there is a level of social homogeneity that keeps relations pleasant.’ 30

3.4.9 Owners and managers of security companies described their guards as ‘generally from “volatile” Downtown neighbourhoods, as barely literate, unpunctual, unreliable, prone to crime, and, all in all, in need of discipline.’ 31 Whilst some security company managers stated that trust was the main challenge regarding security guards, one security company owner explained that security guards are ‘most susceptible to crime themselves, because of their milieu.’ 32

3.4.10 The article added that security guards:

‘…are seen as easily swayed into bad habits, such that one manager explained their inclination to recruit at a younger age: “Sometimes we go a year or two below our required age if they are presentable and look mature, and we train them, because that way they are not exposed to bad habits.” On the whole, guards’ involvement in theft is taken as a given, and suspicion is the basis for many interactions between guards and management. One security consultant asserted “they need an internal affairs department in most of these companies to just look at their own guards and see what’s going on.”’ 33

4. Arrest and detention

4.1 Legal rights

4.1.1 The 2018 USSD report on Jamaica stated:

‘The constitution prohibits arbitrary arrest and detention but permits arrest with “reasonable suspicion of [a subject] having committed or about to commit a criminal offense.” The law provides for the right of any person to challenge the lawfulness of his or her arrest or detention in court, and the government generally observed these requirements; however, abuses arose because police regularly ignored the “reasonable suspicion” requirement, arraignment procedures were very lengthy, and large portions of the country were under a state of emergency.’ 34

4.1.2 In addition, the report mentioned:

29 TandF, […]. ‘Old Boys and Badmen: Private security in (post)colonial Jamaica, 19 March 2019, url
30 TandF, […]. ‘Old Boys and Badmen: Private security in (post)colonial Jamaica, 19 March 2019, url
31 TandF, […]. ‘Old Boys and Badmen: Private security in (post)colonial Jamaica, 19 March 2019, url
32 TandF, […]. ‘Old Boys and Badmen: Private security in (post)colonial Jamaica, 19 March 2019, url
33 TandF, […]. ‘Old Boys and Badmen: Private security in (post)colonial Jamaica, 19 March 2019, url
34 USSD, ‘Jamaica 2018 human rights report’ (section 1d), 13 March 2019, url
Police officers may arrest without warrant where a felony, treason, or breach of the peace is committed or attempted in the officer’s presence. Upon arrest, the officer is required to tell a suspect in clear language the offense(s) for which the individual is being arrested. Any officer may execute a warrant that is lawfully issued by a judge or justice of the peace without being in possession of the warrant. The officer must produce the warrant if the suspect requests it as soon as practical after the arrest. The decision to charge or release must be resolved within 48 hours, although a judge or justice of the peace may extend the period of custody.35

4.2 Arbitrary detention

4.2.1 The USSD 2018 report stated that security forces did not always follow the legal procedures when it came to arrests36 and said that, ‘Government officials and members of civil society reported that the public perceived police could arrest regardless of judicial authorization.’37

4.2.2 The USSD report for 2018 observed:

‘Arbitrary and lengthy detentions took place in the execution of both the ZOSOs (Zones of special operations) and SOEs (State of Emergencies). The Office of the Public Defender, commissioned by parliament to investigate civil and human rights abuses, received reports that security forces temporarily detained more than 2,000 persons in Montego Bay, which was within the St. James SOE, from January to October. Across the country police detained 6,000 persons during the same period. The average length of detention was four days. Extremely few of these arrests resulted in charges…

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

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

35 USSD, ‘Jamaica 2018 human rights report’ (section 1d), 13 March 2019, url
36 USSD, ‘Jamaica 2018 human rights report’ (section 1d), 13 March 2019, url
37 USSD, ‘Jamaica 2018 human rights report’ (section 1d), 13 March 2019, url
forces had orders to meet a specified number of arrests each day. There were few official investigations or prosecutions of security force members involved in arbitrary arrests.\footnote{USSD, ‘Jamaica 2018 human rights report’, (section 1d), 13 March 2019, \url{url}}

### 4.2.3 Regarding lock-ups, the USSD report noted:

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

‘The Office of the Public Defender received reports that when someone was arrested in a ZOSO, the average time in detention was four days. The majority of arrests ended with no charges and the suspect released. The Office of the Public Defender estimated that 14 persons arrested in a ZOSO during the year had been held without charge in excess of 100 days.’\footnote{USSD, ‘Jamaica 2018 human rights report’, (section 1d), 13 March 2019, \url{url}}

### 4.3 Prison and detention center conditions

#### 4.3.1 The USSD report of 2018 noted that ‘Allegations of cruel, inhuman, and degrading treatment or punishment towards individuals in police custody continued.’\footnote{USSD, ‘Jamaica 2018 human rights report’, (section 1c), 13 March 2019, \url{url}}

#### 4.3.2 The report further stated:

‘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…

‘Some of the most egregious reports of human rights abuses took place in “lock-ups” (facilities to hold pretrial detainees). For example, when the government declared a state of emergency in the parish of St. James in January, it identified a lock-up in Montego Bay to facilitate the influx of detained suspects. The Ministry of Health reported major problems, including the lack of functioning bathroom facilities, lighting, and handwashing stations; poor ventilation; and inadequate drainage. Ministry inspectors noted illnesses caused by cockroaches, rats, mosquitoes, and flies. Detainees consumed nutritionally poor meals. There was no refrigeration on site for food storage. Detainees had less than one hour per day out of the cell to use shower facilities and get food. In some cases guards reportedly denied access to bathrooms and water in order to coerce and punish inmates.’\footnote{USSD, ‘Jamaica 2018 human rights report’, (section 1c), 13 March 2019, \url{url}}

#### 4.3.3 Regarding the Montego Bay lock-up, the USSD report noted: ‘Attorneys reported extreme difficulty reaching their clients and conveyed that in most cases their detainees did not know why they were arrested. After receiving citizen complaints and some media coverage, the government took some
corrective actions to reduce the number of detainees and improve the conditions of the detention facility…

4.3.4 The USSD also noted:

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

4.3.5 The report added:

‘Independent authorities investigated allegations of abuse and inhuman conditions. Official complaints and investigations were infrequent and likely underreported… Justices of the Peace and representatives from the Police Civilian Oversight Authority (PCOA) visited correctional centers and lock-ups regularly. The PCOA submitted reports to the Ministry of National Security with recommendations to improve conditions. Citizen groups and NGOs believed the ministry rarely acted upon the recommendations.’

5. Capabilities of the security forces

5.1 Effectiveness

5.1.1 The Jamaica 2019 Crime and Safety report published on 30 May 2019 by the Overseas Security Advisory Council observed:

‘…Jamaica’s police force is understaffed and has limited resources. Gated resorts are not immune to violent crime…

‘Insufficient funding and resources hinder Jamaica’s Constabulary Force (JCF). Government officials have very low salaries. Despite the creation of the Independent Commission of Investigations in 2010, an entity that investigates police misconduct, police corruption and involvement in criminal activity still occur. Additionally, the majority of crime victims do not report crimes due to fear the report will get back to criminals, or the feeling that nothing would come from such reports.

‘Most civilians fear that the authorities cannot protect them from organized criminal elements because they suspect authorities are colluding with

42 USSD, ‘Jamaica 2018 human rights report’, (section 1c), 13 March 2019, url
43 USSD, ‘Jamaica 2018 human rights report’, (section 1c), 13 March 2019, url
44 USSD, ‘Jamaica 2018 human rights report’, (section 1c), 13 March 2019, url
criminals, leading them to avoid giving evidence or witness testimony. Those in some marginalized communities are often indifferent to police authority, adding to a perceived sense of lawlessness. Reporting crime can seem archaic and confusing, and can be a lengthy process that some see as frustratingly bureaucratic.

‘Despite these setbacks, Jamaican police officers have received extensive training from the United States and other international trainers, including the United Kingdom, Russia, China, Canada, and South Korea.’

5.1.2 The report further noted that:

‘In January 2018, due to rampant violence and murders, the Government of Jamaica (GoJ) declared States of Emergency (SOE) and Zones of Special Operations (ZOSOs) for several parishes including the Kingston Metropolitan Area (KMA) and the parish of St. James... Under SOE, security forces deployed to address organized crime, including gang violence related to drug and gun trafficking and lottery scams. The Emergency Powers Act allows the security forces to detain and deport suspicious persons, to enter premises and seize property without a warrant, and declare curfews. The three SOEs and two ZOSOs lowered the murder rate by 22%, due largely to the steep decline in murders in St. James. However, the SOE lapsed the end of January 2019, after Jamaica’s Parliament did not approve its extension.’

5.1.3 The Jamaica 2018 Crime and Safety report observed:

‘Police are unable to patrol and protect most neighborhoods adequately, so burglaries are quite common. Home break-ins occur in Kingston, even in gated and affluent neighborhoods. Past incidents have shown that when occupants neglected to use security features provided, criminals were afforded opportunities to gain entry into residences. Most wealthy residents hire private, armed guard forces to deter criminals...

‘The police are only able to make arrests in 44% of homicides annually, and they only convict perpetrators in 29% of homicide cases...

‘Although the police receive some training from U.S and U.K. law enforcement entities, they endure a lack of funding, resources, and management. The Jamaica Constabulary Force is considered to be underpaid, poorly trained, and understaffed.’

5.1.4 The Jamaica Information Service reported in August 2018 that according to Police Commissioner, Major General Antony Anderson, ‘the reduction in murders and major crimes can be largely attributed to smart policing by the security forces.’

5.1.5 In addition, the article noted:

‘He noted that a number of policing strategies implemented have been effective in significantly reducing the figures.'
Statistics from the Jamaica Constabulary Force (JCF) show that since August 11 (2018), there has been a 16.8 per cent decrease in murders, 15.4 per cent decline in shootings, 9.4 per cent fall in robberies, and 7.2 per cent drop in break-ins...

Major General Anderson also acknowledged that the Zones of Special Operations, and States of Public Emergency, now in effect, have been particularly pivotal in underpinning and fuelling the security forces’ hard work and success.

On Thursday (August 16), Prime Minister, the Most Hon. Andrew Holness, indicated that there is an active national security strategy in place, which is utilising a systematic approach to dealing with crime.

The JCF’s overall statistics for 2018 show that 797 murders were recorded between January 1 and August 11, compared to nearly 1,000 for the corresponding period last year.

There have been a number of government initiatives to tackle corruption. The Major Organised Crime and anti-corruption agency is a department within The Ministry of National Security Jamaica that focuses on this. Its website states:

In August 2014, the Anti-Corruption Branch (ACB) and the Major Organised Crime and Anti-Corruption Task Force (MOCA TF) combined to form the Major Organised Crime and Anti-Corruption Agency (MOCA). MOCA is now an elite agency which focuses on tackling corruption in the public sector and bringing high-value criminal targets to justice. The goals of the agency are:

- To tackle serious organised crime and to stamp out corruption in Jamaica
- To focus on bringing high-value criminal targets to justice
- To improve governance and security in Jamaica through tackling serious transnational organised crime in all its forms and to provide deterrence.

Speaking at the Eighth Summit of America in Lima in 2018, the Prime Minister Andrew Holness addressed the topic of corruption. He stated that Jamaica will continue to partner with international bodies to find a solution to corruption in the country.

For more information, see the Country Policy and Information Note: Fear of Organised Criminal Groups.

5.2 Corruption

The Jamaica 2019 Crime and Safety report stated that ‘The Jamaican government concluded that corruption and the transnational crime it facilitates presents a grave threat to national security.’

49 JIS, ‘Reduction in crime attributed to effective policing strategies’, 18 August 2018, url
50 The Ministry of National Security Jamaica, ‘MOCA’, undated, url
51 JIS, ‘Jamaica committed to cooperating with Int’l Partners to combat corruption’, 16 April 2018, url
5.2.2 Regarding corruption within prisons, the USSD 2018 report stated that ‘Reports existed of corrections officers using their authority to take bribes and control access to prisoners.’ Furthermore, the report mentioned that regarding the Montego Bay lock-up, ‘A credible report existed of families (visiting their relatives in prison) paying for meals, without receipts or confirmation that a meal was delivered, suggesting the administrators pocketed the money.’

5.2.3 The Bertelsmann Stiftung 2018 Jamaica country report observed:

‘After years, attempts to create one, powerful anticorruption agency which would include the OCG (The Office of the Contractor General) and other state agencies culminated with the passage of the Integrity Commission Act on 31 January 2017, supported unanimously by both sides of parliament. This will enable the establishment of a single anti-corruption body to investigate, detect, prevent and prosecute acts of corruption in Jamaica, in the public sector and among politicians. Previously, three different state agencies would be involved in this process, none of which had enough legal power, to overcome political, legal or procedural loopholes, and ensure that both public servants and politicians would be held accountable for breaking the law and engaging in corrupt practices.’

5.3 Human rights violations

5.3.1 The Independent Commission of Investigations (INDECOM) is ‘a civilian staffed state agency tasked to undertake investigations concerning actions by members of the Security Forces and other Agents of the State that result in death or injury to persons or the abuse of the rights of persons; and for connected matters. The members of the Security Forces and other Agents of the State for which INDECOM provides oversight include:

- Jamaica Constabulary Force (JCF)
- District Constables
- Jamaica Defence Force (JDF)
- Correctional officers at the Department of Correctional Services (DCS)

5.3.2 Between 6 January 2019 and 21 February 2019, the agency reported a total of eleven fatalities committed by the JCF.

5.3.3 On 20 March 2019, INDECOM reported the killing of a man by an off duty police officer on 19 March 2019. On 28 April 2019, INDECOM reported a shooting of a civilian by three police officers. The article stated, ‘three men who were in the escaping vehicle were detained, all of whom identified

---

54 USSD, ‘Jamaica 2018 human rights report’ (section 1c), 13 March 2019, url
56 INDECOM, ‘Commission – About us’, undated, url
57 INDECOM, ‘2019 - security forces related fatalities’, undated, url
58 INDECOM, ‘INDECOM investigating fatal shooting of Nevada Dennis’, 20 March 2019, url
59 INDECOM, ‘INDECOM investigating fatal shooting in Spanish Town’, 28 April 2019, url
themselves as police officers. One of those men has since died, one is in custody and the other has escaped. The escaped officer is Cpl. Kirk Frazer and is being sought by the police. The two officers had been previously charged for murder by INDECOM and were released on bail.\(^{60}\)

5.3.4 The first quarterly INDECOM report noted incidents between January and March 2019. The report stated:

‘The Commission received 197 categories of complaints from 181 incidents reported for the period. The top five categories of complaints include: assault (68), discharge of firearm (58), shooting injury (21), fatal shooting (19)…and threat (8).

‘The Commission’s Forensic Unit responded to 69 incident scenes for the period. There were two deaths in custody for the period…

‘No member of the Jamaica Constabulary Force (JCF) was arrested and charged during the period, for incidents investigated by INDECOM.’\(^{61}\)

5.3.5 The 2018 year in review report by INDECOM, observed that between October and December 2018:

‘The Commission received 170 categories of complaints from 165 incidents reported for the period. The top five categories of complaints include: assault (75), discharge of firearm (45), fatal shooting (23)…shooting injury (11) and neglect of duty (5).

‘The Commission’s Forensic Unit responded to 57 incident scenes for the period. There were two deaths in custody for the period…

‘One (1) member of the Jamaica Constabulary Force (JCF) was arrested and charged during the period, for incidents investigated by INDECOM.’\(^{62}\)

5.3.6 The 2018 USSD report on Jamaica noted that:

‘The majority of reports described officials using physical force, intimidation, access to water, and extreme exposure to heat or cold to coerce a change in testimony. INDECOM investigated reports of alleged abuse committed by police and prison officials. Representatives from the nongovernmental organization (NGO) Jamaicans for Justice claimed abuse was likely underreported by victims, who feared reprisal or did not believe authorities would act on their complaint.

‘In one case an elderly woman, Desrine Morris, died while in police custody on or about March 1. The JCF arrested Morris for an unspecified bench warrant. Less than six hours later police reported she had hanged herself. There were no followup police reports, and the autopsy did not confirm a cause of death. Friends and family members were skeptical of this being a suicide. Media reports suggested that excessive punitive force may have led to the death.’\(^{63}\)

5.3.7 Furthermore, the report stated:

\(^{60}\) INDECOM, ‘INDECOM investigating fatal shooting in Spanish Town’, 28 April 2019, url
\(^{61}\) INDECOM, ‘The INDECOM quarterly 1\(^{st}\) January – March 2019’, (page 4), undated, url
\(^{62}\) INDECOM, ‘The INDECOM quarterly 4\(^{th}\) October – December 2018’, (page 4), undated, url
\(^{63}\) USSD, ‘Jamaica 2018 human rights report’ (section 1c), 13 March 2019, url
‘The government had mechanisms to investigate and punish police abuse, but they were not always employed. There were hundreds of abuse and wrongful harm complaints regarding the security forces. INDECOM investigated actions by members of the security forces and other agents of the state that resulted in death, injury, or the abuse of civil rights. When appropriate, INDECOM forwarded cases to the Office of the Director of Public Prosecutions for agents to make an arrest. INDECOM remained one of the few external and independent oversight commissions that monitored security forces, but it was unable to investigate each case thoroughly. As of October 23, INDECOM reported 122 security force-related fatalities.’

5.3.8 The report added:

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

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

5.3.10 Furthermore, the report noted that ‘There were no reports of political prisoners or detainees.’

5.3.11 Amnesty International also reported the killings in 2017 by security forces. A 2018 article stated: ‘Last year, Jamaican law-enforcement officers killed 168 people, an average of three people a week in a nation of 2.8 million. Over the past decade only a handful of police have been convicted for such killings.’

5.3.12 In its 2017/2018 annual report on Jamaica, Amnesty International observed:

‘More than a year after a Commission of Enquiry published its findings into the events that took place in Western Kingston during the 2010 state of emergency that left at least 69 people dead, the government had still not officially responded on how it planned to implement the recommendations, or made a public apology. In June, the Jamaica Constabulary Force completed an internal administrative review into the conduct of officers named in the

64 USSD, ‘Jamaica 2018 human rights report’ (section 1d), 13 March 2019, url
65 USSD, ‘Jamaica 2018 human rights report’, (section 1a), 13 March 2019, url
66 USSD, ‘Jamaica 2018 human rights report’ (section 1e), 13 March 2019, url
67 USSD, ‘Jamaica 2018 human rights report’, (section 1e), 13 March 2019, url
68 AI, ‘petition for PM to take action after 3 people a week killed by police last year’, 15 Mar 2018, url
Commissioners’ report. However, it found no misconduct or responsibility for human rights violations during the state of emergency.\(^69\)

5.3.13 Freedom House observed in the ‘Freedom in the World 2018’ report that ‘there were several high-profile convictions during 2017, including in July of a policeman for his involvement in shooting and killing a teenager in 2007...’\(^70\)

5.3.14 Furthermore, the report stated:

‘Killings by police remain a serious problem in Jamaica. According to the Independent Commission of Investigations (INDECOM), 168 individuals were killed by security personnel in 2017.

‘A Commission of Inquiry in 2016 submitted a report on the state of emergency declared in 2010 in response to violence in the Tivoli Gardens neighborhood of Kingston, in which more than 70 civilians were killed in an operation aimed at arresting an alleged drug trafficker. The report found that security forces had acted disproportionately, and recommended that the government apologize for the event and provide victims with compensation and counseling services; the government issued an apology and provided some compensation to relatives of those killed in December 2017. However, the JCF in August 2017 issued its own report on the raid, which cleared members of wrongdoing and questioned the integrity of the earlier report.’\(^71\)

5.3.15 Freedom House added that ‘harassment of and violence against LGBT people remains a major concern and is frequently ignored by the police...’\(^72\)

5.3.16 The Bertelsmann Stiftung 2018 Jamaica country report observed:

‘Civil rights are protected under law, especially the constitution and the Charter of Rights, but are often not properly respected and protected. Jamaicans for Justice (JFJ) through their legal team receives credible reports, from family members of persons detained at police stations, of the serious physical abuse of detainees while in police custody. Without the intervention and legal action of NGOs like JFJ or state agencies like the Public Defender (when the offending party is a state agency), the rights of detainees are not properly respected and protected, and detainees face threats to their life, safety and fundamental human rights. Mechanisms and institutions to prosecute, punish and redress violations of civil rights exist, but are not consistently effective as the many vulnerable citizens, primarily young black men do not have access to legal services to intervene on their behalf. Discriminatory action on the basis of sexual orientation is given a key reason that LGBT people are afraid to report incidents of assault against them, as they fear further abuse from police officers while in police custody.’\(^73\)

\(^{70}\) Freedom House, ‘Freedom in the World 2018’, (section F1), 27 August 2018, url
5.4 Surveillance and tracking systems

5.4.1 Flight Global, a source for news, data, insight and knowledge for the aviation industry, noted in a November 2018 article that the JDF commissioned a maritime surveillance aircraft on 14 November 2018. The article stated that it was ‘one of the single largest investments that any government of Jamaica has made in the area of security’, says the country’s prime minister Andrew Holness.74

5.4.2 The same report stated that as well as search and rescue operations and police work, ‘the aircraft will be used to spot and stop trafficking of illegal guns and drugs…’.75

5.4.3 On 11 April 2019, Janes reported that the Jamaican government ordered a coastal surveillance system that will detect ‘surface and air targets ranging from inflatable dinghies to warships, helicopters and aircraft in low-level flight’.76

5.4.4 On 19 March 2019, in a report titled ‘Jamaica Eye’, the Jamaica Information Service noted that the ‘Ministry of National Security has launched a tool that will increase surveillance of public spaces island wide and aid in Jamaica’s crime prevention efforts.’ 77

5.4.5 The Jamaica Eye website stated that the Jamaica Eye project is ‘an initiative of the Ministry of National Security’.78

5.4.6 The website further added ‘JamaicaEye is part of an islandwide network of camera surveillance systems designed to increase the safety of all citizens. These cameras will monitor public spaces across the island and assist the authorities in responding to incidents in the event of an incident, disaster, act of criminality of accident.’ 79 And that ‘If you have a camera system outside your home or office, facing a public space you may help by registering your camera with JamaicaEye to share your camera feed.’ 80

5.4.7 The Minister of National Security stated in a message on the Jamaica Eye website:

‘…Our investment in the development and expansion of Jamaica Eye represents an important part of this secure foundation. This investment will utilize technology as a force multiplier for our police, expanding their reach and providing useful information for criminal investigations and overall surveillance.

The Ministry of National Security recognizes that improvements to the efficiency and capacity of the police force, is crucial in our pursuit of a safer Jamaica. Jamaica Eye has been developed as an acknowledgement of the

---

74 Flight Global, ‘JDF commissions maritime surveillance aircraft’, 27 November 2018, url
75 Flight Global, ‘JDF commissions maritime surveillance aircraft’, 27 November 2018, url
76 Janes, ‘Jamaica orders Thales’s coastal surveillance system’, 27 November 2018, url
77 JIS, ‘Jamaica Eye’, 19 March 2019, url
78 Jamaica Eye, ‘About Jamaica Eye’, undated, url
79 Jamaica Eye, ‘About Jamaica Eye’, undated, url
80 Jamaica Eye, ‘About Jamaica Eye’, undated, url
opportunities presented by technology, to assist the police in their responsiveness to critical incidents and their surveillance capabilities..."^81

5.4.8 On 4 August 2018, the Jamaica Observer reported that 'Within the next three years, Jamaica Constabulary Force (JCF) personnel will be using more technological solutions in their daily operations in a bid to reduce incidents of crime and their likely occurrence.'^82 The technology designed will be to 'support the National Security Ministry's focus on situational prevention under the comprehensive five-pillar crime prevention and reduction strategy.'^83

6. **Rule of law and the judiciary**

6.1 **Structure**

6.1.1 The Supreme Court Jamaica website explained 'The structure of the Jamaican Judicial System is based on five basic tiers. The lowest tier is the Petty Sessions Court. This court is presided over by Justices of the Peace. The Petty Sessions Court requires a minimum of two justices to be properly constituted. Sometimes Magistrates exercise jurisdiction in these courts and the presiding magistrate exercises the jurisdiction of two Justices of the Peace.'^84

6.1.2 For more information on the court system, see The Supreme Court Jamaica website.

6.1.3 Freedom House noted in its 'Freedom in the World 2018' report that 'The judicial system is headed by the Supreme Court and includes a court of appeals and several magistrates’ courts. The Trinidad-based Caribbean Court of Justice is the highest appellate court.'^85

6.2 **Trial procedures**

6.2.1 The 2018 USSD report noted:

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

^81 Jamaica Eye, 'About Jamaica Eye', undated, url
^82 Jamaica Observer, 'JCF increasing use of technology in crime fight', 4 August 2018, url
^83 Jamaica Observer, 'JCF increasing use of technology in crime fight', 4 August 2018, url
^84 The Supreme Court Jamaica, 'The court structure and hierarchy', undated, url
^85 Freedom House, 'Freedom in the World 2018', (section F1), 27 August 2018, url
assistance of an interpreter as necessary. The Supreme Court tries serious criminal offenses, which include all murder cases.  

6.3 Independence

6.3.1 The 2018 USSD report stated that ‘The constitution provides for an independent judiciary, and the government generally respected judicial independence and impartiality. An extreme backlog of criminal cases, however, led to a denial of fair public trial for thousands of citizens.’

6.3.2 The Bertelsmann Stiftung 2018 Jamaica country report observed, ‘The judiciary is independent and free both from unconstitutional intervention by other institutions and from corruption. It is institutionally differentiated, and there are mechanisms for judicial review of legislative or executive acts.’

6.3.3 Freedom House noted in its ‘Freedom in the World 2018’ report that ‘Judicial independence is guaranteed by the constitution, though corruption is a problem in some lower courts.’

6.4 Effectiveness of the judiciary

6.4.1 Regarding security force related fatalities, the USSD observed in its human Rights report covering events in 2018 on Jamaica that:

‘Even egregious charges against members of the security forces could take years to process. In 2007 police constable Mark Russell shot and killed an unarmed teenage boy in Kingston. The court concluded Russell plant a police-issued rifle on the victim’s person as he lay wounded in the street to corroborate a false report. Defense counsel used various procedural maneuvers to delay the case. In September [2018] the court sentenced Russell to 24 years in prison.’

6.4.2 The report further stated:

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

---

86 USSD, ‘Jamaica 2018 human rights report’, (section 1e), 13 March 2019, [url](#)
87 USSD, ‘Jamaica 2018 human rights report’, (section 1e), 13 March 2019, [url](#)
89 Freedom House, ‘Freedom in the World 2018’, (section F1), 27 August 2018, [url](#)
90 USSD, ‘Jamaica 2018 human rights report’, (section 1a), 13 March 2019, [url](#)
year courts made significant efforts to address the backlog by closely monitoring and reporting case throughput to the Ministry of Justice.  

6.4.3 The Bertelsmann Stiftung 2018 Jamaica country report mentioned:

‘There are unsubstantiated reports and attempts to link the disappearance of case files and inordinately long-waiting periods for cases to be heard to acts of corruption. It is well established that there are too few courts, not enough judges and old-fashioned reporting practices, which have all contributed to huge back-log and waiting time for cases to be heard. The judicial system is not adequate for the number of cases, especially criminal cases related to the very high levels of violent crimes and murders in Jamaica.

‘Ongoing legal education is provided and required, for both judges and attorneys, and channels of appeal do exist. In recent times, various reforms of court administration have been undertaken, including the opening of night courts, the referral of certain non-criminal cases for mediation, and the introduction of technology for the taking of notes and preparation of judges’ findings. In addition, there is a certain class bias and lower-class people show less confidence in the justice system.

‘Office holders who break the law and engage in corruption are not adequately prosecuted, but occasionally attract adverse publicity. During the period under review, the mayor of a rural parish was accused of using her authority to wrongfully award contracts worth millions of Jamaican dollars to various members of her family. The Office of the Contractor General (OCG) initiated an investigation, the matter was referred to the police and the case is currently in the courts. Despite interventions and investigations by the OCG in other cases, politicians and senior public officials are rarely convicted of corruption.’

6.4.4 Freedom House also reported in 2018 that ‘A large backlog of cases and a shortage of court staff at all levels continues to undermine the justice system. Trials are often delayed for years, and at times cases are dismissed due to systematic failures, including antiquated rules regarding evidence.’

Furthermore, the report noted that, ‘according to a May 2017 report published by the Office of the Contractor General, 68 percent of respondents believed judges had integrity.’

6.4.5 Amnesty International reported in its 2017/2018 international report covering Jamaica, ‘Female relatives of those allegedly killed by the police continued to battle an underfunded, sluggish court system in their fight for justice, truth and reparations.’

6.5 Legal aid and other assistance

6.5.1 The Bertelsmann Stiftung 2018 Jamaica country report noted:

---

91 USSD, ‘Jamaica 2018 human rights report’, (section 1e), 13 March 2019, url
Dominant environmental interest groups include Jamaica Environment Trust (JET). JET is well-recognized globally, and is able to consistently attract funding for public advocacy and legal challenges when state agencies break laws. Jamaicans for Justice (JFJ) remains the most vocal and respected presence in the human rights sector. JFLAG remains the strongest advocacy group for members of the LGBT community. Women’s Resource and Outreach Centre (WROC) remains a strong, national voice, working against violence against women, and for women’s human rights and empowerment. WE-Change is a new entrant in the human rights sector. WE-Change is making its presence felt through its aggressive defense of women’s human rights, empowerment and education, and against all forms of discrimination, in particular sexual/violent abuse…

6.5.2 Regarding the discrimination of sexual orientation and HIV/AIDS that exists in Jamaica, the report noted that ‘there are a number of legal provisions against discrimination (e.g., constitution of Jamaica and the Charter of Rights), but their implementation is highly deficient, with gaps in access and consistency of opportunities to exercise their full citizenship rights.’

6.5.3 Freedom House reported in 2018 that ‘Legal protections for women and girls are poorly enforced…’

6.5.4 Regarding government legal aid, the Jamaica Information Service (JIS) reported:

‘The Government of Jamaica is committed to ensuring that all Jamaicans can access quality legal representation, irrespective of their financial resources.

To this end, the Legal Aid Council was established to provide legal services to members of the public who have been charged with criminal offences and especially to those who are unable to afford private legal representation.

The Council offers services free of cost. Some of these are:

- Legal advice for persons who have been detained, but not charged
- Legal representation during trial
- Legal representation during police questioning
- An Attorney to apply for court or station bail on behalf of the person detained’

6.5.5 For further information, see Get the facts – The Legal Aid Jamaica Information Service.
Terms of Reference

A ‘Terms of Reference’ (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the country information section. The Home Office’s Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Security apparatus
  - Overview
  - Jamaica Constabulary Force
  - Armed forces
  - Private security

- Arrest and detention
  - Legal rights
  - Arbitrary detention
  - Prison and detention centre conditions

- Capabilities of the security forces
  - Effectiveness
  - Corruption
  - Human rights violations
  - Surveillance and tracking systems

- Rule of law and the judiciary
  - Structure
  - Trial procedures
  - Independence
  - Effectiveness of the judiciary
  - Legal aid and other assistance

Back to Contents
Bibliography

Sources cited

Amnesty International


Government of Jamaica,


Jamaica Information Service,


Jamaica Observer,


Jane’s (subscription only),


Taylor and Francis,


The Independent Commission for investigations,


United States State Department


Sources consulted but not cited


Version control

Clearance

Below is information on when this note was cleared:

- version 1.0
- valid from 19 August 2019

Changes from last version of this note
Update of assessment and country of information.

Back to Contents
TAB 4
Jamaica 2019 Crime & Safety Report

The current U.S. Department of State Travel Advisory at the date of this report’s publication assesses Jamaica at Level 2, indicating travelers should exercise increased caution. Do not travel to Spanish Town, or to parts of Kingston and Montego Bay, due to crime.

Overall Crime and Safety Situation

The U.S. Embassy in Kingston does not assume responsibility for the professional ability or integrity of the persons or firms appearing in this report. The American Citizens' Services unit (ACS) cannot recommend a particular individual or location, and assumes no responsibility for the quality of service provided.

Review OSAC's Jamaica-specific webpage for original OSAC reporting, consular messages, and contact information, some of which may be available only to private-sector representatives with an OSAC password.

Crime Threats

There is serious risk from crime in Kingston. Violent crime, including sexual assault, is a serious problem throughout Jamaica, particularly in Kingston and Montego Bay. Jamaica's police force is understaffed and has limited resources. Gated resorts are not immune to violent crime.

In 2017, Jamaica's homicide rate was 56 per 100,000; in 2018, the homicide rate dropped to 47 per 100,000, but remains three times higher than the average for Latin America and the Caribbean. Forbes Magazine listed Jamaica as the third most dangerous place for women travelers in 2017. In 2018, Business Insider ranked Jamaica 10th among 20 of the most dangerous places in the world. The International Monetary Fund (IMF) recently cited crime as the number one impediment to economic growth. The Jamaican government concluded that corruption and the transnational crime it facilitates presents a grave threat to national security.

In January 2018, due to rampant violence and murders, the Government of Jamaica (GoJ) declared States of Emergency (SOE) and Zones of Special Operations (ZOSOs) for several parishes including the Kingston Metropolitan Area (KMA) and the parish of St. James. The Embassy warned visitors to avoid some areas of Kingston, Montego Bay (St. James), and Spanish Town due to violent crime. Under SOE, security forces deployed to address organized crime, including gang violence related to drug and gun trafficking and lottery scams. The Emergency Powers Act allows the security forces to detain and deport suspicious persons, to enter premises and seize property without a warrant, and declare curfews. The three SOEs and two ZOSOs lowered the murder rate by 22%, due largely to the steep decline in murders in St. James. However, the SOE lapsed the end of January 2019, after Jamaica's Parliament did not approve its extension. For more information on the SOE, review OSAC's report, Jamaica State of Emergency.

<table>
<thead>
<tr>
<th>Crime</th>
<th>2018</th>
<th>2017</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murders</td>
<td>1287</td>
<td>1647</td>
<td>-21.9%</td>
</tr>
<tr>
<td>Shootings</td>
<td>1154</td>
<td>1485</td>
<td>-22.3%</td>
</tr>
<tr>
<td>Aggravated Assaults</td>
<td>369</td>
<td>423</td>
<td>-12.8%</td>
</tr>
<tr>
<td>Rapes</td>
<td>432</td>
<td>492</td>
<td>-12.2%</td>
</tr>
<tr>
<td>Robberies</td>
<td>1085</td>
<td>1276</td>
<td>-15.0%</td>
</tr>
<tr>
<td>Break-ins</td>
<td>1150</td>
<td>1197</td>
<td>-3.9%</td>
</tr>
</tbody>
</table>

Provided by the Jamaican Constabulary Force Statistics and Information Management Unit
The Embassy refers to its largest off-limits area in Kingston as the “M-Zone,” which represents two-thirds of the city. The Embassy prohibits personnel from travel within this zone. The Regional Security Office must approve all official travel within the M-Zone.

Embassy personnel may not travel into notoriously high-crime areas of Kingston including, but not limited to Mountain View, Trench Town, Tivoli Gardens, Standpipe, Cassava Piece, Grants Pen, and Arnett Gardens. In Montego Bay, Embassy employees must avoid Flankers, Canterbury, Norwood, Rose Heights, Clavers Street, and Hart Street. The downtown “Hip Strip” of bars, clubs, and vendors in Montego Bay is an area where tourists should remain aware of pickpockets and theft.

In Kingston, Embassy personnel reside in several housing compounds that have 24/7 armed guards. Residences must adhere to rigid security standards for a high-crime crime environment; each must be equipped with locked window grilles, alarm systems, and a safe room.

Rape and sexual assault are serious problems throughout Jamaica, including at resorts and hotels. The use of date rape drugs is possible even at private parties and resorts. For more information on date rape drugs, review OSAC’s report, Scopolamine Incidents on the Rise in Colombia.

Gangs are a major security issue across the country, and are the source of the majority of violent crime nationwide. While there is no evidence to indicate criminals and gang-related activities are specifically targeting U.S. citizens for violent crime, U.S. citizens are the prime targets for financial “lottery scams.” In 2018, the USPIS assisted Jamaican law enforcement with 109 cases involving lottery scamming, and have extradited six lotto scammers. Criminal elements pose as legitimate lottery companies, and convince unsuspecting U.S. citizens to send large amounts of money to obtain claimed lottery winnings. The lottery fraud/scam operates predominantly from the north coast near the tourist areas. Those organizing scams may obtain personal information on tourists and use it to conduct their operations.

The most notorious Jamaican scam is the Lotto Scam, a kind of advance-fee fraud. The scammer leads the victim to believe that a Jamaican lottery prize is available to them after the payment of “fees.” If you receive a call, know that you did NOT win a lottery. The person on the telephone is lying, and you should hang up. Never send money to someone who calls to say you have won the lottery in Jamaica. Do not travel to Jamaica to collect a “prize.” Criminals have killed, kidnapped, extorted, or robbed victims. Be very cautious about sending money to help a traveler claiming to be in trouble. When in doubt, contact your local police department for advice and assistance. Be wary of promises to protect a loved one from harm or to help the loved one out of trouble, in exchange for money. That is extortion – contact your local police department. Scam artists often fake romantic interest to get money from a would-be lover, especially on the internet. When in doubt, contact your local police department. If you are the target of a financial scam, you will need to file a report with your local police department.

Transportation-Safety Situation

For more information, review OSAC’s report, Security in Transit: Airplanes, Public Transport, and Overnights.

Road Safety and Road Conditions

Driving is on the left side of the road in Jamaica. The lack of pedestrian crosswalks requires special vigilance. In 2018, road fatalities increased to 389, from 322 the year before. Most roads are paved, but suffer from ill repair, inadequate signage, large potholes, limited lighting, and poor traffic control markings. Roads are often subject to poorly marked construction zones, pedestrians, bicyclists, and livestock. Driving habits range from aggressive speeding and disregard for others, to inexperience and overly cautious behaviors, creating uncertainty and hazards to pedestrians.

Drivers should maintain special care when entering poorly marked traffic circles; entering motorists must yield to those already inside. Exit points are exceptionally confusing, often making it difficult to determine which exit to take. There is no law prohibiting the use of mobile devices while driving; use vigilance, as drivers in Jamaica often allow their cell phones to distract them. (Legislation addressing this is forthcoming in the new Road Traffic Act.)

With the completion of the North-South Highway toll road in 2016, there is now a modern, expedient route between Kingston and the north coast area near Ocho Rios. The A1, A2, and A3 highways provide links between the country’s most important cities and tourist destinations. These roads are comparable to but do not quite meet the standard of U.S. highways; road conditions are hazardous due to poor repair, inadequate signage, and poor traffic control markings. Highways and rural roads are often very narrow and frequented by large trucks, buses, pedestrians, bicyclists, and open range livestock. Most highways are traveled at high speeds but do not limit access (Only North South Highway and Highway 2000 preclude bicyclists, pedestrians, and livestock). Breakdown assistance is limited in urban areas, and virtually unavailable in rural areas. Avoid nighttime driving; lighting is either poor or non-existent outside of larger cities, and nighttime driving is especially dangerous. Drivers and passengers in the front seat must wear seat belts, and motorcycle riders must wear helmets. Use extreme caution operating motor-driven cycles, as this is the leading category of deaths.

Public Transportation Conditions
Embassy employees may not use public transportation, with the exception of the Jamaica Union of Travelers Association (JUTA), the Knutsford Express, or pre-approved taxis. Public buses are often overcrowded and a venue for crime. Several serious and fatal accidents take place each year involving U.S. tourists riding in taxis without seatbelts. There are reports of private buses, acting as public transport, driving erratically leading to injury and death for both riders and pedestrians.

Official public transportation vehicles have red license plates. Private vehicles, NOT licensed for public transportation, have white license plates with blue letters/numbers. Only use licensed taxicabs with red-and-white PP license plates or recommended transportation services. Do not accept rides from strangers.

Terrorism Threat

There is moderate risk from terrorism in Jamaica. While there do not appear to be any extremist groups active in Jamaica, lax immigration controls, porous borders, availability of illegal weapons, and the ease with which fraudulent travel documents can be obtained make the country an attractive target for potential terrorists.

Political, Economic, Religious, and Ethnic Violence

There is moderate risk from political violence in Jamaica. Jamaica’s political system is stable, and the country has a history of peaceful transfers of power between the two political parties, the Jamaica Labour Party (JLP) and the People’s National Party (PNP). The country’s historic economic challenges and consistently high murder rate exacerbate social tensions and are the subject of intense political debate.

Civil Unrest

Protests and demonstrations can be unpredictable. Although protests and demonstrations are infrequent in Kingston, they do occur. Even those intended to be peaceful can turn confrontational and escalate into violence. Activities in protest include, but are not limited to roadblocks, throwing rocks, burning tires and vehicles, and some degree of physical violence between law enforcement and protesters. The U.S. Embassy and U.S. interests within the community are not immune to the effects of these protests, but are not direct targets.

Post-specific Concerns

Environmental Hazards

Jamaica shares a major geographic fault line with Haiti; tremors are very common throughout the country. Jamaica also lies within the Atlantic hurricane belt; the hurricane season runs from June 1 through November 30.

Critical Infrastructure

Jamaica’s Office of Disaster Preparedness and Emergency Management has put measures in place in the event of an emergency or natural disaster.

Personal Identity Concerns

Despite the diverse ethnic and religious background of its population, Jamaica has the reputation for being one of the least accepting countries for the LGBTI community. Public displays of affection between same sex couples are uncommon, and the law still criminalizes consensual sex between males with up to 10 years in prison, though this law is rarely enforced. Several highly popular Jamaican music entertainers have featured song lyrics that contain anti-homosexual messages and condone violence against homosexuals. Negative attitudes towards LGBTI issues are widespread in Jamaica. There are continued reports of serious discrimination and abuse against LGBTI individuals, including assault, “Corrective rape” of women accused of being lesbians, arbitrary detention, mob attacks, stabbings, harassment of LGBTI patients by hospital and prison staff, and blackmail.

While some of the country’s resorts meet U.S. standards, most transportation, entertainment, and medical facilities cannot accommodate travelers with disabilities.

Drug-related Crimes

Jamaica is a transit point for South American cocaine destined to the United States, Canada, and Europe. It is also the largest Caribbean producer and exporter of cannabis (marijuana), adding to the vibrant drugs-for-guns trade with Haiti. The Government of Jamaica has a National Drug Control Strategy in place that covers supply and demand reduction. The Government has intensified and focused its law enforcement efforts on more effectively disrupting the trans-shipment of large amounts of cocaine. It also has fully cooperated in several major international narcotics law enforcement initiatives. It is ready and willing to extradite to the United States those responsible for the manufacture, trans-shipment, and distribution of vast amounts of cocaine throughout the central Caribbean region.

Foreign visitors to Jamaica may use marijuana for medicinal purposes with a prescription from a physician in the United States or from a local doctor. Any attempt to take marijuana in or out of the country may lead to a serious charge of drug trafficking. Possession of two ounces or less of marijuana may result in a fine. Possession of larger amounts of marijuana, or possession of other illegal drugs, may lead
Kidnapping Threat

Kidnappings can happen in any part of Jamaica; a wide range of criminals with varying levels of professionalism and differing motives can execute kidnappings. At one end of the spectrum are high-end kidnapping gangs that target high-profile/high-net-worth individuals. Such groups employ teams of operatives who carry out specialized tasks (e.g. collecting intelligence, conducting surveillance, snatching the target, negotiating with the victim's family, and establishing/guarding safe houses). On the other end of the spectrum are gangs that roam the streets and randomly kidnap targets of opportunity. These gangs are generally less professional, and often will hold a victim for a short period, just long enough to use the victim's ATM card to drain his/her accounts or to receive a small ransom. Sometimes express kidnappers hold victims for a couple of days if the victim has a large amount in a checking account and a small daily ATM withdrawal limit. For more information, review OSAC's report, Kidnapping: The Basics.

Police Response

Insufficient funding and resources hinder Jamaica's Constabulary Force (JCF). Government officials have very low salaries. Despite the creation of the Independent Commission of Investigations in 2010, an entity that investigates police misconduct, police corruption and involvement in criminal activity still occur. Additionally, the majority of crime victims do not report crimes due to fear the report will get back to criminals, or the feeling that nothing would come from such reports. Most civilians fear that the authorities cannot protect them from organized criminal elements because they suspect authorities are colluding with criminals, leading them to avoid giving evidence or witness testimony. Those in some marginalized communities are often indifferent to police authority, adding to a perceived sense of lawlessness. Reporting crime can seem archaic and confusing, and can be a lengthy process that some see as frustratingly bureaucratic.

Despite these setbacks, Jamaican police officers have received extensive training from the United States and other international trainers, including the United Kingdom, Russia, China, Canada, and South Korea.

Police: 119
Ambulance/Fire: 110

How to Handle Incidents of Police Detention or Harassment

If an officer stops or questions U.S. citizens, they should cooperate. If you feel unjustly stopped, detained, or harassed, request that the officer contact the U.S. Embassy on your behalf.

Crime Victim Assistance

Local police assistance is available throughout the country. Police support for foreign victims of crimes varies between semi-responsive and responsive due to a shortage of labor, training, vehicles, and resources. Police do not usually mistreat victims of crime, but response times, investigation techniques, and the arrest/conviction rates of suspects are below the standards found in U.S. police departments.

If a citizen is involved in a traffic accident or victimized by crime, that person may be required to accompany the investigating police officer to the local police station to file a complaint or respond to questions. Should you require a police for an insurance claim, they will charge a nominal fee.

If you are victim of a sexual assault, contact the police and the U.S. Embassy in Kingston as soon as possible. In a hotel, management should assist you with these communications. Victims of sexual assault in Jamaica should not expect the same assistance routinely offered in the United States. Rape kits are not always available, and victims must often ask for medication to avoid STD transmission and reduce the chances of pregnancy. An offer of counseling is unlikely. Law enforcement shortcomings exist in collection of evidence. Prosecution of rape cases moves very slowly. Victims may need to return to Jamaica during the legal process.

Medical Emergencies

Medical care is limited compared to the United States. Comprehensive emergency medical services are only available in Kingston and Montego Bay. The Embassy medical staff does not recommend using medical facilities outside of Kingston and Montego Bay.

Visitors in need of medical attention should make every effort to reach Kingston or Montego Bay. An ambulance service is available in Kingston at (876) 978-2327, (876) 978-6021, or (876) 923-7415.

Contact Information for Available Medical Services

For medical assistance, refer to the Embassy's Medical Assistance page.

Available Air Ambulance Services
Visit the embassy website for information for medical evacuation providers.

Insurance Guidance

Doctors and hospitals often require cash payment prior to providing services. Serious medical problems requiring hospitalization and/or medical evacuation (medevac) can cost thousands of dollars. Consider purchasing insurance that includes medevac assistance prior to travel.

Country-specific Vaccination and Health Guidance

The CDC offers additional information on vaccines and health guidance for Jamaica.

OSAC Country Council Information

The Kingston Country Council meets quarterly. Interested private-sector security managers should contact OSAC’s Western Hemisphere team with any questions.

U.S. Embassy Location and Contact Information

Embassy Address and Hours of Operation

142 Old Hope Road, Kingston 6. Hours: Monday-Friday 0715-1600

Embassy Contact Information

Switchboard: (876) 702-6000 (includes after-hour emergencies)

Website: http://jm.usembassy.gov

Embassy Guidance

U.S. travelers should register with the Smart Traveler Enrollment Program (STEP).

Additional Resource: Jamaica Country Information Sheet

Attachments

🔗 OSAC - 2019 CSR - Jamaica.pdf
TAB 5
EXECUTIVE SUMMARY

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

Civilian authorities maintained effective control over the security forces.

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

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

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

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

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

The government did not take sufficient action to address this problem. Of the cases of security force-related fatalities reported to INDECOM, fewer than 5
percent led to official charges, and fewer than 2 percent led to a conviction. Even egregious charges against members of the security forces could take years to process. In 2007 police constable Mark Russell shot and killed an unarmed teenage boy in Kingston. The court concluded Russell planted a police-issued rifle on the victim’s person as he lay wounded in the street to corroborate a false report. Defense counsel used various procedural maneuvers to delay the case. In September the court sentenced Russell to 24 years in prison.

b. Disappearance

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

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

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

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

Prison and Detention Center Conditions

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

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

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

Administration: Independent authorities investigated allegations of abuse and inhuman conditions. Official complaints and investigations were infrequent and
likely underreported. The Office of the Children’s Advocate investigated matters involving minors.

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

d. Arbitrary Arrest or Detention

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

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

**Role of the Police and Security Apparatus**

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

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

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

**Arrest Procedures and Treatment of Detainees**

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

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

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

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

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

**e. Denial of Fair Public Trial**

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

**Trial Procedures**

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

**Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

**Civil Judicial Procedures and Remedies**

There is an independent and impartial civil judiciary process. Complainants may bring human rights abuse cases to the courts for civil remediation, but awards were difficult to collect. The government is required to undertake pretrial negotiations or mediation in an attempt to settle out of court, but this rarely occurred. When there were settlements, the government often lacked the funds to pay, resulting in a backlog of awards.
f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

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

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

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

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

Internet Freedom

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

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

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom.
The Broadcasting Commission of Jamaica barred certain lyrics and music videos, including songs referring to violent sex or violence against women, children, and other vulnerable persons, and expunged lyrics deemed inappropriate to broadcast.

b. Freedoms of Peaceful Assembly and Association

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

c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

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

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

Protection of Refugees

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

Section 3. Freedom to Participate in the Political Process

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

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

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

Section 4. Corruption and Lack of Transparency in Government

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

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

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

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

Domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were cooperative and responsive to their views.
Government Human Rights Bodies: The Office of the Public Defender investigates abuses of constitutional rights and engages with claimants in a process to seek remediation from the government. The public defender is not authorized to appear in court but may retain attorneys to represent clients on the office’s behalf. The office cannot investigate cases affecting national defense or actions investigable by a court of law. As a commission of parliament, this organization’s reach and effect hinges on the political will associated with the case. Parliament can ignore the commission’s findings or demur from recommended action. This limited the overall efficacy of the organization.

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

Women

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

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

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

According to estimates from the Ministry of National Security’s Research Evaluation Unit, there were 442 rape cases in 2017, which corresponded to approximately a 16 percent reduction from the previous year. Advocacy groups, however, contended that rape was significantly underreported because victims had little faith in the judicial system and were unwilling to endure lengthy criminal proceedings.
Some cases occurred in gated, all-inclusive resorts on the northern coast. In each case reports noted a lack of action by the JCF, and no one was charged. Observers suspected that not all cases were reported, since foreign tourists could not stay in the country long enough to contend with a lengthy legal process.

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

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

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

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

**Children**

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

**Child Abuse:** The law bans child abuse in all forms. Corporal punishment is illegal; however, it was practiced informally in the home, schools, and children’s correctional facilities, as well as when a child was under state care. The penalty is a potential fine of 250,000 JMD ($1,900) or a prison sentence with hard labor for a period not to exceed three months.
Legislation also criminalizes sexual relations by an adult with a child--male or female--under the age of 16 and provides for penalties ranging from 15 years’ to life imprisonment. The law requires anyone who knows of or suspects child abuse to make a report to the registry office, with a penalty of up to 500,000 JMD ($3,800) and six months’ imprisonment, or both, for failure to do so.

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

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

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

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


**Anti-Semitism**

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

See the Department of State’s *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

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

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

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

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

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

The government enforced the portion of the law that criminalizes anal sex, or “buggery,” only in cases of sexual assault and child molestation. Officials did not prosecute consensual same-sex sexual conduct between men. The legal definitions of rape and buggery create a phenomenon where, under certain circumstances, segments of the population have unequal legal protection from sexual assault. For
example, a man who sexually assaults a woman through penile penetration of the vagina is punishable by 15 years to life in prison. This same act, committed through penile anal penetration, of a woman, child, or man, would be punishable by only up to 10 years in prison. Local human rights advocates contended this was unequal protection under the law.

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

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

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

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

**HIV and AIDS Social Stigma**

Civil society, international organizations, and government officials cited stigma and discrimination as a factor contributing to low HIV-treatment coverage. This especially affected subpopulations such as LGBTI and female sex workers, in which the HIV epidemic was more concentrated.
The government collaborated with the Global Fund to address stigma and discrimination. Measures included training for health-care providers on human rights and medical ethics; sensitization of lawmakers and law enforcement agents; reducing discrimination against women in the context of HIV; legal literacy; legal services; and monitoring and reforming laws, regulations, and policies relating to HIV.

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

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

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

There are aspects of the law that inhibit the ability to organize. The government defines 10 categories of services as “essential.” These include water, electricity, health, hospital, sanitation, transportation, firefighting, corrections, overseas telecommunication, and telephone services. Before workers in these categories can legally strike, they must take disputes to the Ministry of Labor and Social Security and allow the ministry to attempt to settle the dispute amicably. The International Labor Organization also raised concerns that this definition of essential services was too broad. Additionally, the government prohibited unionizing in export processing zones, which are industrial areas with special tax and trade incentives to attract foreign investment. This law heavily affected the bauxite industry, which employed thousands of workers.
The law mandates that in the case of any doubt or dispute as to whether workers may exercise bargaining rights, the labor minister must conduct a secret ballot requiring that a majority of workers vote. For unions that represent less than 30 percent of workers eligible to vote, the minister grants joint bargaining rights to two or more unions. The minister of labor may apply through the Supreme Court to curtail an industrial action such as a strike or lockout when the minister deems that industrial action to be harmful to national security or the national economy, or may have the potential to endanger the lives of a substantial number of persons. In such cases the minister refers industrial disputes to compulsory arbitration. The IDT hears cases when management and labor fail to reach agreement, including those involving nonunionized workers.

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

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

b. Prohibition of Forced or Compulsory Labor

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

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

Also see the Department of State’s *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

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

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

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

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

Also see the Department of Labor’s *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/reports/child-labor/findings/.

d. *Discrimination with Respect to Employment and Occupation*

Laws and regulations do not prohibit discrimination on the grounds of sexual orientation or gender identity. There were limited reports of cases filed for discrimination in employment or occupation during the year, but these instances
were likely to be underreported. Women’s salaries lagged behind men’s, and persons with disabilities often lacked access to the workplace. Those who were subject to workplace discrimination had little confidence that legal recourse was available to them.

e. Acceptable Conditions of Work

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

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

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

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

Unofficial sources estimated that up to 40 percent of citizens worked in the informal sector, where the labor law applied. Most violations pertaining to acceptable conditions of work occurred in the informal sector.
TAB 6
JAMAICA 2017 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Jamaica is a constitutional parliamentary democracy. In national elections in February 2016, the Jamaica Labor Party (JLP) led by Prime Minister Andrew Michael Holness won a majority 32 of the 63 seats in the House of Representatives. International and local election observers deemed the elections transparent, free, and fair but noted isolated incidents of violence prior to, and on, election day. By-elections for three seats in the House of Representatives on October 30, resulted in the JLP’s increasing its majority to 33 seats. Local election observers deemed the by-elections transparent, free, fair, and peaceful.

Civilian authorities maintained effective control over the security forces.

The most significant human rights issues included numerous reports of arbitrary and other unlawful killings by government security forces; entrenched government corruption within some government agencies; violence against women; sexual assault and incest committed against young girls by gang members; criminalization of same-sex sexual activity, although these laws were not enforced during the year; and societal violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.

The government took some steps to investigate, prosecute, and punish officials who committed human rights abuses, although a general sense of impunity remained with respect to alleged unlawful killings by agents of state.

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, mainly police, committed arbitrary and unlawful killings. Government statistics indicated that through September, government security force-related fatalities increased by 44 percent over the same period in 2016, with 124 and 86 in the first three quarters of 2017 and 2016, respectively. Of the 124, 118 involved the police, and six involved the military.
The number of government security force-involved killings from January through September deemed to have occurred under suspicious circumstances increased over the same period in the prior year by 10 percent, from 29 to 32. Incidents in which police officers fatally shot two or more persons increased considerably, to 14 through the end of September, compared with eight in the same period of 2016. Police-involved fatalities during traffic stops along thoroughfares at night markedly increased. The proportion of victims of police-involved fatalities found to have been in possession of no weapon or only a knife or machete increased to approximately one-third.

On March 23, seven officers on mobile patrol shot and killed a person purportedly with mental health disabilities in the southeastern parish of St. Thomas. The only weapon investigators retrieved from the crime scene was a machete.

Authorities arrested two police officers on February 7 for a killing in 2013. Investigations and prosecutions into fatalities by government security forces from prior years continued slowly.

Financial fraud criminals known as “lotto scammers,” narcotics and gun traffickers, gangs, and other criminal groups engaged in widespread criminality and contributed to the country’s very high homicide rate and culture of lawlessness. Through the end of September, there were 1,193 homicides, which marked a 25.4 percent increase over the same period in 2016. Six police officers were killed through September.

Acting on a recommendation from the 2016 report released by the government’s West Kingston Commission of Enquiry, which examined the 2010 Tivoli Incursion that left 73 individuals dead, the government on December 6 officially apologized for the events of the incursion. As of December 7, the government compensated the estates of persons killed during the event, including those of all 16 persons allegedly killed extrajudicially according to the commission, with a total of 134 million Jamaican dollars (JMD) ($1.05 million).

b. Disappearance

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

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
The constitution prohibits such practices, although there is no legal definition of torture. Occasional reports of physical abuse of individuals in custody by security personnel continued. Independent commissions investigated all reports of abuse by prison officials, including those allegedly committed against juvenile offenders.

**Prison and Detention Center Conditions**

Inhuman conditions due to dilapidated infrastructure and overcrowding persisted in detention centers, called police “lock-ups.” In prisons, called correctional centers, ventilation and space improved in several facilities.

**Physical Conditions:** Overcrowding and difficult conditions remained in many lock-ups. Cells often held up to 11 persons in a space designed for four. Cells were very dark, had subpar bathroom and toilet facilities, and limited ventilation. Detainees were given less than one hour per day out of the cell to use shower facilities and get food and water. Female inmates generally had better conditions than men.

Medical care for detainees in lock-ups was available only through the public medical system and was therefore limited and often delayed. Prisoners in correctional centers, however, had adequate access to medical care, provided through either the department of corrections system or the public medical system. The department of corrections employed three full-time and several part-time doctors, one full-time nurse, and one dentist, and it accessed the public medical system when necessary. Four part-time psychiatrists cared for at least 225 inmates diagnosed as having mental disabilities in 11 facilities across the island. Inmates could not obtain dentures, but correctional centers accommodated the dietary needs of those with dental impairments.

**Administration:** There was no corrections ombudsman, but independent authorities investigated allegations of inhuman conditions. Official complaints and investigations were infrequent. The Office of the Children’s Advocate investigated matters involving minors.

**Independent Monitoring:** Justices of the peace and representatives from the Police Civilian Oversight Authority (PCOA) visited correctional centers and lock-ups regularly. The PCOA submitted reports to the Ministry of National Security with recommendations to improve conditions, although citizen groups complained the ministry rarely acted upon the recommendations.
d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest but permits the arrest of persons “reasonably suspected” to have committed a crime. The law provides for the right of any person to challenge the lawfulness of his/her arrest or detention in court. The government generally observed these requirements.

Security forces conducted “cordon and search” operations, enforced curfews, and established blockades in enforcing two Zones of Special Operation.

Role of the Police and Security Apparatus

The Jamaica Constabulary Force (JCF) has primary responsibility for internal security. The Jamaica Defense Force (JDF), including the Coast Guard, has responsibility for national defense and maritime narcotics interdiction. The government enforced a law, the Zones of Special Operations Act passed in July, which gave the JDF arrest authority and operational partnership alongside the JCF in domestic policing operations in the specified zones. In other areas the JCF continued to conduct joint operations with the support of the JDF.

The Ministry of National Security exercises the prime minister’s authority for oversight of the JCF and JDF. The JCF maintained divisions for community policing, special response, intelligence gathering, and internal affairs. The Passport, Immigration, and Citizenship Agency has responsibility for migration. Civilian authorities maintained effective control over the JCF and JDF.

The Independent Commission of Investigations (INDECOM) investigates actions by members of the security forces and other agents of the state that result in death or injury to persons or the abuse of the rights of persons and, when appropriate, forwards cases to the Office of the Director of Public Prosecutions for prosecution.

As of the end of November, the Office of the Director of Public Prosecutions and INDECOM had active cases of criminal charges against 81 government security officials for their alleged involvement in unlawful killings or other abuses. Lengthy trials with numerous delays, including with respect to those cases involving police officers, continued to be a systemic problem.

INDECOM continued to be unable to execute arrest warrants for 19 police officers it sought to charge with murder and other offenses because the officers took advantage of a lengthy judicial review process through the courts afforded to them
by law. Trial delays, the judicial review mechanism, and a perceived reluctance to discipline police officers for wrongdoing contributed to a sense of impunity with respect to suspected unlawful killings. On November 17, the Court of Appeal overturned the 2015 conviction of a police officer serving a 15-year sentence for wounding with intent and ordered a new trial. As an exception to this trend, on July 14, a court sentenced a former police officer to life imprisonment for murder, which he committed in 2013 while on duty in St. Ann.

**Arrest Procedures and Treatment of Detainees**

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

The law provides for legal assistance for criminal cases if the detainee does not have sufficient means to pay for legal representation. A Ministry of Justice program increased legal assistance to defendants with mental health disabilities, providing 139 individuals with representation as of the end of September. The constitution provides for a right to bail, and there is a functioning bail system. Authorities allowed detainees prompt access to family members.

The law requires justices of the peace and judges to inquire at least once a week into the welfare of each person detained by the JCF.

**Pretrial Detention:** Lock-ups are intended for short-term detentions of 48 hours or less, but often detainees were held in these facilities without charge or awaiting trial for much longer periods.

**e. Denial of Fair Public Trial**

The constitution provides for an independent judiciary, and the government generally respected judicial independence and impartiality.
Trials often were delayed for many years, and at times cases were dismissed due to delay tactics, including no-shows by witnesses for a variety of reasons, not infrequently including death, challenges in impaneling juries, antiquated rules of evidence, and lack of equipment for collecting and storing evidence, among other reasons. Through the end of June, the parish court level had a 58-percent case disposal rate.

The Office of the Director of Public Prosecutions attributed the worsening case backlog at the Supreme Court level to an increasing crime rate with a static number of courtrooms and judiciary personnel as well as to the Committal Proceedings Act’s burden on the judicial bureaucracy.

In an effort to lessen the backlog, the government passed the Criminal Justice (Plea and Negotiations) Act in June to increase the rate of plea bargaining, which accounted for less than 1 percent of case resolutions from 2011 to 2016. In September guilty pleas accounted for approximately 90 percent of cases disposed of at the parish court level. In addition, in October courts disposed of 57 cases during two Sentence Reduction Days.

In an increasing number of civil cases, the courts used mandatory alternative dispute resolution in place of traditional trials. Under its Reform Implementation Plan, the Ministry of Justice opened three justice centers, one in the parish of St. Ann on July 8 and two in West Kingston on July 13. The ministry also planned to open 11 more to facilitate restorative justice practices, child diversion, mediation, and an expanded justices of the peace program.

There is a witness protection program, but many eligible witnesses either refused protection or violated the conditions of the program. While the JCF reported that no participant in the witness protection program was ever killed, the program suffered from a number of problems. The government allocated approximately $1 million in additional funds for the program in February.

**Trial Procedures**

The constitution provides for the right to a fair and public trial, and an independent judiciary generally enforced this right. The constitution provides defendants a presumption of innocence and the right to counsel and to confront witnesses against them. Defendants have the right to be informed of the charges against them and the right to a fair public trial, within a reasonable time. The Supreme Court tries serious criminal offenses, including all murder cases. Citizens’
reluctance to serve as jurors resulted in a persistent problem of seating jurors, which contributed to the judicial backlog.

Defendants are provided ample time to prepare defense and are not compelled to confess guilt. They have the right to appeal. Public attorneys were available to defend the indigent, except those charged with certain offenses under the Proceeds of Crime Act or the Dangerous Drugs Act. The government provides free assistance of an interpreter for defendants who cannot speak or understand English.

**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 are difficult to collect. The government is required to undertake pretrial negotiations or mediation in an attempt to settle out of court, but it often did not do so. When there are settlements, the government often lacks the funds to pay, resulting in a backlog of awards.

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

Although the constitution prohibits such actions, the law gives security personnel broad powers of search and seizure. The law allows search without a warrant of a person on board or disembarking from a vehicle, ship, or boat if a police officer has good reason to be suspicious. Police often conducted searches without warrants when there was a reasonable suspicion.

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

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

The constitution guarantees 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. Independent media were active and expressed a wide variety of views without restriction.
Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority. According to the International Telecommunication Union, 45 percent of the population used the internet in 2016.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom.

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

b. Freedoms of Peaceful Assembly and Association

The constitution guarantees the freedoms of peaceful assembly and association, and the government generally respects these rights.

c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at www.state.gov/religiousfreedomreport/

d. Freedom of Movement

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. Residents complained of the onerous requirement of having to furnish identification when coming in and out of two zones of operations during its September-November implementation.

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

Access to Asylum: Neither the constitution nor the laws provide for the granting of asylum or refugee status. Although the government does not have a system or regulatory framework for processing and providing protection to refugees, it handles refugee and asylum cases administratively. The government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened.

Section 3. Freedom to Participate in the Political Process

The constitution guarantees 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: Transparent, free, and fair by-elections were held October 30 to fill three seats in parliament. In general elections held in February 2016, the JLP won a majority 32 of the 63 seats in the House of Representatives. Following the election, power transferred peacefully from the People’s National Party to the JLP, led by Prime Minister Holness. International election observers from the Organization of American States deemed the general elections transparent, free, and fair but noted isolated incidents of violence prior to and on election day. By-elections for three seats in the House of Representatives were held on October 30, which resulted in the JLP increasing its majority to 33 seats. Local election observers deemed the by-elections transparent, free, fair, and peaceful.

Participation of Women and Minorities: No laws limit participation of women and/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 did not implement and enforce the law effectively, and officials reportedly engaged in corrupt practices with impunity. There were numerous reports of government corruption during the year. The legislature passed and the government began to implement the Integrity Commission Act, 2017, which consolidated three governmental anticorruption bodies into a single Integrity Commission that includes a prosecutorial office.
Because of the government’s weak efforts to prosecute officials’ alleged corrupt practices, corruption remained a significant systemic problem of public concern. Media and civil society organizations continued to criticize the director of public prosecutions for being slow and at times reluctant to prosecute corruption cases.

**Corruption:** Through October the Major Organized Crime and Anti-Corruption Agency arrested and charged six officials and 17 police officers with corruption. Courts reached 39 convictions on charges brought by the agency through October. On March 8, prosecutors charged a politician and businessman with forgery and obtaining $600,000 under false pretenses from 2011 to 2013.

**Financial Disclosure:** The Integrity Commission Act, 2017 requires that parliamentarians, public officials in positions prescribed in the law, and public officials who earn 3.5 million JMD ($27,300) or more per year disclose annually their income, liabilities, and assets.

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

A number of domestic and international human rights groups and other international bodies generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials often were cooperative and responsive to their views.

**Government Human Rights Bodies:** The Office of the Public Defender investigates abuses of constitutional rights and engages with clients and the government 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.

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

**Women**

**Rape and Domestic Violence:** The rape of women is illegal and carries a maximum penalty of life imprisonment. The law criminalizes spousal rape only when spouses have separated or begun proceedings to dissolve the marriage; when the husband is under a court order not to molest or cohabit with his wife; or when the husband knows he suffers from a sexually transmitted infection.
The law prohibits domestic violence and provides remedies, including restraining orders and other noncustodial sentencing, but violence against women continued to be a severe problem. Breaching a restraining order is punishable by a fine of up to 10,000 JMD ($78) and six months’ imprisonment.

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

**Coercion in Population Control:** There were no reports of coerced abortion, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at: [www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/](http://www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/).

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

**Children**

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

**Child Abuse:** The law criminalizes sexual relations by an adult with a child--male or female--under the age of 16 and provides for penalties ranging from 15 years’ to life imprisonment. Enforcement of the law, however, was sporadic, especially in rural areas, with child abuse and incest often suspected but not reported to authorities. The law requires anyone who knows of or suspects child abuse to make a report to the registry office, with a penalty of up to 500,000 JMD ($3,900) and six months’ imprisonment, or both, for failure to do so.

Child abuse, including sexual abuse, was substantial and widespread. NGOs reported that gang leaders, sometimes including fathers, initiated sex with young girls as a “right,” and missing children often were fleeing violent situations and sexual abuse.
For additional information, see Appendix C.

**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 prohibits sexual intercourse with a person less than 16 years old, the minimum age for consensual sex. Sexual relations by an adult with a child under 16 is punishable by up to life imprisonment. The law provides for a Sex Offenders Registry, which the Department of Corrections administers and police enforce.

The law criminalizes the commercial sexual exploitation of children and applies to the protection, possession, importation, exportation, and distribution of child pornography. It carries a maximum penalty of 20 years’ imprisonment and a fine of 500,000 JMD ($3,900). There were reports of the commercial sexual exploitation of children.

**International Child Abductions:** As of May the country was 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 [travel.state.gov/content/childabduction/en/legal/compliance.html](http://travel.state.gov/content/childabduction/en/legal/compliance.html).

**Anti-Semitism**

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

**Trafficking in Persons**

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

**Persons with Disabilities**

Although the law prohibits discrimination against persons with disabilities, it does not mandate accessibility standards. Persons with disabilities continued to encounter discrimination in employment and access to schools, usually due to the state of the infrastructure, which limited access to buildings and provided few accessible facilities.
There were limitations in access to education at the primary school level, due to insufficient facilities for persons with disabilities. There was also a lack of suitably trained faculty to care for and instruct students with disabilities, although the constitution guarantees all children the right to primary education. Health care reportedly was universally available but at times difficult to access, especially for deaf and intellectually disabled persons.

The Ministry of Labor and Social Security has responsibility for the Jamaica Council for Persons with Disabilities. The council distributes economic empowerment grants of up to 150,000 JMD ($1,170) to persons with disabilities to help them develop small businesses and 250,000 JMD ($1,950) per person for the purchase of assistive aids.

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

The law prohibits “acts of gross indecency” (generally interpreted as any kind of physical intimacy) between persons of the same sex, in public or in private, and provides for a penalty of two years in prison for the offense. There is also an “antibuggery” section in the law that criminalizes consensual and nonconsensual anal intercourse, punishable by up to 10 years in prison. During the year the law was enforced only in cases of sexual assault and child molestation and was not used to prosecute consensual same-sex sexual conduct between men. Homophobia was widespread in the country.

The NGO Jamaica Forum for Lesbians, All-Sexuals, and Gays reported that through September it received 23 reports of human rights violations against LGBTI individuals according to its criteria, including 19 incidents of physical assault, five mob attacks, one case of employment discrimination, and six cases in which police failed to respond adequately to reports.

**HIV and AIDS Social Stigma**

The country’s National HIV/AIDS Workplace Policy prohibits HIV-related discrimination in the workplace and the Public Health (Notifiable Diseases) Act 2003 provides some legal recourse to persons with HIV/AIDS who experienced discrimination. The overall prevalence of HIV reached 2.8 percent among sex workers and 32.8 percent among men who have sex with men, according to UNAIDS data for 2016. Members of these groups were highly stigmatized and had difficulties accessing HIV testing and treatment services.
Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law, including related regulations and statutes, provides for the rights of workers to form or join 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 every worker to take part, at any appropriate time, in the activities of any trade union of which he is a member. The law prohibits antiunion discrimination and provides for the Industrial Disputes Tribunal (IDT) to reinstate a worker if a dismissal is found to be unjustified.

The law makes it a criminal offense to prevent or deter a worker from exercising the right to participate in trade union activities or to dismiss, penalize, or otherwise discriminate against a worker for exercising these rights.

The government defines workers in 10 categories as “essential services,” the interruption of which would endanger the life, personal safety, or health of the whole or part of the population. Before they can legally strike, these workers must first take disputes to the Ministry of Labor and Social Security and must allow the ministry to attempt to settle their disputes amicably. Restrictive rules and intimidation reportedly prevented formation of independent unions in economic processing zones. The International Labor Organization continued to raise concerns about the country’s broad definition of essential services.

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

Although the government in general attempted to enforce the law, defendants were able to appeal and delay resolution of their cases for years. The IDT hears cases
when management and labor fail to reach agreement, including those involving nonunionized workers. While cases are, by law, to be resolved within 21 days, the tribunal decided most cases in four to five months. Some took longer to resolve due to the complexity of the dispute or delays requested by involved parties. The IDT decisions are formal and binding unless challenged specifically on a point of law. Parties may apply for judicial review of the award by the Supreme Court.

Freedom of association and the right to collective bargaining generally were respected. Worker organizations operated without interference by government or political parties although government had authority to monitor union finances. While employers generally respected the law prohibiting antiunion discrimination, some labor unions reported that private-sector workers were fearful of management retaliation against unionization. It was not uncommon for private-sector employers to lay off union workers and rehire them as contractors. The International Trade Union Confederation reported that this hampered workers’ ability to organize and bargain collectively.

b. Prohibition of Forced or Compulsory Labor

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

Jamaica is a source and destination country for adults and children subjected to forced labor. Foreign citizens were subjected to forced labor and aboard foreign-flagged fishing vessels operating in the country’s waters. The penalty for forced labor is imprisonment, a fine, or both, and it was sufficiently stringent to deter violations. While the government investigated some suspected cases of forced labor, it often did not effectively enforce applicable laws.

Also see the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

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

The government did not effectively enforce its child labor laws. The labor ministry’s Child Labor Unit (CLU) is responsible for monitoring and controlling child labor, although its resources and ability were limited. The Occupational Safety and Health Department (OSHD) assisted the CLU in identifying incidents of child labor in industrial establishments covered under the Factories Act. As of September the CLU and OSHD received no reports of suspected cases of illegal child labor. The JCF assists with investigations, depending upon the nature and severity of the case, especially in cases involving the worst forms of child labor, including trafficking and sexual exploitation.

The government attempted to track the number of children involved in child labor through the Youth Activity Survey completed in November in conjunction with the International Labor Organization and Statistical Institute of Jamaica.

Child labor remained a problem. Child domestic workers may be subject to domestic servitude. Some children reported missing in Jamaica were subjected to forced labor. Children performed dangerous tasks in street work and also engaged in the worst forms of child labor, including in commercial sexual exploitation. Children were engaged in illicit activities, including executing financial scams and serving as drug couriers and dealers. They also worked in the farming, fishing, construction, and retail sectors, as well as in garbage scavenging and scrap metal.

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

d. Discrimination with Respect to Employment and Occupation

Laws and regulations do not prohibit discrimination on the grounds of sexual orientation or gender identity. There were no reports of cases filed for discrimination in employment or occupation during the year, but it occurred since women’s salaries lagged behind men’s, and persons with disabilities often lacked access to the workplace.

e. Acceptable Conditions of Work

The minimum wage, which the government reviews each year, was 6,200 JMD ($48) per week. According to 2015 statistics of the Planning Institute of Jamaica,
the official poverty line estimate for both male and female adults was 132,506 JMD ($1,034) annually, below the annual minimum wage. Most workers received more than the legal minimum wage, and some minimum-wage earners held two or more jobs.

The law provides for a standard 40-hour workweek and mandates at least one day of rest per week. Work in excess of 40 hours per week must be compensated at overtime rates, a provision employers generally respected. The law also provides for paid annual holidays. The law restricting work in excess of 12 hours in a day is not applicable to all workers.

The government did not effectively enforce the law. Insufficient staffing in the Ministries of Labor and Social Security, Finance and Public Service, and National Security contributed to difficulties in enforcing workplace regulations. The government sets occupational safety and health standards, which were appropriate for the main industries in the country. Legal fines or imprisonment were generally sufficient to deter violations, and the labor ministry gained compliance in the vast majority of cases by threatening legal action. The law has no provisions that explicitly give workers an ability to remove themselves from hazardous conditions without jeopardy to employment.

The labor ministry employed an insufficient number of inspectors to enforce compliance with labor laws and report on minimum wage, health, and safety violations in workplaces throughout the country. The ministry’s Industrial Safety Division enforced industrial health and safety standards. It conducted inspections, investigated accidents, warned violators, and gave them a period in which to correct the violation. If the violation was not corrected within that time, the violator was taken to court. Penalties and fines are stipulated by law, and the minister of labor and social security has the authority to increase any monetary penalty. The ability of defendants to appeal a case in the court system for years mitigated the effectiveness of penalties.

Some unofficial sources estimated that up to 40 percent of citizens worked in the informal sector, where the labor law applied. There were four fatal workplace accidents through November 27.
JAMAICA 2017 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Jamaica is a constitutional parliamentary democracy. In national elections in February 2016, the Jamaica Labor Party (JLP) led by Prime Minister Andrew Michael Holness won a majority 32 of the 63 seats in the House of Representatives. International and local election observers deemed the elections transparent, free, and fair but noted isolated incidents of violence prior to, and on, election day. By-elections for three seats in the House of Representatives on October 30, resulted in the JLP’s increasing its majority to 33 seats. Local election observers deemed the by-elections transparent, free, fair, and peaceful.

Civilian authorities maintained effective control over the security forces.

The most significant human rights issues included numerous reports of arbitrary and other unlawful killings by government security forces; entrenched government corruption within some government agencies; violence against women; sexual assault and incest committed against young girls by gang members; criminalization of same-sex sexual activity, although these laws were not enforced during the year; and societal violence against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons.

The government took some steps to investigate, prosecute, and punish officials who committed human rights abuses, although a general sense of impunity remained with respect to alleged unlawful killings by agents of state.

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, mainly police, committed arbitrary and unlawful killings. Government statistics indicated that through September, government security force-related fatalities increased by 44 percent over the same period in 2016, with 124 and 86 in the first three quarters of 2017 and 2016, respectively. Of the 124, 118 involved the police, and six involved the military.
The number of government security force-involved killings from January through September deemed to have occurred under suspicious circumstances increased over the same period in the prior year by 10 percent, from 29 to 32. Incidents in which police officers fatally shot two or more persons increased considerably, to 14 through the end of September, compared with eight in the same period of 2016. Police-involved fatalities during traffic stops along thoroughfares at night markedly increased. The proportion of victims of police-involved fatalities found to have been in possession of no weapon or only a knife or machete increased to approximately one-third.

On March 23, seven officers on mobile patrol shot and killed a person purportedly with mental health disabilities in the southeastern parish of St. Thomas. The only weapon investigators retrieved from the crime scene was a machete.

Authorities arrested two police officers on February 7 for a killing in 2013. Investigations and prosecutions into fatalities by government security forces from prior years continued slowly.

Financial fraud criminals known as “lotto scammers,” narcotics and gun traffickers, gangs, and other criminal groups engaged in widespread criminality and contributed to the country’s very high homicide rate and culture of lawlessness. Through the end of September, there were 1,193 homicides, which marked a 25.4 percent increase over the same period in 2016. Six police officers were killed through September.

Acting on a recommendation from the 2016 report released by the government’s West Kingston Commission of Enquiry, which examined the 2010 Tivoli Incursion that left 73 individuals dead, the government on December 6 officially apologized for the events of the incursion. As of December 7, the government compensated the estates of persons killed during the event, including those of all 16 persons allegedly killed extrajudicially according to the commission, with a total of 134 million Jamaican dollars (JMD) ($1.05 million).

b. Disappearance

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

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
The constitution prohibits such practices, although there is no legal definition of torture. Occasional reports of physical abuse of individuals in custody by security personnel continued. Independent commissions investigated all reports of abuse by prison officials, including those allegedly committed against juvenile offenders.

**Prison and Detention Center Conditions**

Inhuman conditions due to dilapidated infrastructure and overcrowding persisted in detention centers, called police “lock-ups.” In prisons, called correctional centers, ventilation and space improved in several facilities.

**Physical Conditions:** Overcrowding and difficult conditions remained in many lock-ups. Cells often held up to 11 persons in a space designed for four. Cells were very dark, had subpar bathroom and toilet facilities, and limited ventilation. Detainees were given less than one hour per day out of the cell to use shower facilities and get food and water. Female inmates generally had better conditions than men.

Medical care for detainees in lock-ups was available only through the public medical system and was therefore limited and often delayed. Prisoners in correctional centers, however, had adequate access to medical care, provided through either the department of corrections system or the public medical system. The department of corrections employed three full-time and several part-time doctors, one full-time nurse, and one dentist, and it accessed the public medical system when necessary. Four part-time psychiatrists cared for at least 225 inmates diagnosed as having mental disabilities in 11 facilities across the island. Inmates could not obtain dentures, but correctional centers accommodated the dietary needs of those with dental impairments.

**Administration:** There was no corrections ombudsman, but independent authorities investigated allegations of inhuman conditions. Official complaints and investigations were infrequent. The Office of the Children’s Advocate investigated matters involving minors.

**Independent Monitoring:** Justices of the peace and representatives from the Police Civilian Oversight Authority (PCOA) visited correctional centers and lock-ups regularly. The PCOA submitted reports to the Ministry of National Security with recommendations to improve conditions, although citizen groups complained the ministry rarely acted upon the recommendations.
d. Arbitrary Arrest or Detention

The constitution prohibits arbitrary arrest but permits the arrest of persons “reasonably suspected” to have committed a crime. The law provides for the right of any person to challenge the lawfulness of his/her arrest or detention in court. The government generally observed these requirements.

Security forces conducted “cordon and search” operations, enforced curfews, and established blockades in enforcing two Zones of Special Operation.

Role of the Police and Security Apparatus

The Jamaica Constabulary Force (JCF) has primary responsibility for internal security. The Jamaica Defense Force (JDF), including the Coast Guard, has responsibility for national defense and maritime narcotics interdiction. The government enforced a law, the Zones of Special Operations Act passed in July, which gave the JDF arrest authority and operational partnership alongside the JCF in domestic policing operations in the specified zones. In other areas the JCF continued to conduct joint operations with the support of the JDF.

The Ministry of National Security exercises the prime minister’s authority for oversight of the JCF and JDF. The JCF maintained divisions for community policing, special response, intelligence gathering, and internal affairs. The Passport, Immigration, and Citizenship Agency has responsibility for migration. Civilian authorities maintained effective control over the JCF and JDF.

The Independent Commission of Investigations (INDECOM) investigates actions by members of the security forces and other agents of the state that result in death or injury to persons or the abuse of the rights of persons and, when appropriate, forwards cases to the Office of the Director of Public Prosecutions for prosecution.

As of the end of November, the Office of the Director of Public Prosecutions and INDECOM had active cases of criminal charges against 81 government security officials for their alleged involvement in unlawful killings or other abuses. Lengthy trials with numerous delays, including with respect to those cases involving police officers, continued to be a systemic problem.

INDECOM continued to be unable to execute arrest warrants for 19 police officers it sought to charge with murder and other offenses because the officers took advantage of a lengthy judicial review process through the courts afforded to them.
by law. Trial delays, the judicial review mechanism, and a perceived reluctance to discipline police officers for wrongdoing contributed to a sense of impunity with respect to suspected unlawful killings. On November 17, the Court of Appeal overturned the 2015 conviction of a police officer serving a 15-year sentence for wounding with intent and ordered a new trial. As an exception to this trend, on July 14, a court sentenced a former police officer to life imprisonment for murder, which he committed in 2013 while on duty in St. Ann.

**Arrest Procedures and Treatment of Detainees**

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

The law provides for legal assistance for criminal cases if the detainee does not have sufficient means to pay for legal representation. A Ministry of Justice program increased legal assistance to defendants with mental health disabilities, providing 139 individuals with representation as of the end of September. The constitution provides for a right to bail, and there is a functioning bail system. Authorities allowed detainees prompt access to family members.

The law requires justices of the peace and judges to inquire at least once a week into the welfare of each person detained by the JCF.

**Pretrial Detention:** Lock-ups are intended for short-term detentions of 48 hours or less, but often detainees were held in these facilities without charge or awaiting trial for much longer periods.

**e. Denial of Fair Public Trial**

The constitution provides for an independent judiciary, and the government generally respected judicial independence and impartiality.
Trials often were delayed for many years, and at times cases were dismissed due to delay tactics, including no-shows by witnesses for a variety of reasons, not infrequently including death, challenges in impaneling juries, antiquated rules of evidence, and lack of equipment for collecting and storing evidence, among other reasons. Through the end of June, the parish court level had a 58-percent case disposal rate.

The Office of the Director of Public Prosecutions attributed the worsening case backlog at the Supreme Court level to an increasing crime rate with a static number of courtrooms and judiciary personnel as well as to the Committal Proceedings Act’s burden on the judicial bureaucracy.

In an effort to lessen the backlog, the government passed the Criminal Justice (Plea and Negotiations) Act in June to increase the rate of plea bargaining, which accounted for less than 1 percent of case resolutions from 2011 to 2016. In September guilty pleas accounted for approximately 90 percent of cases disposed of at the parish court level. In addition, in October courts disposed of 57 cases during two Sentence Reduction Days.

In an increasing number of civil cases, the courts used mandatory alternative dispute resolution in place of traditional trials. Under its Reform Implementation Plan, the Ministry of Justice opened three justice centers, one in the parish of St. Ann on July 8 and two in West Kingston on July 13. The ministry also planned to open 11 more to facilitate restorative justice practices, child diversion, mediation, and an expanded justices of the peace program.

There is a witness protection program, but many eligible witnesses either refused protection or violated the conditions of the program. While the JCF reported that no participant in the witness protection program was ever killed, the program suffered from a number of problems. The government allocated approximately $1 million in additional funds for the program in February.

**Trial Procedures**

The constitution provides for the right to a fair and public trial, and an independent judiciary generally enforced this right. The constitution provides defendants a presumption of innocence and the right to counsel and to confront witnesses against them. Defendants have the right to be informed of the charges against them and the right to a fair public trial, within a reasonable time. The Supreme Court tries serious criminal offenses, including all murder cases. Citizens’
reluctance to serve as jurors resulted in a persistent problem of seating jurors, which contributed to the judicial backlog.

Defendants are provided ample time to prepare defense and are not compelled to confess guilt. They have the right to appeal. Public attorneys were available to defend the indigent, except those charged with certain offenses under the Proceeds of Crime Act or the Dangerous Drugs Act. The government provides free assistance of an interpreter for defendants who cannot speak or understand English.

**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 are difficult to collect. The government is required to undertake pretrial negotiations or mediation in an attempt to settle out of court, but it often did not do so. When there are settlements, the government often lacks the funds to pay, resulting in a backlog of awards.

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

Although the constitution prohibits such actions, the law gives security personnel broad powers of search and seizure. The law allows search without a warrant of a person on board or disembarking from a vehicle, ship, or boat if a police officer has good reason to be suspicious. Police often conducted searches without warrants when there was a reasonable suspicion.

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

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

The constitution guarantees 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. Independent media were active and expressed a wide variety of views without restriction.
Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports that the government monitored private online communications without appropriate legal authority. According to the International Telecommunication Union, 45 percent of the population used the internet in 2016.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom.

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

b. Freedoms of Peaceful Assembly and Association

The constitution guarantees the freedoms of peaceful assembly and association, and the government generally respects these rights.

c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

The constitution provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. Residents complained of the onerous requirement of having to furnish identification when coming in and out of two zones of operations during its September-November implementation.

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

Access to Asylum: Neither the constitution nor the laws provide for the granting of asylum or refugee status. Although the government does not have a system or regulatory framework for processing and providing protection to refugees, it handles refugee and asylum cases administratively. The government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened.

Section 3. Freedom to Participate in the Political Process

The constitution guarantees 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: Transparent, free, and fair by-elections were held October 30 to fill three seats in parliament. In general elections held in February 2016, the JLP won a majority 32 of the 63 seats in the House of Representatives. Following the election, power transferred peacefully from the People’s National Party to the JLP, led by Prime Minister Holness. International election observers from the Organization of American States deemed the general elections transparent, free, and fair but noted isolated incidents of violence prior to and on election day. By-elections for three seats in the House of Representatives were held on October 30, which resulted in the JLP increasing its majority to 33 seats. Local election observers deemed the by-elections transparent, free, fair, and peaceful.

Participation of Women and Minorities: No laws limit participation of women and/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 did not implement and enforce the law effectively, and officials reportedly engaged in corrupt practices with impunity. There were numerous reports of government corruption during the year. The legislature passed and the government began to implement the Integrity Commission Act, 2017, which consolidated three governmental anticorruption bodies into a single Integrity Commission that includes a prosecutorial office.
Because of the government’s weak efforts to prosecute officials’ alleged corrupt practices, corruption remained a significant systemic problem of public concern. Media and civil society organizations continued to criticize the director of public prosecutions for being slow and at times reluctant to prosecute corruption cases.

Corruption: Through October the Major Organized Crime and Anti-Corruption Agency arrested and charged six officials and 17 police officers with corruption. Courts reached 39 convictions on charges brought by the agency through October. On March 8, prosecutors charged a politician and businessman with forgery and obtaining $600,000 under false pretenses from 2011 to 2013.

Financial Disclosure: The Integrity Commission Act, 2017 requires that parliamentarians, public officials in positions prescribed in the law, and public officials who earn 3.5 million JMD ($27,300) or more per year disclose annually their income, liabilities, and assets.

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

A number of domestic and international human rights groups and other international bodies generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials often were cooperative and responsive to their views.

Government Human Rights Bodies: The Office of the Public Defender investigates abuses of constitutional rights and engages with clients and the government 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.

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

Women

Rape and Domestic Violence: The rape of women is illegal and carries a maximum penalty of life imprisonment. The law criminalizes spousal rape only when spouses have separated or begun proceedings to dissolve the marriage; when the husband is under a court order not to molest or cohabit with his wife; or when the husband knows he suffers from a sexually transmitted infection.
The law prohibits domestic violence and provides remedies, including restraining orders and other noncustodial sentencing, but violence against women continued to be a severe problem. Breaching a restraining order is punishable by a fine of up to 10,000 JMD ($78) and six months’ imprisonment.

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

**Coercion in Population Control:** There were no reports of coerced abortion, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at: [www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/](http://www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/).

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

**Children**

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

**Child Abuse:** The law criminalizes sexual relations by an adult with a child--male or female--under the age of 16 and provides for penalties ranging from 15 years’ to life imprisonment. Enforcement of the law, however, was sporadic, especially in rural areas, with child abuse and incest often suspected but not reported to authorities. The law requires anyone who knows of or suspects child abuse to make a report to the registry office, with a penalty of up to 500,000 JMD ($3,900) and six months’ imprisonment, or both, for failure to do so.

Child abuse, including sexual abuse, was substantial and widespread. NGOs reported that gang leaders, sometimes including fathers, initiated sex with young girls as a “right,” and missing children often were fleeing violent situations and sexual abuse.
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 prohibits sexual intercourse with a person less than 16 years old, the minimum age for consensual sex. Sexual relations by an adult with a child under 16 is punishable by up to life imprisonment. The law provides for a Sex Offenders Registry, which the Department of Corrections administers and police enforce.

The law criminalizes the commercial sexual exploitation of children and applies to the protection, possession, importation, exportation, and distribution of child pornography. It carries a maximum penalty of 20 years’ imprisonment and a fine of 500,000 JMD ($3,900). There were reports of the commercial sexual exploitation of children.

International Child Abductions: As of May the country was 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 travel.state.gov/content/childabduction/en/legal/compliance.html.

Anti-Semitism

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

Trafficking in Persons

See the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

Although the law prohibits discrimination against persons with disabilities, it does not mandate accessibility standards. Persons with disabilities continued to encounter discrimination in employment and access to schools, usually due to the state of the infrastructure, which limited access to buildings and provided few accessible facilities.
There were limitations in access to education at the primary school level, due to insufficient facilities for persons with disabilities. There was also a lack of suitably trained faculty to care for and instruct students with disabilities, although the constitution guarantees all children the right to primary education. Health care reportedly was universally available but at times difficult to access, especially for deaf and intellectually disabled persons.

The Ministry of Labor and Social Security has responsibility for the Jamaica Council for Persons with Disabilities. The council distributes economic empowerment grants of up to 150,000 JMD ($1,170) to persons with disabilities to help them develop small businesses and 250,000 JMD ($1,950) per person for the purchase of assistive aids.

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

The law prohibits “acts of gross indecency” (generally interpreted as any kind of physical intimacy) between persons of the same sex, in public or in private, and provides for a penalty of two years in prison for the offense. There is also an “antibuggery” section in the law that criminalizes consensual and nonconsensual anal intercourse, punishable by up to 10 years in prison. During the year the law was enforced only in cases of sexual assault and child molestation and was not used to prosecute consensual same-sex sexual conduct between men. Homophobia was widespread in the country.

The NGO Jamaica Forum for Lesbians, All-Sexuals, and Gays reported that through September it received 23 reports of human rights violations against LGBTI individuals according to its criteria, including 19 incidents of physical assault, five mob attacks, one case of employment discrimination, and six cases in which police failed to respond adequately to reports.

**HIV and AIDS Social Stigma**

The country’s National HIV/AIDS Workplace Policy prohibits HIV-related discrimination in the workplace and the Public Health (Notifiable Diseases) Act 2003 provides some legal recourse to persons with HIV/AIDS who experienced discrimination. The overall prevalence of HIV reached 2.8 percent among sex workers and 32.8 percent among men who have sex with men, according to UNAIDS data for 2016. Members of these groups were highly stigmatized and had difficulties accessing HIV testing and treatment services.
Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law, including related regulations and statutes, provides for the rights of workers to form or join 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 every worker to take part, at any appropriate time, in the activities of any trade union of which he is a member. The law prohibits antiunion discrimination and provides for the Industrial Disputes Tribunal (IDT) to reinstate a worker if a dismissal is found to be unjustified.

The law makes it a criminal offense to prevent or deter a worker from exercising the right to participate in trade union activities or to dismiss, penalize, or otherwise discriminate against a worker for exercising these rights.

The government defines workers in 10 categories as “essential services,” the interruption of which would endanger the life, personal safety, or health of the whole or part of the population. Before they can legally strike, these workers must first take disputes to the Ministry of Labor and Social Security and must allow the ministry to attempt to settle their disputes amicably. Restrictive rules and intimidation reportedly prevented formation of independent unions in economic processing zones. The International Labor Organization continued to raise concerns about the country’s broad definition of essential services.

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

Although the government in general attempted to enforce the law, defendants were able to appeal and delay resolution of their cases for years. The IDT hears cases
when management and labor fail to reach agreement, including those involving nonunionized workers. While cases are, by law, to be resolved within 21 days, the tribunal decided most cases in four to five months. Some took longer to resolve due to the complexity of the dispute or delays requested by involved parties. The IDT decisions are formal and binding unless challenged specifically on a point of law. Parties may apply for judicial review of the award by the Supreme Court.

Freedom of association and the right to collective bargaining generally were respected. Worker organizations operated without interference by government or political parties although government had authority to monitor union finances. While employers generally respected the law prohibiting antiunion discrimination, some labor unions reported that private-sector workers were fearful of management retaliation against unionization. It was not uncommon for private-sector employers to lay off union workers and rehire them as contractors. The International Trade Union Confederation reported that this hampered workers’ ability to organize and bargain collectively.

b. Prohibition of Forced or Compulsory Labor

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

Jamaica is a source and destination country for adults and children subjected to forced labor. Foreign citizens were subjected to forced labor and aboard foreign-flagged fishing vessels operating in the country’s waters. The penalty for forced labor is imprisonment, a fine, or both, and it was sufficiently stringent to deter violations. While the government investigated some suspected cases of forced labor, it often did not effectively enforce applicable laws.

Also see the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

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

The government did not effectively enforce its child labor laws. The labor ministry’s Child Labor Unit (CLU) is responsible for monitoring and controlling child labor, although its resources and ability were limited. The Occupational Safety and Health Department (OSHD) assisted the CLU in identifying incidents of child labor in industrial establishments covered under the Factories Act. As of September the CLU and OSHD received no reports of suspected cases of illegal child labor. The JCF assists with investigations, depending upon the nature and severity of the case, especially in cases involving the worst forms of child labor, including trafficking and sexual exploitation.

The government attempted to track the number of children involved in child labor through the Youth Activity Survey completed in November in conjunction with the International Labor Organization and Statistical Institute of Jamaica.

Child labor remained a problem. Child domestic workers may be subject to domestic servitude. Some children reported missing in Jamaica were subjected to forced labor. Children performed dangerous tasks in street work and also engaged in the worst forms of child labor, including in commercial sexual exploitation. Children were engaged in illicit activities, including executing financial scams and serving as drug couriers and dealers. They also worked in the farming, fishing, construction, and retail sectors, as well as in garbage scavenging and scrap metal.

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

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

Laws and regulations do not prohibit discrimination on the grounds of sexual orientation or gender identity. There were no reports of cases filed for discrimination in employment or occupation during the year, but it occurred since women’s salaries lagged behind men’s, and persons with disabilities often lacked access to the workplace.

**e. Acceptable Conditions of Work**

The minimum wage, which the government reviews each year, was 6,200 JMD ($48) per week. According to 2015 statistics of the Planning Institute of Jamaica,
the official poverty line estimate for both male and female adults was 132,506 JMD ($1,034) annually, below the annual minimum wage. Most workers received more than the legal minimum wage, and some minimum-wage earners held two or more jobs.

The law provides for a standard 40-hour workweek and mandates at least one day of rest per week. Work in excess of 40 hours per week must be compensated at overtime rates, a provision employers generally respected. The law also provides for paid annual holidays. The law restricting work in excess of 12 hours in a day is not applicable to all workers.

The government did not effectively enforce the law. Insufficient staffing in the Ministries of Labor and Social Security, Finance and Public Service, and National Security contributed to difficulties in enforcing workplace regulations. The government sets occupational safety and health standards, which were appropriate for the main industries in the country. Legal fines or imprisonment were generally sufficient to deter violations, and the labor ministry gained compliance in the vast majority of cases by threatening legal action. The law has no provisions that explicitly give workers an ability to remove themselves from hazardous conditions without jeopardy to employment.

The labor ministry employed an insufficient number of inspectors to enforce compliance with labor laws and report on minimum wage, health, and safety violations in workplaces throughout the country. The ministry’s Industrial Safety Division enforced industrial health and safety standards. It conducted inspections, investigated accidents, warned violators, and gave them a period in which to correct the violation. If the violation was not corrected within that time, the violator was taken to court. Penalties and fines are stipulated by law, and the minister of labor and social security has the authority to increase any monetary penalty. The ability of defendants to appeal a case in the court system for years mitigated the effectiveness of penalties.

Some unofficial sources estimated that up to 40 percent of citizens worked in the informal sector, where the labor law applied. There were four fatal workplace accidents through November 27.
| TAB 7 |
EXECUTIVE SUMMARY

Jamaica is a constitutional parliamentary democracy. In national elections on February 25, the Jamaica Labor Party (JLP) led by Prime Minister Andrew Michael Holness won a majority 32 of the 63 seats in the House of Representatives needed to form the government. International election observers from the Organization of American States deemed the elections transparent, free, and fair but noted isolated incidents of violence prior to and on election day.

Civilian authorities maintained effective control over the security forces.

The most serious human rights problems were an overburdened, underresourced, and dysfunctional judicial system, which obstructed access to justice for victims of crime and their families and facilitated widespread corruption and impunity. There was also an increased number of fatalities at the hands of government security forces, many of which were suspected to be carried out unlawfully and the majority of which appeared to occur during planned security force operations rather than at random events.

Other human rights problems included inadequate and overcrowded prison and jail conditions; violence and discrimination against women and against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons; and violence against and sexual abuse of children.

The government charged a much larger number of police officers with abuses than in the previous year. A lack of willing witnesses and inefficiencies in the judiciary, however, continued to plague the justice system, and trials languished.

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

a. Arbitrary Deprivation of Life and other Unlawful or Politically Motivated Killings

While there were no reports that the government or its agents committed politically motivated killings, there were reports that government security forces committed arbitrary or unlawful killings. Independent Commission of Investigations (INDECOM) statistics indicated that 92 persons were killed by government
security forces through October, an approximately 10 percent increase over the same period in 2015.

Narcotics traffickers, criminal networks, and gangs created a widespread culture of criminality and contributed to the country’s very high homicide rate.

On April 13, INDECOM arrested and charged two police officers for unlawfully killing a man in Westmoreland Parish.

A government-established commission completed its inquiry and in June released its final report into the activities of the security forces during the 2010 Tivoli Gardens security operation that left at least 73 civilians and one security force member dead. The report recommended the government provide an apology, facilitate reparations, and implement police reform. The report provided numerous other recommendations aimed at holding security forces accountable and preventing the “large-scale loss of lives during the operations of the security forces.” The government established on September 13 a cabinet-level committee to review the recommendations and determine appropriate steps for implementation. The Jamaica Constabulary Force (JCF) removed three senior leaders from positions of responsibility because of the commission’s report.

b. Disappearance

There were no reports of politically motivated disappearances.

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

Although the constitution prohibits torture, there is no legal definition of it. INDECOM arrested on July 4 and charged on July 13 the five members of the JCF Mobile Reserve Division involved in the shooting injury of a student on June 30. INDECOM arrested Senior Superintendent Anthony Castelle and District Constable Rohan McIntosh of the JCF in Montego Bay on May 19 for unlawful wounding. Reports of physical abuse of individuals in custody by security personnel continued, but there were fewer reports compared with the previous year, according to the country’s Department of Correctional Services. INDECOM investigated all reports of abuse by prison officials. The parliament-commissioned Office of the Children’s Advocate (OCA) investigates reports of abuse and other rights violations committed against juvenile offenders housed in remand and
correctional facilities operated by the Department of Correctional Services (DCS). OCA investigations can lead to proceedings against the officials or the DCS.

**Prison and Detention Center Conditions**

Dilapidated buildings, inconsistent health care, and overcrowding in some facilities presented challenges to the prison and detention center systems. The nongovernmental organization (NGO) Jamaicans for Justice reported that, because each prisoner is initially received at one of two high-security institutions, overcrowding at high-security facilities remained a significant problem, while there was vacant capacity at low- and medium-security remand centers.

**Physical Conditions:** Overcrowding and difficult conditions remained in some facilities. Cells in some facilities had little natural light, inadequate artificial light, subpar bathroom and toilet facilities, and limited ventilation. Female prisoners generally were provided better conditions than male inmates.

At the maximum security St. Catherine Adult Correctional Institution, inmates remained in their cells from 6 p.m. to 6 a.m. with a slop bucket to use but no other means to address their hygienic needs. Bedbugs were a problem.

Lock-up cells were crowded, with up to 11 persons per cell. Detainees claimed authorities allocated cellmates 15 minutes two or three times a day to bathe, use the bathroom, and fill water bottles.

Medical care was limited. The system employed three full-time and several part-time doctors, one full-time nurse, and one dentist, and accessed the public medical system when necessary. Four part-time psychiatrists cared for at least 225 inmates diagnosed as having mental disabilities in 11 facilities across the island. Prisoners could not obtain dentures, but prisons accommodated the dietary needs of those with dental impairments.

**Administration:** There was no specific prison ombudsman. Official complaints and investigations were infrequent. Independent authorities investigated credible allegations of inhuman conditions. The OCA investigated complaints concerning children in conflict with the law. Children detained in juvenile correctional or remand facilities lodged complaints directly with the OCA. The OCA accepted complaints on behalf of children from the independent, civilian-constituted Juvenile Boards of Visitors appointed for each juvenile facility. Despite the
OCA’s legal mandate to investigate and address allegations of child rights abuse, the DCS at times resisted OCA authority, resulting in delayed investigations.

Independent Monitoring: The government allowed private groups, voluntary and religious organizations, local and international human rights organizations, and media to visit prisons and monitor prison conditions, and such visits took place during the year. Justices of the peace and representatives from the Police Civilian Oversight Authority visited police-run lock-ups regularly.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest, although it permits the arrest of persons “reasonably suspected” of having committed a crime. Security forces occasionally performed “cordon and search” operations and enforced curfews, during which they detained persons and took them into custody. Security forces may legally hold a suspect for 48 hours before the individual must be charged or released.

Role of the Police and Security Apparatus

The JCF has primary responsibility for internal security. The Jamaica Defense Force (JDF), including the Coast Guard, has responsibility for national defense, maritime narcotics interdiction, and JCF support. The JCF often conducted joint operations with the support of the JDF in particular high-crime areas. The Ministry of National Security exercises the prime minister’s authority for oversight of the JCF and JDF. The JCF maintained divisions for community policing, special response, intelligence gathering, and internal affairs. The Passport, Immigration, and Citizenship Agency has responsibility for migration. Civilian authorities maintained effective control over the JCF and JDF. The government made limited efforts to investigate and punish abuse and corruption in general.

INDECOM investigates actions by members of the security forces and other agents of the state that result in death or injury to persons or the abuse of the rights of persons and, when appropriate, forwards cases to the director of public prosecutions (DPP) for prosecution.

Lengthy trials with numerous delays continued to be a systemic problem (not confined to cases involving police officers). As of October 14, the DPP and INDECOM had 100 active cases of criminal charges against 93 government security officials for their alleged involvement in unlawful killings or other abuses.
On July 1, a seven-member jury found JCF Constable Wayne Hamil guilty of wounding with intent for the unlawful shooting of a civilian in Hanover in 2014.

**Arrest Procedures and Treatment of Detainees**

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

The constitution provides for legal assistance if someone does not have sufficient means to pay for legal representation and provides that a civil organization may initiate an application on behalf of a detainee or a person with a mental disability. If a detainee requests access to counsel, the law requires police to contact duty counsel (a private attorney who volunteers to represent detainees at police stations and until cases go to trial) under the Legal Aid Program. There was a functioning bail system. Authorities allowed detainees prompt access to family members.

The law requires justices of the peace and judges to inquire at least once a week into the welfare of each person listed by the JCF as detained.

**Pretrial Detention:** Police administered lock-ups, which lack a legal or regulatory framework, according to Jamaicans for Justice. Lock-ups are intended for short-term detentions of 48 hours or less, but often detainees were held in these facilities without charge for longer periods.

**Detainee’s Ability to Challenge Lawfulness of Detention before a Court:** Persons arrested or detained are entitled to, but have a very limited capacity to, challenge in court the legal basis or arbitrary nature of their detention and obtain prompt release and compensation if found to have been unlawfully detained.

**e. Denial of Fair Public Trial**

The law provides for an independent judiciary. The independent Court Management Services maintained its own budget, but the Ministry of Justice
provided resources for the judiciary’s large items such as vehicles for judges, the introduction of new technologies, and new court buildings.

Trials are often delayed for years, and at times cases are dismissed due to delay tactics, including no-shows by witnesses, challenges in impaneling juries, antiquated rules of evidence, and lack of equipment for collecting and storing evidence, among other reasons. For example, drug evidence collected in an arrest must be stored in its entirety; samples or photographs are not acceptable. Storage facilities were inadequate and understaffed, and evidence occasionally disappeared, deteriorated in the warehouse, or could not be located when needed.

The parish courts, which handle more than 90 percent of the cases in the court system, operated night courts to reduce the backlog. The Supreme Court and parish courts alleviated some of the civil case backlog by using alternative dispute resolution in place of traditional trials and recruiting judges out of retirement to serve.

There is a witness protection program, but many eligible witnesses either refused protection or violated the conditions of the program. According to the JCF, no participant in the witness protection program who abided by the rules of the program has ever been killed.

**Trial Procedures**

The constitution provides defendants a presumption of innocence and the right to counsel and to confront witnesses against them. Defendants have the right to be informed of the charges against them and the right to a fair public trial. The Supreme Court tries serious criminal offenses, including all murder cases. Citizens’ reluctance to serve as jurors resulted in a persistent problem of seating jurors, which contributed to the judicial backlog. Defendants are provided ample time to prepare defense and are not compelled to confess guilt. They have the right to appeal. Legal Aid attorneys were available to defend the indigent, except those charged with certain offenses under the Money Laundering Act or the Dangerous Drugs Act, as well as defendants not liable to incarceration. The Office of the Public Defender may bring cases on behalf of persons who claim violations of their constitutional rights but cannot appear in court on their behalf.

The OCA provides legal representation for all children who require assistance before the courts. The law allows the OCA to intervene in court proceedings and
to initiate proceedings against individuals or government entities that breach the rights of children.

**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 are difficult to collect. The government is required to undertake pretrial negotiations or mediation in an attempt to settle out of court, but it often did not do so. When there are settlements, the government often lacks the funds to pay, resulting in a backlog of awards.

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

Although the constitution prohibits such actions, the law gives security personnel broad powers of search and seizure. The law allows search without a warrant of a person on board or disembarking from a vehicle, ship, or boat if a police officer has good reason to be suspicious. Police often conducted searches without warrants when there was a reasonable suspicion.

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

**a. Freedom of Speech and Press**

The law provides for freedom of speech and press, and the government generally respected these rights. An independent press, generally effective judicial protection, and a functioning democratic political system combine to promote freedom of speech and press. Independent media are active and express a wide variety of views without restriction.

**Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content. There were no credible reports that the government monitored private online communications without appropriate legal authority. According to the
International Telecommunication Union, 43 percent of the population used the internet in 2015.

**Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom.

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

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

The law provides for the freedoms of assembly and association, and the government generally respects these rights.

**c. Freedom of Religion**

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

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

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

The government cooperates with the International Organization for Migration, UN Children’s Fund, Office of the UN High Commissioner for Refugees, and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, or other persons of concern.

**Protection of Refugees**

**Access to Asylum:** The constitution provides for the granting of asylum or refugee status. Although the government does not have a system or regulatory framework for processing and providing protection to refugees, it handles refugee and asylum cases administratively. The government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened.
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 general elections held February 25, the JLP won a majority 32 of the 63 seats in the House of Representatives. Following the very close election, power transferred peacefully from the People’s National Party to the JLP. Andrew Holness was sworn in as prime minister on March 3. International election observers from the Organization of American States deemed the elections transparent, free, and fair, but noted isolated incidents of violence prior to and on election day.

Participation of Women and Minorities: No laws or cultural practices limit participation of women and 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 did not implement and enforce the law effectively, and officials reportedly engaged in corrupt practices with impunity. The Ministry of Justice and the Attorney General’s Office have overall responsibility to combat official corruption.

Because of the government’s weak efforts to prosecute officials’ alleged corrupt practices, corruption remained a significant systemic problem of public concern. Media and civil society organizations continued to criticize the director of public prosecutions for being slow and at times reluctant to prosecute corruption cases. The Major Organized Crime and Anti-Corruption Agency (MOCA), which is part of the JCF, conducted raids on and uncovered corruption in several parish councils.

Corruption: Through September 18, MOCA arrested and charged eight officials for public-sector corruption and 18 police officers for corruption. Through June courts reached 13 convictions, 3 acquittals, and 12 dismissals. As of September 30, 114 corruption cases were pending in the courts.
Financial Disclosure: The law requires public servants earning two million Jamaican dollars (JMD) ($16,800) or more per year to disclose income, liabilities, and assets annually to the Integrity Commission, and the law carries administrative sanctions for noncompliance. Several high profile public officials, including the prime minister and opposition leader, released their Integrity Commission submissions to the public.

Public Access to Information: The law authorizes public access to government information. The last mandatory review of the law concluded in 2010, and the government implemented the law satisfactorily. The law does not include a mechanism to sanction or penalize officials who do not respond to access-to-information applications. Documents exempt from disclosure include those classified for national security reasons; those considered confidential to protect essential public interests or the private or business affairs of others; cabinet documents; investigative documents compiled for law enforcement proceedings; those affecting the national economy, personal privacy, or the government’s deliberative process; and documents subject to legal privilege. The government must inform all requesters in writing within 30 days of receipt of the application if it intends to disclose the information and of the right to appeal disclosure denials. Civil society and media often complained that the government routinely violated the 30-day period and failed to cooperate when processing applications.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups and other international bodies generally operate without government restriction, investigating and publishing their findings on human rights cases. Government officials often were cooperative and responsive to their views.

Government Human Rights Bodies: The Office of the Public Defender investigates abuses of constitutional rights and engages with clients and the government in a process to seek remediation from the government, but the office is not authorized to appear in court. The OCA is another independent government body that provides services for children when government authorities or others allegedly violate their rights. The OCA has the authority in its own right to sue the government on behalf of any child.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons
Women

Rape and Domestic Violence: Rape is illegal and carries a maximum penalty of 25 years’ imprisonment. The law criminalizes spousal rape only under the following conditions: when spouses have separated or begun proceedings to dissolve the marriage; when the husband is under a court order not to molest or cohabit with his wife; or when the husband knows he suffers from a sexually transmitted infection. The law criminalizes sexual relations by an adult with a child--male or female--under the age of 16 and provides for penalties ranging from 15 years to life imprisonment. The JCF reported 374 rapes through October 9, approximately a 19 percent decrease from the same period in 2015. The government’s 2015 Economic and Social Survey of Jamaica indicated that from January to September 2015, hospital emergency rooms received 948 cases of sexual assault, which was 13 percent of total emergency room visits.

The JCF Center for Investigation of Sexual Offenses and Child Abuse (CISOCA) comprised a multidisciplinary team, which included police officers, social workers, and counselors from the Victim Support Unit. CISOCA handled sex crimes and offered integrated services, including providing legal information. CISOCA officers received tailored training on sexual offense investigations.

The law prohibits domestic violence and provides remedies, including restraining orders and other noncustodial sentencing, but violence against women continued to be a severe problem and studies reported that domestic violence was widespread. Breaching a restraining order is punishable by a fine of up to 10,000 JMD ($78) and six months’ imprisonment. The NGO Woman Inc. reported that women frequently complained that police failed to treat domestic violence as a crime and take the required reports. The Ministry of Justice’s Victim Support Unit, and NGOs including Woman Inc., Dispute Resolution Foundation, and Women’s Center of Jamaica Foundation, as well as various faith-based institutions, offered counseling and other services countrywide. NGOs expressed concern that resources were insufficient for police investigations of gender-based violence and for counseling and shelter for victims.

Sexual Harassment: No legislation addresses sexual harassment, and no legal remedy exists for victims of sexual harassment. According to reports, authorities may use the Offenses against the Person Act in cases of physical sexual harassment and, under labor law, employers may be held liable for not providing a safe workspace, although through November 17 no charges were filed using either mechanism.
Reproductive Rights: Couples and individuals have the right to decide the number, spacing, and timing of their children, manage their reproductive health, and have access to the information and means to do so, free from discrimination, coercion, or violence. Access to information on modern contraception and skilled health attendance during pregnancy and at delivery was widely available. The UN Population Fund (UNFPA) reported that 68 percent of women ages 15-49 use a modern contraceptive method, while 10 percent of women have an unmet need for family planning. Women have access to emergency health care, including for the management of consequences arising from abortions; however, the standard of care varied widely, especially in rural communities.

According to UNFPA estimates, 99 percent of births were attended by skilled health personnel. The major challenges to reducing maternal deaths in the country were the prevalence of unsafe abortions, inadequate public education, early pregnancy, violence, and HIV/AIDS.

Discrimination: Although the law provides for the same legal status and rights for women as for men, including equal pay for equal work, women suffered from discrimination in the workplace and often earned less than men (see section 7.d.). Domestic workers were particularly vulnerable to workplace discrimination and sexual harassment. Women sought jobs and served in almost every occupation in both the public and private sectors.

Children

Birth Registration: Every person born in the country after August 5, 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. There is universal birth registration, either in the hospital at the time of birth or at a local registrar’s office if the child is not born in a hospital.

Child Abuse: Child abuse, including sexual abuse, was substantial and widespread. NGOs reported that gang leaders, sometimes including fathers, initiated sex with young girls as a “right,” and missing children often were fleeing violent situations and sexual abuse. During the year the JCF implemented a “Child Interaction Policy.” The Office of Children’s Registry (OCR) receives, records, processes, and stores data relating to the mistreatment and abuse of children. The law requires anyone who knows of or suspects child abuse to make a report to the
OCR, with a penalty of up to 500,000 JMD ($3,900) and/or six months’ imprisonment for failure to do so.

The Child Development Agency (CDA) under the Ministry of Education, Youth, and Information provides housing and day-to-day care for orphans, destitute children, and those with unsuitable parents, and administers the foster care and adoption programs.

The Office of the Children’s Advocate (OCA) has broad responsibilities for reviewing laws, policies, practices, and government services affecting children, as well as providing legal services to protect the best interests of children. The OCA has an investigative function that gives it concurrent jurisdiction with the police whenever a child is the victim or complainant. The OCA also has the power to investigate government agencies and officials and to institute legal proceedings against agents of government. Through September the OCA received 253 complaints directly from individuals and an additional 350 referrals from the OCR. It conducted preliminary investigations in some cases and referred other cases to appropriate government institutions.

Corporal punishment is illegal in early childhood centers and for all children in state care, but it remained legal elsewhere, including in schools.

**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 prohibits sexual intercourse with a person less than 16 years old, the minimum age for consensual sex. Sexual relations by an adult with a child under the age of 16 is punishable by up to life imprisonment. The law provides for a Sex Offenders Registry, which the Department of Corrections administers and police enforce. In 2015 the number of cases of persons reported to police for sexual intercourse with a minor was 769, a 13 percent decrease from the prior year. In 2016 through October 9, there were 306 reported cases.

The law criminalizes the commercial sexual exploitation of children and applies to the protection, possession, importation, exportation, and distribution of child pornography. It carries a maximum penalty of 20 years’ imprisonment and a fine of 500,000 JMD ($3,900). There were reports of children being involved in commercial sexual exploitation. The OCA investigated sex crimes when the victim was below 18 years of age. Depending on the case, the complaint was
lodged directly with the OCA or referred to the OCA from the Office of Children’s Registry for investigation.

**International Child Abductions:** The country is not 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 [travel.state.gov/content/childabduction/en/legal/compliance.html](http://travel.state.gov/content/childabduction/en/legal/compliance.html).

**Anti-Semitism**

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

**Trafficking in Persons**

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

**Persons with Disabilities**

While the law prohibits discrimination against persons with disabilities, it does not mandate accessibility standards. The 2014 Disabilities Act, passed by parliament but still not signed into law, would provide for the “full and effective participation and inclusion in the society for persons with disabilities on an equal basis with others” and establish a disabilities rights tribunal to hear complaints. Persons with disabilities continued to encounter discrimination in employment and access to schools, usually due to the state of the infrastructure, which limited access to buildings and provided few special facilities.

Limitations in access to education were particularly pronounced at the primary school level, due to insufficient access to facilities for persons with disabilities. There was also a lack of suitably trained faculty to care for and instruct students with disabilities. There were fewer reports of problems in secondary schools. Tertiary institutions, including community colleges, increasingly drafted policies to promote full inclusion of persons with disabilities. Health care reportedly was universally available.

The Ministry of Labor and Social Security (MLSS) has responsibility for the Jamaica Council for Persons with Disabilities. The council distributes economic empowerment grants of up to $50,000 JMD ($420) to persons with disabilities to
provide assistive aids and to help them develop small businesses. The ministry also has responsibility for the Early Stimulation Project, an education program for children with disabilities, and for the Abilities Foundation, a vocational program for older persons with disabilities.

**National/Racial/Ethnic Minorities**

Maroons—descendants of slaves who escaped to the mountainous interior in the 17th and 18th centuries—considered themselves a group apart and maintained some cultural traditions distinct from those of the larger society. While formal education was not available within Maroon communities beyond the junior high school level, Maroons were able to attend high school in nearby communities.

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

The law prohibits “acts of gross indecency” (generally interpreted as any kind of physical intimacy) between persons of the same sex, in public or in private, and provides a penalty of two years in prison for the offense. There is also an “antibuggery” law that criminalizes consensual and nonconsensual anal intercourse, punishable by up to 10 years in prison. During the year the law was enforced only in cases of sexual assault and child molestation and was not used to prosecute consensual same-sex sexual conduct between men. Homophobia was widespread in the country.

The NGO J-FLAG reported that through June there were 53 incidents of physical and verbal assault against 35 LGBTI persons, including 24 cases of physical assault, 11 of verbal assault, 12 involving threats and intimidation, one case of arson, and one case of harassment by a police officer. The JCF reports that most incidents involving the LGBTI population are not reported to police.

**HIV and AIDS Social Stigma**

The most recent HIV and AIDS legal environment assessment for the country (2013) revealed a dramatic reduction of HIV prevalence among sex workers and that the country was close to eliminating the transmission of HIV and AIDS between mother and child. The country’s National HIV/AIDS Workplace Policy prohibits HIV-related discrimination in the workplace. Nevertheless, criminalization of private, consensual same-sex acts, sex work, and drug use
continued to foster stigma and discrimination against the most vulnerable populations and impede their access to health information and services.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law, including related regulations and statutes, provides for the rights of workers to form or join unions and to bargain collectively. The freedom to strike is granted pursuant to the constitution in the Charter of Fundamental Rights and Freedoms provision for peaceful assembly and association. The law prohibits antiunion discrimination and provides for the Industrial Disputes Tribunal (IDT) to reinstate a worker if a dismissal is found to be unjustified.

The law makes it a criminal offense to prevent or deter a worker from exercising the right to participate in trade union activities or to dismiss, penalize, or otherwise discriminate against a worker for exercising these rights.

The government defines workers in 10 categories as “essential services,” the interruption of which would endanger the life, personal safety, or health of the whole or part of the population. Before they can legally strike, these workers must first take disputes to the MLSS and must allow the ministry to attempt to settle their disputes amicably. The International Labor Organization (ILO) continued to raise concerns about the country’s broad definition of these 10 categories.

The law denies collective bargaining to a bargaining unit if no single union represents at least 40 percent of the workers in the unit, or when the union seeking recognition obtains support from fewer than 50 percent of the workers (whether or not they are members of the union).

Although the government in general attempted to enforce applicable laws, the effectiveness of applicable remedies and penalties was mitigated by the ability of defendants to appeal and tie up their cases in the court system for years. The independent IDT hears cases when management and labor fail to reach agreement, including those involving nonunionized workers. While cases are, by law, to be resolved within 21 days, the tribunal decided most cases in four to five months. Some took longer to resolve due to the complexity of the dispute or delays requested by involved parties. The IDT decisions are formal and binding unless challenged specifically on a point of law. Parties may apply for judicial review of the award by the Supreme Court.
Freedom of association and the right to collective bargaining generally were respected. Worker organizations operated without interference by government or political parties. While employers generally respected the law prohibiting antiunion discrimination, some labor unions reported that private-sector workers were fearful of management retaliation against unionization. Both management and workers were often unaware of their rights and obligations. It was not uncommon for private-sector employers to lay off union workers and rehire them as contractors. The International Trade Union Confederation reported that this hampered workers’ ability to organize and bargain collectively.

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

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

While the government investigated some suspected cases of forced labor, it often did not effectively enforce applicable laws.

Also see the Department of State’s *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

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

The minimum age for general employment is 15, with strict prohibitions on employing children under age 13 in any type of work. The law permits children between ages 13 and 15 to engage in “light work,” but the MLSS has yet to define light work activities, except for the general guidance that such activities should not disrupt a child’s education or be harmful to their health.

The government did not effectively enforce its child labor laws. The MLSS Child Labor Unit (CLU) is responsible for monitoring and controlling child labor, although its resources and ability were limited. The CLU received reports from the public and was assisted by the Occupational Safety and Health Department (OSHD) in identifying incidents of child labor in industrial establishments covered under the Factories Act. The OSHD did not identify instances of children working on construction sites or receive any such reports. The JCF assists with investigations, depending upon the nature and severity of the case, especially in
cases involving the worst forms of child labor, including trafficking and sexual exploitation.

The government did not adequately track the number of children involved in child labor. During the year the government collaborated with the ILO on a four-year project to increase its capacity to collect data on child labor. In January the Statistical Institute of Jamaica (STATIN), in collaboration with the ILO, held a two-day workshop to raise awareness about child labor and discuss child labor statistics collected by the International Conference for Labor Statisticians. The workshop included agency representatives from the MLSS, STATIN, and CDA. In July the MLSS and Jamaica Employer’s Federation, in collaboration with the ILO, held a seminar for businesses about ending child labor in supply chains.

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

d. Discrimination with Respect to Employment and Occupation

Laws and regulations prohibit discrimination on the grounds of race, sex, gender, place of origin, social status, color, disability, religion, or political opinions. The law does not prohibit discrimination based on sexual orientation or gender identity or HIV-positive status. There were no reports of cases filed for discrimination in employment or occupation during the year.

e. Acceptable Conditions of Work

The minimum wage, which the government reviews each year, was 6,200 JMD ($48) per week. According to the Planning Institute of Jamaica’s 2014 statistics, the official poverty line estimate for male and female adults, respectively, was 169,044 JMD ($1,320) and 124,873 JMD ($1,035) annually, as compared to the annual minimum wage of 291,200 JMD ($2,270).

The law provides for a standard 40-hour workweek and mandates at least one day of rest per week. Work in excess of 40 hours per week must be compensated at overtime rates, a provision employers generally respected. The law also provides for paid annual holidays. The law restricting work in excess of 12 hours in a day is not applicable to all workers.

Insufficient staffing in the Ministries of Labor and Social Security, Finance and Public Service, and National Security contributed to difficulties in enforcing
workplace regulations. The government sets occupational safety and health standards, which were appropriate for the main industries in the country but were not effectively enforced. Legal fines up to 500,000 JMD ($3,900) or imprisonment of up to six months were not sufficient to deter violations due to lengthy delays in their application.

The MLSS employed 16 inspectors, an insufficient number to enforce compliance with labor laws and report on minimum wage, health, and safety violations in workplaces throughout the country. The MLSS Industrial Safety Division enforces industrial health and safety standards, mainly through factory inspections. The safety division conducted inspections, investigated accidents, warned violators, and gave them a period in which to correct the violation. If the violation was not corrected within that time, the violator was taken to court. Penalties and fines are stipulated by law, and the minister of labor and social security has authority to increase any monetary penalty so specified. The ability of defendants to appeal a case in the court system for years mitigated the effectiveness of penalties.

Most workers received more than the legal minimum, and some minimum wage earners held two or more jobs. There were reports that domestic workers received less than the minimum wage. Some unofficial sources estimated that up to 40 percent of citizens worked in the informal sector.
TAB 8
Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as 'clearly unfounded' under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained with this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country information

The COI within this note has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the Common EU [European Union] Guidelines for Processing Country of Origin Information (COI), dated April 2008, and the European Asylum Support Office’s research guidelines, Country of Origin Information report methodology, dated July 2012.

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the Country Policy and Information Team.

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office's COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

Independent Chief Inspector of Borders and Immigration,
5th Floor, Globe House, 89 Eccleston Square, London, SW1V 1PN.
Email: chiefinspector@icinspector.gsi.gov.uk

Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at http://icinspector.independent.gov.uk/country-information-reviews/
Policy guidance

1. Introduction
1.1 Basis of claim
1.1.1 Fear of persecution or serious harm by the state and/or non-state actors because of the person’s actual or perceived sexual orientation and/or gender identity.

1.2 Points to note
1.2.1 This note provides policy guidance on the general situation of gay men, lesbians, bisexuals and transgender persons. They are referred collectively as ‘LGBT persons’, though the experiences of each group may differ.
1.2.2 Decision makers must also note the Asylum Instructions on Sexual identity issues in the asylum claim and Gender identity issues in the asylum claim.

2. Consideration of issues
2.1 Credibility
2.1.1 For information on assessing credibility, see the Asylum Instruction on Assessing Credibility and Refugee Status.
2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants).
2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the Asylum Instruction on Language Analysis).

2.2 Particular social group
2.2.1 LGBT persons in Jamaica form a particular social group (PSG) within the meaning of the Refugee Convention. This is because they share a common characteristic that cannot be changed and have a distinct identity which is perceived as being different by the surrounding society.
2.2.2 Although LGBT persons in Jamaica form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question to be addressed is whether the particular person will face a real risk of persecution on account of their membership of such a group.
2.2.3 For further information and guidance on particular social groups, see the Asylum Instruction on Assessing Credibility and Refugee Status.
2.3 Assessment of risk

a. General points

2.3.1 Decision makers must establish whether or not the person, if returned to their country of origin, will live freely and openly as an LGBT person. This involves a wide spectrum of conduct which goes beyond merely attracting partners and maintaining relationships with them. If it is found that the person will in fact conceal aspects of his or her sexual orientation/identity if returned, decision makers must consider why the person will do so.

2.3.2 If this will simply be in response to social pressures or for cultural or religious reasons of their own choosing and not because of a fear of persecution, then they may not have a well-founded fear of persecution. Decision makers should also consider if there are individual or country specific factors that could put the person at risk even if they choose to live discreetly because of social or religious pressures.

2.3.3 But if the reason why the person will resort to concealment is that they genuinely fear that otherwise they will be persecuted, it will be necessary to consider whether that fear is well founded.

2.3.4 For further guidance, see the Asylum Instruction on Sexual Identity Issues in the Asylum Claim

b. State treatment

2.3.1. Consensual sex between adult males is proscribed by law; prosecutions are rarely pursued although no official statistics are available. Jamaican law does not criminalize sexual orientation or changes to gender identity itself, nor does the government condone discrimination or violence against LGBT persons (see Legislation).

2.3.2. In general there is no real risk of state persecution as the authorities do not actively seek to prosecute LGBT persons and there is no real risk of prosecution even when the authorities become aware of such behaviour. Each case must however be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.

c. Societal treatment

2.3.3. Jamaica is a deeply homophobic society and there are reports of LGBT persons facing a high level of both physical and sexual violence from non-state agents (and some rogue state agents) and many live in constant fear. LGBT persons are targeted for mob violence, ‘corrective rape’, extortion, harassment, forced displacement and discrimination, and are taunted, threatened, fired from their jobs, thrown out of their homes, and suffer ill-treatment including being beaten, stoned, raped, or killed (see Treatment by, and attitudes of, state authorities and Societal treatment and attitudes).

2.3.4. In the country guidance case of DW (Homosexual Men; Persecution; Sufficiency of Protection) Jamaica CG [2005] UKAIT 00168 (28 November 2005) (heard on 28 October 2005), the Tribunal found that men who are
perceived to be gay and have for this reason suffered persecution in Jamaica are likely to be at risk of persecution on return. Men who are perceived to be gay and have not suffered past persecution may be at risk depending on their particular circumstances [Headnote].

2.3.5 The Upper Tribunal in the country guidance case of SW (lesbians - HJ and HT applied) Jamaica CG [2011] UKUT 251 (IAC) (24 June 2011) (heard on 7 December 2009 and 30 November 2010) also noted that Jamaica is a deeply homophobic society and that there is a high level of societal violence, finding that being a lesbian (actual or perceived) brings a risk of violence, up to and including ‘corrective’ rape and murder. [para 107(1)]

2.3.6 The Upper Tribunal also found at paras 107(3)–107(8) that:

- Not all lesbians are at risk. Those who are naturally discreet, have children and/or are willing to present a heterosexual narrative for family or societal reasons may live as discreet lesbians without persecutory risk, provided that they are not doing so out of fear;
- Single women with no male partner or children risk being perceived as lesbian, whether or not that is the case, unless they present a heterosexual narrative and behave with discretion;
- Because the risks arise from perceived as well as actual lesbian sexual orientation, internal relocation does not enhance safety. Newcomers in rural communities will be the subject of speculative conclusions, derived both by asking them questions and by observing their lifestyle and unless they can show a heterosexual narrative, they risk being identified as lesbians. Perceived lesbians also risk social exclusion (loss of employment or being driven from their homes);
- A manly appearance is a risk factor, as is rejection of suitors if a woman does not have a husband, boyfriend or child, or an obvious and credible explanation for their absence;
- In general, younger women who are not yet settled may be at less risk; the risk increases with age. Women are expected to become sexually active early and remain so into their sixties, unless there is an obvious reason why they do not currently have a partner, for example, recent widowhood;
- Members of the social elite may be better protected because they are able to live in gated communities where their activities are not the subject of public scrutiny. Social elite members are usually from known families, wealthy, lighter skinned and better educated; often they are high-ranking professional people.

2.3.5 LGBT persons who live openly will be at risk of discrimination, intolerance, harassment, ill-treatment and violence by non-state actors which will, in many cases, amount to persecution.

2.3.6 For further information and guidance on assessing risk, see the Asylum Instruction on Assessing Credibility and Refugee Status.
2.4 Protection

2.4.1 In the country guidance case of DW, the Tribunal held that if the person is at risk of persecution or serious harm from a non-state actor, as a general rule, the authorities do not provide gay men with a sufficiency of protection.

2.4.2 Similarly, in the country guidance case of SW, the Tribunal found that where a real risk of persecution or serious harm is established, the Jamaican state offers lesbians no sufficiency of protection.

2.4.3 Since the promulgation of these country guidance cases, the Jamaica Constabulary Force (JCF) have taken steps to address homophobic and transphobic violence. In 2011, the JCF developed and launched a policy on diversity to ensure LGBT people can safely file police reports, although it is unclear the extent to which this has been successful (if at all). The Jamaican Government also acknowledges that there is a need for targeted anti-discrimination legislation to address violations against LGBT persons citing that families and neighbours often drive LGBT people from their homes and communities; landlords refuse to rent to LGBT persons, denying them housing; health providers stigmatise them when they seek services; and employers arbitrarily fire them (see Treatment by, and attitudes of, state authorities: Government and Societal treatment and attitudes).

2.4.4 However, in spite of the procedures the Government has put in place, it has so far failed to prevent and protect against violence and discrimination, or to punish the perpetrators of crimes against LGBT persons. In some cases rogue police officers themselves are perpetrators of violence and extortion against LGBT people. They have also failed to intervene when attacks are happening, arrest suspects or investigate homophobic crimes. There remains a prevalence of homophobic attitudes within the police force and some police protection remains inadequate (see Treatment by, and attitudes of, state authorities: Police).

2.4.5 Consequently, there is continuing evidence that LGBT people are not provided with effective protection and that the authorities fail to punish those responsible for such human rights abuses.

2.4.6 For further information on protection in Jamaica, see the country policy and information note on Jamaica: background information, including actors of protection and internal relocation.

2.4.7 For further guidance on assessing the availability or not of state protection, see the Asylum Instruction on Assessing Credibility and Refugee Status.

Back to Contents
2.5 Internal relocation

2.5.1 Where the threat is from the state, internal relocation is not a viable option.

2.5.2 Where the threat is from a non-state actor, decision makers should consider each case on its individual circumstances.

2.5.3 The question of internal relocation was not considered in the country guidance case of DW and the Tribunal accordingly gave no general guidance on the matter. The Tribunal did however note that there are likely to be difficulties in finding safety through internal relocation.

2.5.4 In the 2011 country guidance case of SW, the Tribunal found that single women with no male partner or children risk being perceived as lesbian, whether or not that is the case, unless they present a heterosexual narrative and behave with discretion and because the risks arise from perceived as well as actual lesbian sexual orientation, internal relocation does not enhance safety. It was also found that perceived lesbians also risk social exclusion (loss of employment or being driven from their homes).

2.5.5 Decision makers must therefore give careful consideration to the relevance and reasonableness of internal relocation on a case-by-case basis taking full account of the individual circumstances of the particular person.

2.5.6 Internal relocation will not be an option if it depends on the person concealing their sexual orientation and / or gender identity in the proposed new location for fear of persecution.

2.5.7 Decision makers need to consider the ability of the persecutor to pursue the person in the proposed site of relocation, and whether effective protection is available in that area. Decision makers must also consider factors such as the age, health, financial circumstances and support network of the person, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including their ability to sustain themselves.

2.5.8 See the country policy and information note on Jamaica: background information, including actors of protection and internal relocation.

2.5.9 For further guidance on internal relocation, see the Asylum Instruction on Assessing Credibility and Refugee Status.

2.6 Certification

2.6.1 Where a claim is refused, it is unlikely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002.

2.6.2 For guidance on certification, see the Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims).
3. **Policy summary**

3.1.1 Consensual sex between adult males is proscribed by law but prosecutions are rarely pursued.

3.1.2 While LGBT people are not in general at risk from state actors, some rogue state actors are responsible for acts of violence, abuse and extortion of members of the LGBT community.

3.1.3 Jamaica is a deeply homophobic society and LGBT persons who live openly will be at risk of discrimination, intolerance, harassment, ill-treatment and violence by non-state actors which in many cases is likely to amount to persecution.

3.1.4 Where LGBT persons do face a real risk of harm or ill-treatment by non-state actors, the authorities do not provide effective protection.

3.1.5 Where LGBT persons do encounter societal hostility they may be able to avoid this by moving elsewhere in Jamaica, but because the risks arise from perceived as well as actual sexual orientation, internal relocation does not necessarily enhance safety and will depend on the individual circumstances of the person.

3.1.6 Internal relocation will not generally be an option for a single woman who may be perceived as a lesbian, whether or not this is the case.

3.1.7 Internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.

3.1.8 Claims are unlikely to be certifiable as ‘clearly unfounded’
4. Legal context

4.1 Legislation

4.1.1 The Offences Against the Person Act of 1864, which is still in force, contains the following provisions:

Article 76 (Unnatural Crime)

"Whosoever shall be convicted of the abominable crime of buggery [anal intercourse] committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years."

Article 77 (Attempt)

"Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour."

Article 78 (Proof of Carnal Knowledge)

"Whenever upon the trial of any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only."

Article 79 (Outrages on Decency)

"Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding 2 years, with or without hard labour."

4.1.2 The Inter-American Commission on Human Rights ‘report on the Human Rights Situation in Jamaica’ dated 10 August 2012 noted that:

‘Jamaica’s laws do not criminalize the status of being homosexual but rather outlaw conduct. The Jamaican Offenses Against the Person Act (also referred to as the “buggery” law) prohibits anal sex between men, in public or in private, punishable by 10 years in prison with hard labour. The law also makes “gross indecency” between two men, the acts of which are not defined, a misdemeanor punishable by 2 years in prison. Moreover, there

---

is no law which prevents discrimination against an individual on the basis of his or her sexual orientation, gender identity, or gender expression. There is no legislation addressing hate crimes in Jamaica.²

4.1.3 The US State Department’s report on human rights practices for 2015 (‘the USSD report for 2015’) noted that:

‘The law prohibits “acts of gross indecency” (generally interpreted as any kind of physical intimacy) between persons of the same sex, in public or in private, and provides a penalty of two years in prison for the offense. There is also an “antibuggery” law that criminalizes consensual as well as non-consensual anal intercourse, punishable by up to 10 years in prison. During the year [2015], it was only enforced in cases of sexual assault and child molestation and was not used to prosecute consensual same-sex sexual conduct between men. Homophobia was widespread in the country.’³

4.1.4 The Antillean Media Group (AMG) reported in June 2016 that:

‘When the law is taken literally, it is not illegal to be gay in Jamaica; it is only illegal to behave in a certain way. Put simply, it is legal for gay men to exist, but it is not acceptable for them to act in accordance with their identity. Within this context, gay men must keep an integral component of who they are hidden for fear of adverse ramifications.’⁴

4.1.5 Amnesty International’s annual report for 2016/17⁵ repeated their assessment from their 2015/16 report⁶ that: ‘There remained no legal protection against discrimination based on real or perceived sexual orientation or gender identity […] Consensual sex between men remained criminalized.’

4.2 Challenges to legislation

4.2.1 Freedom House’s freedom in the world report for 2016 noted that:

‘Legislation against sodomy, which is punishable by 10 years in prison with hard labour, was challenged in court in 2014; however, the case was

---

withdrawn that year after death threats were made against the claimant and his family.\(^7\)

### 4.2.2

The Jamaican Gleaner paper further reported on the dropped legal challenge stating that:

‘A Jamaican gay man has dropped his court case challenging the anti-buggery law because of what he says are fears for his safety. Javed Jaghai, who had brought the case to the Supreme Court, had argued that the anti-sodomy laws violated his and constitutional rights and those of other people too. But he says he dropped the case because of personal threats, the burden that the litigation was putting on his family, and continuing incidents of violence against Jamaica’s lesbian, gay, bisexual and transgender, the LGBT community.’\(^8\)

### 4.2.3

The same source also reported in December 2015 of a fresh legal challenge to the anti-sodomy law. The source noted that:

‘A Jamaican gay rights activist has brought a rare legal challenge to the nation's anti-sodomy laws that criminalise consensual sex between men, the Canadian advocacy group he works for said. Gay rights campaigner and attorney Maurice Tomlinson recently filed a claim in Jamaica’s Supreme Court challenging the constitutionality of the rarely-used 1864 laws that ban anal sex and anything interpreted as "gross indecency" between men. In a statement yesterday from the Canadian HIV/AIDS Legal Network, Tomlinson said longstanding laws are a "gross violation of my human rights" and those of all LGBT people in Jamaica. He is a senior policy analyst with the Toronto-based advocacy organisation.’\(^9\)

### 4.2.4

According to an article in Attitude magazine on 16 January 2017 the case is still at the pre-trial stage.\(^10\)

### 4.3

**Government review of legislation**

### 4.3.1

In May 2015 the Jamaica Gleaner reported on the mounting pressure from the UN for Jamaica to repeal anti-gay laws. The article noted:

‘More international pressure is being applied on Jamaica to repeal laws believed to be infringing on the human rights of vulnerable groups including gays, lesbians, bisexuals and transgendered (LGBT) people. […] calls came from representatives of several countries, including Canada, Sweden, and the United States for Jamaica to change its laws and address cultural issues that are out of step with global human rights provisions. The representative

---

\(^7\) Freedom House, Freedom in the World 2016, 29 August 2016

\(^8\) The Jamaica Gleaner, Jamaican Gay Man Drops Court Challenge Against Anti-Buggery Law, 29 August 2014, [http://jamaica-gleaner.com/power/55113](http://jamaica-gleaner.com/power/55113) [date accessed 10 January 2017]


from Great Britain, Matthew Buckley, took issue with the fact that changes to the Charter of Fundamental Rights and Freedoms did not protect against discrimination on grounds of sexual orientation.\textsuperscript{11}

4.3.2 The Jamaica Observer reported also reported in May 2015 that:

‘Minister of Justice, Senator Mark Golding, says that the Government has rejected suggestions from United Nations member states to repeal current buggery legislations and legalise same-sex marriages. In a statement to the Senate today [22 May 2015] on the United Nation’s recent periodic review of Jamaica’s human rights record, Senator Golding said that there were “recurring recommendations made by some member states that did not enjoy Jamaica’s support.”\textsuperscript{12}

4.3.3 The International Lesbian, Gay, Bisexual, Trans and Intersex Association for Latin America and the Caribbean (ILGALAC) noted in July 2015 that:

‘In 2011, British prime minister, David Cameron, threatened to withhold aid from governments that do not reform legislation banning homosexuality. However, Justice Minister Mark Golding had earlier told the panel that several steps have been taken to safeguard the rights of all, including implementation of a diversity policy for the police.’

‘Lobbyists believe the removal of the buggery law will help in HIV/AIDS prevention and treatment among members of the LGBT community. However, last year, a local poll found that 91 per cent of Jamaicans believe lawmakers should not repeal the controversial buggery law.’\textsuperscript{13}

4.3.4 Pink News reported in March 2016 that:

‘The country’s new Prime Minister Andrew Holness hinted at a strategy to get round international pressure on the law this week – by suggesting a referendum. The leader of the Jamaican Labour Party, who ousted PM Portia Simpson-Miller in an election, signalled that he would hold “public votes” on “key constitutional and social issues” – widely interpreted to suggest the sodomy law will be put to a vote.’

4.3.5 However the article further notes that: ‘An editorial in the Jamaica Gleaner newspaper noted that such a vote has very little chance of securing a majority in favour of repealing the law.’

‘The country’s previous Prime Minister had been elected on a platform calling for the anti-gay law to be scrapped. Portia Simpson-Miller claimed she would consider decriminalising homosexuality before her election in


2011 – but went back on her promise. She was later accused of “betraying” voters on the issue.\(^ {14} \)

4.3.6 AMG noted in an article titled ‘With anti-gay laws, the state is complicit in violence against LGBT people’ dated 1 June 2016 that:

‘The newly-installed government of Prime Minister Andrew Holness has similarly rejected recent recommendations from the United Nations to repeal the law. Instead, the government has indicated that it will take the issue of a repeal to a national referendum which, given the extreme opposition of 2011, is anything but certain. The mere idea of dispensing with the law last saw thousands of Jamaicans rallying in the streets in protest.’\(^ {15} \)

5. Treatment by, and attitudes of, state authorities

5.1 Government

5.1.1 Human Rights First’s report ‘The World as it Should Be” Advancing the Human Rights of LGBT People in Jamaica’ updated in July 2015 noted that:

‘Jamaican Public Defender Arlene Harrison Henry, who has been a perennial advocate for the rights of LGBT people, explained to Human Rights First that elected officials and leaders are not ready to break political rank with their constituents and support the rights of LGBT people. Thus, strong political and state leadership is required to reduce homophobia in the country. In a climate of entrenched homophobia, Dr. Sandra Knight of the National Family Planning Board is one of few prominent individuals within the Jamaican government who demonstrates support for the rights of all people, including members of the LGBT community. Many activists note that support at high levels of government is essential to the movement towards LGBT equality. Dr. Knight noted that the National Family Planning Board, an institution housed within the Ministry of Health, exists to “serve every single Jamaican.” However, Dr. Knight acknowledges the practical obstacles to the full realization of this mandate, as illustrated by the discrimination LGBT people face in healthcare facilities.’\(^ {16} \)

5.1.2 The Guardian reported in August 2015 of Jamaica’s first pride event, the article noted that the now former Prime Minister Portia Simpson Miller had:

‘[…] raised hopes among gay rights activists in the run-up to the 2011 elections, when she said she would not discriminate against gay politicians. Her comments offered a marked contrast to the previous leader, Bruce Golding, who vowed he would never allow a gay member in his cabinet; but many activists now feel that Miller missed an opportunity for change. Nearly


\(^ {15} \) Antillean Media Group (AMG), With anti-gay laws, the state is complicit in violence against LGBT people, 1 June 2016, http://www.antillean.org/jamaica-buggery-law-complicity-violence-876/ [date accessed 11 January 2017]

five years later, the colonial-era legislation that outlaws homosexuality remains on the statutes.'

The same report also noted that during Jamaica’s first Pride celebration: ‘justice minister Mark Golding sent a message of support to organisers, saying: “I believe that the views of the Jamaican society are evolving towards greater tolerance and against violence and other forms of discrimination”.’

5.1.3 The Guardian paper reported in February 2016 that:

‘While Jamaica faces an ongoing battle to repeal the law that criminalises gay sex, its justice minister, Mark Golding, and mayor of Kingston, Angela Brown Burke, have shown their support for a pride event. Newspaper editorials and even a few clergy have also called for equal rights – all milestones lawyer and gay rights activist Maurice Tomlinson says would have been inconceivable a few years ago.’

5.1.4 BBC News reported on the reaction following the attack on the Orlando Pulse nightclub, BBC news noted that:

‘Jamaica's attorney general has sparked criticism after saying it was "disrespectful" to Jamaican law for the US embassy to fly a rainbow flag following the Orlando shooting. […]The embassy in Kingston joined other US missions around the world in flying the rainbow flag in solidarity with the victims of the attack, the worst mass shooting in recent US history. […]In a post that now appears to have been deleted, Ms Malahoo Forte said: "I strongly condemn #OrlandoNightClubShooting but find it disrespectful of Jamaica's laws to have #RainbowFlag flown here. #MyPersonalView."’

5.1.5 In discussing the murder and wounding of over 100 gay, lesbian and trans people at the Orlando Pulse nightclub Antillean Media Group (AMG) looked at the politics of mourning LGBT deaths. They noted that:

‘In Jamaica, where officials withheld condemnation for a recent double murder of two homosexuals (presented as a brutish report in the island’s press), Prime Minister Andrew Holness was similarly reserved. For him the attack was a medley of terrorism and gun violence, “two scourges which continue to scar the quest for peace and brotherhood among peoples”.

‘Doubling down on the script, Attorney-General Marlene Malahoo Forte expressed strong condemnation for the Pulse massacre, and equally strong condemnation for the Rainbow Flag, saying that it offended Jamaican laws which she couldn’t name.’

‘Jamaica’s law, in fact, criminalizes sexual acts between men: being gay, as the government’s argument goes, is legal. Puzzled, the US Embassy

---


initiated what would become a firestorm of debate and criticism over Malahoo’s remarks.’

‘Malahoo went on to call for meaningful gun control, as she framed the murders simply as an act of terror. She defended her opposition to the display of the Rainbow Flag, saying “when we ask each other to respect our differences, we should do so in all areas where we differ”— presumably in respect of the differences in rights accorded to LGBT citizens under Jamaican and US laws.’

5.1.6 Freedom house noted that: ‘As a modest step forward, in 2014 the government added a provision to the Offences Against the Person Act; the amendment criminalizes the production, recording, or distribution of any audio or visual materials that promote violence against any category of persons, including LGBT individuals.’

5.2 Police

5.2.1 The Inter-American Commission on Human Rights, ‘Report on the Human Rights Situation in Jamaica’ dated 10 August 2012 stated that:

‘Jamaican law provides police great discretion in detaining individuals; the Offenses Against the Person Act permits a police officer to arrest without a warrant any person found “loitering” between 7 p.m. and 6 a.m. whom the police constable has “good cause to suspect of having committed, or being about to commit any felony” prescribed by the Act. Jamaican laws are also used as a pretext by police to detain men who do not conform to gender roles, and women who have sex with women are also targeted for arrest. There are accounts that the laws are actively enforced against men engaged in homosexual behaviour. Thus, members of the LGBT community face arrest, detention, and prosecution for their sexuality under the law.’

5.2.2 The Human Rights Watch report ‘Not Safe at Home Violence and Discrimination against LGBT People in Jamaica’ dated 21 October 2014 stated that:

‘The laws have been used by police to extort money from adults engaged in consensual homosexual sex by public television stations to justify refusal to broadcast public service announcements making positive statements about LGBT persons and by landlords to justify refusal to rent apartments to them. Though those arrested are rarely if ever prosecuted, gay men who are “outed” through arrest risk violence and other abuse by community members. While the law does not directly reference transgender people, transgender women and homosexuals are often conflated. Gender non-

---

conforming Jamaicans, especially transgender women and gender non-conforming gay men who are publicly visible, are most likely to suffer violence and discrimination.'

‘In recent years, the police have taken some steps to address homophobic and transphobic violence. In 2011, the Jamaican Constabulary Force launched a Policy on Diversity, developed in consultation with J-FLAG, which requires police to ensure that LGBT people and other vulnerable groups can safely file police reports. The policy establishes a mechanism to monitor police non-compliance, although Human Rights Watch has not been able to ascertain whether any police have been held accountable for non-compliance, despite a formal request for this information.’

‘Nonetheless, police protection remains inadequate, and is among several factors that contribute to the specific vulnerability of LGBT people.’

5.2.3 The same source found the following with regards to police failure to act in light of crimes committed against LGBT persons: ‘Human Rights Watch interviewed LGBT people who said that when they tried to report a crime, police made derogatory comments and failed or refused to take a report, even well after the Policy on Diversity was established. The fact that police themselves are sometimes perpetrators of violence and extortion against LGBT people makes LGBT victims even more unlikely to seek police assistance. The report describes incidences where the ‘police failed to intervene, even as attacks were happening’, ‘police failing to arrest suspects or investigate homophobic incidents’, and despite police being instructed to record hate crimes ‘they lack a clear definition of what constitutes such a crime, and documenting these incidents appears to be under-prioritized’.

5.2.4 Human Rights Watch also documented instances where the police were the perpetrators:

‘Cases of police violence toward LGBT people appear to have decreased in the decade since Human Rights Watch documented such violence in our 2004 report, Hated to Death. However, the persistence of even isolated cases is of great concern given the police’s role as a source of protection. At the root of much police abuse appears to be the same intolerance and homophobia found in Jamaican society more broadly’. The report recorded specific incidences of verbal abuse, physical abuse, sexual abuse, and extortion.\(^{23}\)

5.2.5 The Human Rights First report 'The World as it Should Be' Advancing the Human Rights of LGBT People in Jamaica' updated in July 2015 stated that:

‘Members of the Jamaica Constabulary Force (JCF) often contribute to stigmatization and discrimination against LGBT people. Some police use the sodomy law as leverage to extract bribes, threatening to arrest or release the names of members of the LGBT community to the media.’

While most Jamaicans expressed support for the sodomy laws in a 2014 poll, over 80 percent admit that gay men are not treated fairly by the police or justice system. Just under 80 percent of Jamaicans believe the same holds true for lesbians. Jamaican Public Defender Arlene Harrison Henry notes reports of general police inaction in cases of violence or discrimination against LGBT people. Many activists say such inaction is rooted in homophobia among the police force.

Jamaica’s police force implemented a diversity policy in 2011, which includes sexual orientation as a protected class and directs police to ensure that LGBT people and other groups are able to file police reports. However, it is unclear whether members of the police force are in practice being held accountable for noncompliance with the policy.

The prevalence of homophobic attitudes within the police force, combined with the general inefficiency of the justice system, result in an overall lack of investigation into violence or discrimination against LGBT people.

A December 2015 joint report on ‘Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Jamaica’ reported that:

‘It is important to note that in an effort to improve public confidence in the police, in 2011 the Jamaica Constabulary Force issued a Policy on Diversity with the aim to “effectively transform the negative aspects of police culture manifested in the scant regards paid to reports made by members of diverse groups, as it relate to the incidence of crimes committed against them.”

According to the policy definitions, diverse groups comprise, among others, persons of various sexual orientation. In addition, the police have undergone a number of human rights-related capacity building and sensitization workshops. For example, in September 2015, two-hundred and thirty police officers participated in a two-day training which ‘focused on the safety and security of women and girls, persons living with disabilities, marginalised youth, and members of the lesbian, gay, bisexual or Transgendered (LGBT) community.’ However, as J-FLAG stresses, “much more work needs to be done to ensure that all Jamaicans are protected and where their rights are infringed, they are treated equally before the law.” Negative police attitudes towards LGBT persons persist and as a consequence, many LGBT crime victims do not even attempt to report crimes to the police.’

‘[...] perception of a significant number of common Jamaicans is that the police treat LGBT persons worse than heterosexual persons. According to the 2012-2013 Jamaica National Crime Victimization Survey, 46.5% residents in Kingston report that they feel that the police treat homosexuals worse than heterosexuals. The percentages in other parishes are: St Andrew (16.5%), St Thomas (19.1%), St Mary (31.8%), St James (32.3%), Clarendon (28.2%), St Catherine (22.3%) and Trelawney (32.3%).

‘A 2015 study entitled the Developmental Cost of Homophobia which was commissioned by JFLAG indicates that a large number of LGBT people did not report the last incident of physical or sexual assault that was perpetrated against them to the police. 30.1% of the persons did not report because they felt the incident was too minor to be reported, while 40.5% did not report because they felt the police would not do anything to address the matter. About 1 in 4 (25.5%) feared a homophobic response from the police, and about 1 in 5 (22.9%) did not report because they felt too ashamed or embarrassed and did not want anyone to know what had happened to them.’

6. Societal treatment and attitudes

6.1 Overview

6.1.1 The Human Rights Watch report ‘Not Safe at Home Violence and Discrimination against LGBT People in Jamaica’ dated 21 October 2014 stated that: ‘Families and neighbours often drive LGBT people from their homes and communities; landlords refuse to rent to LGBT persons, denying them housing; health providers stigmatize them when they seek services; and employers arbitrarily fire them.’

6.1.2 A J-FLAG commissioned paper on the National Human Rights Institutions and the Human Rights Situation of LGBT People in Jamaica, dated June 2015 stated that:

‘Outside of flagrant acts of violence and intimidation, the culture of homophobia has allowed these acts to continue with impunity. The public perception of homosexuality as “morally wrong” or “against the natural order” has made it difficult for many LGBT persons to live comfortably, especially those in lower strata of society, as indicated. The 2011 National Survey on Attitudes and Perceptions of Jamaicans towards Same-Sex Relationships found that Jamaicans are generally homophobic and some LGBT persons are more at risk than others. It found that anti-gay attitudes and views were most common among, inter alia, people in low income communities and people who had no university education.’

‘Jamaicans overwhelmingly support criminalizing homosexuality (85%). One public opinion poll shows 83 percent of Jamaicans find male homosexuality “morally wrong,” and 75 percent believe female homosexuality is “morally wrong.” Another survey shows 72 percent of Jamaicans “strongly disapproved” of homosexuals running for office, and 91 percent “strongly disapproved” of same-sex marriage.’

Misperceptions of same-sex attraction as a “choice” or “form of rebellion” are widespread, according to the advocates, and many are surprised to hear gay and lesbian people cannot be attracted to the opposite sex in the same way that heterosexuals cannot be attracted to the same sex. Additionally, advocates believe some Jamaicans perceive homosexuality as illegal, due to a misunderstanding of the buggery law.

‘The 2014 LAPOP study revealed that 69.1% of Jamaicans strongly disapproved of the rights of homosexuals to run for office and 89% strongly disapproved of gay marriage.’

Goldsmiths University news article entitled ‘Gay rights support improves in Jamaica but anti-gay sentiment grows new research suggests’ dated 15 August 2016 noted that:

‘Social psychologist Dr West – an expert in anti-LGBT prejudice in Jamaica - analysed the results of two surveys from 2012 and 2015 of almost 1,900 people, to see how attitudes have changed.’

‘The surveys show that, over the 3-year period, heterosexual Jamaicans reduced their support for the country’s “buggery law” and became more supportive of gay rights. However, they simultaneously became more likely to say they do not trust or like gay people, or that they would threaten, hurt and insult them.’

‘Dr West’s research into changes in attitudes appears in The Journal of Sex Research. He explains: “What should we make of these findings? Taken together my conclusion is that these changes in structural and personal prejudice suggest that heterosexual Jamaicans now respect LGBT Jamaicans more, but like them less.”’

Amnesty International’s annual report for 2015/16 noted that: ‘In August, a gay pride celebration was held in Jamaica for the first time. The Minister of Justice called for tolerance during the celebration and expressed his support for the rights of LGBTI people to express themselves peacefully.’

6.2 Incidents of harassment or abuse

6.2.1 The Inter-American Commission on Human Rights, ‘Report on the Human Rights Situation in Jamaica’ dated 10 August 2012 stated that:

‘The IACHR has come to understand that discrimination based on sexual orientation, gender identity, and gender expression is widespread throughout Jamaica, and that discrimination against those in the lesbian, gay, bisexual, trans, and intersex (LGBTI) communities is entrenched in Jamaican State


institutions. Those who are not heterosexual or cisgender face political and legal stigmatization, police violence, an inability to access the justice system, as well as intimidation, violence, and pressure in their homes and communities.  

6.2.2 The October 2014 Human Rights Watch report ‘Not Safe at Home Violence and Discrimination against LGBT People in Jamaica’ stated that:

‘Between 2009 and 2012, J-FLAG, a Jamaican LGBT rights organization, recorded 231 incidents of attacks against LGBT people, including home invasions, physical assaults, and mob attacks.’

‘LGBT Jamaicans, especially those who are poor and unable to live in safer, more affluent areas, are particularly vulnerable to violence. Many live in constant fear. They are taunted; threatened; fired from their jobs, thrown out of their homes; beaten, stoned, raped, and even killed.’

‘Physical and sexual violence, including severe beatings and even murder, are part of the lived reality of many LGBT people in Jamaica. The level of brutality leads many to fear what could happen if their sexual orientation or gender identity is disclosed. [...] In many cases, perpetrators appear to have been private actors who felt that they had the moral authority to “rid the community” of LGBT people and had no fear of arrest from the authorities [...] Some of the individuals we interviewed had more than one experience of physical violence. These reported acts of violence included rape; being chopped with a machete; being choked; being stabbed with a knife; being shot with a gun; being hit with boards, pipes, sticks, chairs, or brooms; being attacked by groups ranging from 5 to 40 individuals; and being slapped in the face with hands or with guns. [...] Among the various types of physical abuses endured, interviewees identified two forms- mob attacks and arson- as notable for being both extreme and targeted at LGBT people. [...] At least 48 physical assaults that interviewees described to Human Rights Watch were accompanied by slurs that referred to the victim’s perceived or real sexual orientation or gender identity.’

‘Sexual assaults on LGBT people are frequently accompanied by verbal abuse that suggests the assaults are motivated by homophobia and justified by the perpetrators as an attempt to “convert” the victims to heterosexuality.’

6.2.3 Amnesty International’s annual report noted that: ‘Between January and July [2015], the Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG) received 47 reports of human rights violations against LGBTI people.’


6.2.4 The USSD report for 2015 stated that ‘The NGO J-FLAG reported that during the year [2015] approximately 100 LGBTI persons were subjected to discrimination, harassment, violence and other forms of abuse, including 19 cases of physical assault, 34 of verbal assault, 22 involving threat and intimidation, and four mob attacks.’

6.2.5 Freedom House stated that ‘Harassment of and violence against LGBT (lesbian, gay, bisexual, and transgender) people remains a major concern and is frequently ignored by the police.’

6.3 Mob violence

6.3.1 The Organization of American States' Inter-American Commission on Human Rights (IACHR) recorded in its annual report covering 2014 that:

‘In 2012, an angry mob broke into a house to attack three gay men who were living together in Jones Town, Kingston. Police officers who arrived at the scene were also confronted by villagers for trying to protect the men.’

‘Another resounding case took place in 2012 at the Jamaica's University of Technology (UTech), when a gay student was chased by mob of male and female students through the university campus. The victim was able to reach the security office, while the mob kept screaming outside. A video shot at the scene shows how at least two guards, instead of protecting the student, went on to slap, kick and punch him in view of the crowd sneaking through the windows. A few months later, the guards were subsequently freed by a Court after the student decided to no longer pursue the case. By mid-2013 mob attacks in Jamaica soared to worrying levels. According to the information received by the IACHR, on 1 August [2014], two men inside a patrol car were perceived as gay and a crowd quickly gathered and started harassing the men. Police officers had to disperse the crowd using warning shots and pepper spray. On the very same day, police forces had to be called on to rescue two gay men from another irate crowd, which claimed the men “were engaging in an illegal activity in a house” in St. Catherine. Prior to the police arrival, one of the accused men was attacked by an occupant of the house.’

‘[T]he IACHR received information that on August 10 [2013], police personnel had to rescue a trans woman in Portmore, St Catherine, after an angry mob who had seen her in the community threatened to flog her. On 22 August [2013], another irate mob barricaded five gay men inside of their home in Manchester. The men were reportedly trapped until police arrived and escorted them to safety, to the applause of enraged community members. Additionally, on 26 August [2013], local media reported that two men had to seek refuge after being involved in a motor vehicle accident when angry residents said they appeared to be gay. Police forces had to escort the men out of the police station and away from the angry mob that

had gathered outside the premises. Two months later, a mob firebombed a house in which several gay men were living in Porto Bello, St James.’

6.3.2 In response to this violence, the IACHR formally requested the Jamaican State to provide specific information on the measures adopted in response to the ongoing situation and to report on any measures or policies that had been adopted to prevent further acts of violence against LGBT persons, or those perceived as such. The government replied expressing that:

‘[It is difficult to investigate mob killings or attacks given that a mob attack often involves large numbers of persons. It is therefore challenging in those circumstances to determine which persons were actively involved and, in the case of a death, which person or persons landed the fatal blow. In cases of mob attacks, it is also challenging to find witnesses who are willing to give evidence. [In Jamaica] there is no legislation which specifically addresses mob attacks against LGBT persons or those perceived as such.’

6.3.3 Human Rights First report ‘The World as it Should Be” Advancing the Human Rights of LGBT People in Jamaica’ updated July 2015 noted that:

‘In 2013, teenager Dwayne Jones was brutally murdered after attending a party dressed in feminine attire. He was stabbed, beaten, shot, and run over by a car by a violent mob. The case attracted international attention and outrage. At the release of the 2013 U.S. Department of State Human Rights Country Reports, then-Acting Assistant Secretary for Democracy, Human Rights, and Labor Uzra Zeya cited the brutal murder of Dwayne Jones as an example of the egregious global trend of “troubling acts of violence against LGBT persons”. Despite outrage at the national and international level, the case remains unsolved.’

‘The co-founder of J-FLAG, Brian Williamson, was murdered in 2004. Well-known in Jamaica as an elder statesman within the LGBT community, Williamson was found in his home with multiple stab wounds to his neck and face. Police investigated the death primarily as a burglary despite the jubilant crowd at the crime scene shouting homophobic expressions. The murderer was ultimately arrested and sentenced to life in prison.’

‘A U.S. official in Jamaica notes that mob violence is a severe problem, particularly as it affects members of the LGBT community. He described mob violence as an expression of a general lack of faith in the Jamaican justice system. Indeed, the U.S. Department of State documents an “overburdened, under resourced and ineffective judicial system” as one of Jamaica’s principal challenges.’

Back to Contents


6.4 Corrective rape

6.4.1 The Inter-American Commission on Human Rights (IACHR) 2014 annual report stated that:

'[...] many sources indicate that “corrective” rape in Jamaica is an issue of concern. To name a few of the reported incidents, in 2007 a 17-year-old lesbian was held captive by her own mother and her pastor for 18 days and raped repeatedly day after day by different religious men in the attempt “to make her take men” and “live as God instructed.” In 2008, four more cases were reported. The women refused to report the matter to the police out of fear of further victimization. At least another three episodes of “corrective” rape were reported in 2009. In 2010, a lesbian woman was gang-raped by four men from her community who had complained about her ‘butch’ or ‘manly’ attire. After she was raped, the rapists cut her with a knife ‘so she could better take men.’ A few days after that episode, a known friend of the first woman was driven away at knifepoint, brutally raped and then dumped half-naked. The women refused to go to the police because of the perceived ineffectual nature of their response. It is noteworthy, in this respect, that there exists a precedent in a foreign court granting asylum to a Jamaican lesbian taking into account the high risks of suffering “corrective” rape she would be exposed to if returned to Jamaica.'

6.4.2 Human Dignity Trust (UK) article titled ‘Jamaican activist Angeline Jackson brings attention to rapes targeting lesbians’ dated 27 April 2015 noted that:

‘In April 2015 the Human Dignity Trust reported that when Angeline Jackson and a friend were ambushed at gunpoint and sexually assaulted on a wooded trail outside the Jamaican capital in 2009, police initially seemed less concerned about the attack than the fact she is a lesbian. Jackson, a victim of a targeted sexual assault when she was 19, now directs the only registered lesbian and bisexual women’s organisation in Jamaica and is determined to help others recover from sexual crimes targeting female homosexuals, including so-called "corrective rapes" intended to force them into becoming heterosexual or punish them for not fitting societal norms.'

6.5 Homelessness

6.5.1 The Human Rights Watch October 2014 report ‘Not Safe at Home Violence and Discrimination against LGBT People in Jamaica’ stated that:

‘Many LGBT Jamaicans become effectively homeless, forced to flee their homes and sometimes the country, and denied full citizenship rights. Among the most vulnerable are dozens of gay and transgender Jamaican children and young adults who have been rejected by their families and are living on

\[\text{Organization of American States, Inter-American Commission on Human Rights (IACHR), Annual Report 2014, 7 May 2015, Chapter V. Paras 172} \]

\[\text{Human Dignity Trust (UK), Jamaican activist Angeline Jackson brings attention to rapes targeting lesbians, 27 April 2015} \]

Back to Contents
the streets, where they face violence and harassment by police and the public.\textsuperscript{39}

6.5.2 Amnesty International’s annual report for 2015/16 noted that ‘Homelessness and displacement of LGBTI youths remained a concern. Young people pushed out of their homes because of their sexual orientation or gender identity continued to live in storm drains and abandoned buildings. Local NGOs supported homeless LGBTI youths, while the state did little to help. By mid-year, J-FLAG had provided social and crisis services to 329 LGBTI people and continued to receive requests for advice from LGBTI Jamaicans planning to seek asylum in other countries.’\textsuperscript{40}

6.5.3 The USSD report for 2015 noted that:

‘According to J-FLAG, an estimated 100 LGBTI persons reported being forced to flee their homes and rendered homeless over the past six years; another group of approximately 30 individuals remained homeless in Kingston. Through J-FLAG and other local NGOs, LGBTI persons were able to address these issues in the media and public forums and advocate for their human rights. Several high-ranking political leaders expressed support for safeguarding human rights of LGBTI persons.’\textsuperscript{41}

6.5.4 Vice published an article titled ‘The Challenges of Running a Queer Homeless Shelter in Jamaica’ dated 20 December 2016 which stated that:

‘[…] in January this year [2016] the Jamaica Observer revealed a 26 percent rise in homelessness over the past three years. The problem is particularly prevalent amongst the country’s LGBTQ community, who comprise at least 40 percent of the overall homeless youth population.’

‘According to Dane Lewis, director of J-Flag, one of the greatest barriers to providing shelter for the LGBTQ homeless youth is a lack of funding. NGOs seeking to alleviate the burdens of the queer homeless youth were, and still are, locked in ongoing negotiations with both the government and international agencies for financial support that would help them address the issue on the ground. They find themselves consistently overstretched and unable to provide anything more than stop-gap support.’

‘The National Anti-Discrimination Alliance (NADA) is a Jamaican organisation "committed to protecting the rights and freedoms of all people regardless of social or cultural biases." They have provided LGBTQ-friendly safe houses and private shelters for the homeless since 2014. NADA is a small-scale operation, relying largely on the kindness of volunteers willing to open their homes for those in need. When that’s not an option, the group will pool their resources and rent a residential property which can be run as a safe house. The shelters can only take on a few guests at a time.


and operate on a word of mouth basis, but nonetheless NADA represents a small but significant victory in the struggle to provide shelter to displaced members of Jamaica's LGBTQ community.'

‘Andrew Higgins, founder of NADA, believes that they have so far been able to avoid becoming a target of anti-LGBTQ groups by operating as a "non-discriminatory" organisation rather than a "pro-LGBTQ" organisation.'

‘The fact still stands, though, that NADA's shelters are primarily aimed at people who are newly homeless, rather than those who have been living without shelter for several years. With a high occurrence of HIV and other medical problems within the long-term LGBTQ homeless community, as well as a high rate of unemployment and training, any shelter will have to provide more than just a roof in order to see the long-term homeless youth rejoin broader society. Therefore, for shelters like NADA's with limited funding, the best strategy is to focus energies on those who have just become homeless in the hope that they can prevent them from becoming homeless in the long-term."^^42

6.6 Employment

6.6.1 Human Rights First report 'The World as it Should Be" Advancing the Human Rights of LGBT People in Jamaica' updated July 2015 noted that:

‘Jamaica’s “Staff Orders for the Public Service” - which outline the operational procedures for the Jamaican civil service do explicitly include sexual orientation as a protected category for those in public service. However, similar protections for those working in the private sector are nonexistent, and employment discrimination continues to be a significant issue for the LGBT community."^^43

6.6.2 In correspondence with the Immigration and Refugee Board of Canada, a Professor of anthropology at the City University of New York, who specialises in gender, sexuality and human rights studies, and has conducted research on Jamaica, stated that while the country has a high unemployment rate in general, members of sexual minorities who live in the open are "basically unemployable".^^44

6.6.3 The council on Hemispheric affairs noted that: ‘Further exacerbating the homophobia is the fact that it is also legal in Jamaica to fire LGBT people because of their gender identity or sexual orientation."^^45

---


6.7 Healthcare

6.7.1 Human Rights First’s report (updated July 2015) ‘The World as it Should Be: Advancing the Human Rights of LGBT People in Jamaica’ noted that:

‘Activists providing direct health services to the LGBT population recounted various anecdotes of healthcare workers’ mistreatment of LGBT people based on sexual orientation and/or gender identity. They note that while HIV medicine is available, many in the LGBT community are reluctant to access this essential treatment because of prior experiences of discrimination, ridicule, and/or rejection in healthcare centres. A lack of privacy and anonymity for those seeking treatment, particularly in small rural communities, is another discouraging factor to LGBT people seeking treatment.’

6.7.2 A December 2015 report on ‘Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Jamaica’ noted that:

‘The 2015 survey of 316 LGBT Jamaicans found that “the experience with healthcare service providers was varied. The majority of the respondents (52.5%) reported being forced to undergo seemingly unnecessary medical or psychological testing. A third (32.2%) also experienced inappropriate curiosity regarding their identity. Approximately 17% felt they had not received equal treatment, and 15% declined treatment because they felt fear or discrimination or intolerance, and 15% also felt the need to change their general practitioner or specialist because of negative reaction.”’

6.7.3 The USSD report for 2015 noted:

‘The Ministry of Health and J-FLAG trained more than 200 healthcare workers in 2014 and 2015 to sensitize them to LGBTI patients. Although the country has universal health care, members of the LGBTI community relied mainly on the Jamaica AIDS Support for Life clinic, claiming that the staff in the government’s health system did not understand their needs and was unwelcoming. Training programs such as those conducted by J-FLAG, public advocacy by other NGOs and international donors, and increased focus by the government on the public health issue of HIV/AIDS increased the number of LGBTI persons accessing public-sector health care facilities.’

‘The 2013 HIV and AIDS legal assessment for Jamaica shows significant improvement in the nation’s response to HIV, including a new governance structure of the National HIV/Sexually Transmitted Infection program, which has been integrated within the National Family Planning Board under the new Sexual and Reproductive Health Authority for Jamaica. There has been a dramatic reduction of HIV prevalence among sex workers. The country is close to eliminating the transmission of HIV and AIDS between mother and


child. The country adopted the National HIV/AIDS Workplace Policy prohibiting HIV-related discrimination in the workplace, and increased public awareness and engagement on HIV for various vulnerable populations. Criminalization of private, consensual same-sex acts, sex work, and drug use continued to exacerbate stigma and discrimination against the most vulnerable populations and impede their access to health information and services. A high-level political declaration in 2011 to address stigma and discrimination has not been translated into concrete legal or policy reforms.48

6.8 Media

6.8.1 The J-FLAG annual report covering 2014 reported that there was a tremendous increase in attention on LGBT issues in the media in 2014. There were several editorials on LGBT issues in the two leading print media, many commentaries written and numerous current affairs programmes dealing with LGBT issues. Notably, there were two television programmes on the leading current affairs programmes Impact and All Angles that were specifically geared to issues related to transgender people. This heightened interest resulted in many media engagements by J-FLAG. Notably, the Executive Director, Dane Lewis, published an article in the Jamaica Gleaner that essentially “clarified the J-FLAG agenda” This was necessary in light of the preconceptions about the organisation that were held and presented in the media by opponents of a nefarious gay lobby that is insistent on promoting a “gay agenda” that will be to the detriment of the nation, families especially.49

6.8.2 The Organization of American States’ Inter-American Commission on Human Rights (IACHR) noted in its annual report covering 2014 that:

‘Public policy campaigns, which seek to promote tolerance, have faced backlash from media channels. The Office of the Special Rapporteur for Freedom of Expression was informed of the decision by television channels CVMTV and Television Jamaica not to authorize dissemination of the commercial “Love & Respect,” which apparently seeks to promote tolerance of diverse sexual orientations. The Broadcasting Commission found no legal reason not to broadcast the advertisement.’

‘Additionally, the Office of the Special Rapporteur expresses its concern over the promotion in some media outlets of outwardly discriminatory and homophobic messages that could incite violence against members of the LGBT community, especially when those messages come from shapers of public opinion. According to the information received, during 2013 some media systematically published articles that could incite violence against

LGBT individuals, by disseminating messages that encourage hatred against the members of that community.’

‘Caribbean Vulnerable Communities (“CVC”) has noted a lack of balance and input from the State aimed at providing information in defence of human rights and human rights defenders as well as providing public education to counter some of the homophobic and divisive demonizing rhetoric. The State’s lack of input in this regard does not only negatively affect the national HIV response or LGBT rights, but it is a regional impact that has led to the Caribbean Community (“CARICOM”) questioning its provision of funding for education for sexual and reproductive rights.’

6.8.3 Human Rights First’s report (updated July 2015) argued that the media also strongly influences the debate around the rights of LGBT people.

‘Most activists Human Rights First spoke to said that The Jamaica Observer, one of the country’s two most prominent newspapers, is reflective of homophobic attitudes in Jamaica. In turn, many described the Jamaica Gleaner as a news outlet that provides more balanced reporting on issues related to the LGBT population.’

They added that Human Rights Watch had concluded, by analyzing political cartoons, the Jamaica Observer and other newspapers produce cartoons that stereotype, ridicule, foment hate against, and demonize LGBT people.

6.8.4 The Council on Hemispheric Affairs article on ‘Jamaica’s Homophobia Forced ‘Out of the Closet’ by the Rainbow Flag’ dated 21 June 2016 stated that: ‘[…] broadcasting companies have refused to air public service announcements that encourage residents to respect LGBT Jamaicans because the announcements were encouraging homosexuality and were therefore a violation of the “buggery”.’

Back to Contents


Version control and contacts

Contacts
If you have any questions about this note and your line manager, senior caseworker or technical specialist cannot help you, or you think that this note has factual errors then email the Country Policy and Information Team.

If you notice any formatting errors in this note (broken links, spelling mistakes and so on) or have any comments about the layout or navigability, you can email the Guidance, Rules and Forms Team.

Clearance
Below is information on when this note was cleared:

- version 2.0
- valid from 23 February 2017

Changes from last version of this note
Update of country information and corresponding refresh of policy guidance.
TAB 9
1. Legislation


The 1864 Offences Against the Person Act [last amended in 2010] contains the following provisions, also referred to as buggery (Human Rights Watch 2014, 10; J-FLAG 16 Apr. 2014) or [anti-]sodomy laws (Human Rights First July 2015, 4; Human Rights Watch 2014, 10):

Unnatural Offences

76. Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.

77. Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof, shall be liable to be imprisoned for a term not exciding seven years, with or without hard labour.
Outrages on Decency

79. Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding two years, with or without hard labour. (Jamaica 1864, Art. 76-77, 79)

According to the Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG), an NGO that promotes human rights of sexual minorities in Jamaica (ibid. n.d.a), acts of buggery refer to anal intercourse between men (ibid. 16 Apr. 2014). The US Department of State's Country Reports on Human Rights Practices for 2014 specify that the "acts of gross indecency' [are] (generally interpreted as any kind of physical intimacy) between persons of the same sex" (US 2 July 2015, 21).

According to sources, enforcement of the anti-buggery laws remains rare in practice (Aids Free World and Canadian HIV/AIDS Legal Network Dec. 2015, 1; Human Rights Watch 2014, 10). Sources report that despite a lack of enforcement, the existence of these laws creates a climate that sanctions violence and discrimination against sexual minorities (AI 17 May 2013; Human Rights First July 2015, 4; Human Rights Watch 2014, 10).

Sources note that in 2013, a gay rights activist filed a legal challenge against the anti-buggery laws in Jamaica (Erasing 76 Crimes 12 Feb. 2013; Toronto Star 11 Aug. 2013; Aids-Free World and J-FLAG 29 Aug. 2014). The Toronto Star quotes the activist as stating that the law propagates homophobia and violates his right to privacy that is guaranteed in Jamaica's Charter of Rights (11 Aug. 2013). According to sources, the activist subsequently withdrew his lawsuit in 2014 because of threats received by himself and his family (Aids-Free World and J-FLAG 29 Aug. 2014; US 2 July 2015, 21).

In December 2015, a similar challenge to the existing law was launched by another Jamaican gay rights activist who is challenging the constitutionality of laws that criminalize consensual sex between men (Canadian HIV/AIDS Legal Network 9 Dec. 2015; Erasing 76 Crimes 8 Dec. 2015; Reuters 10 Dec. 2015). Further information on the status of the case could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.


Human Rights First, "a nonprofit, nonpartisan international human rights organization based in New York and Washington D.C." (July 2015), indicates that the Jamaican Charter of Fundamental Rights and Freedoms does not provide protection from discrimination based on sexual orientation (July 2015, 4-5). J-FLAG notes that "[o]n the face of it," the Charter of Rights affords rights to all Jamaicans, including LGBT citizens; however, "the Charter's homophobia is very much evident. The decision to use the words 'on the basis of being male or female' in section 13(3)(i) was a deliberate attempt to ensure that sexual orientation discrimination was not prohibited" (J-FLAG June 2015, 17).
2. Societal Attitudes and Discrimination

According to Country Reports for 2014, homophobia is "widespread" in Jamaica (US 2 July 2015, 21). Reuters reports that homophobia is a "cultural norm" (18 Jan. 2014) and other sources note that homophobia continues to be perpetuated by the country's music, political and religious figures (AI 17 May 2013; Human Rights Watch 2014, 11, 12, 14, 17), and by the media (Human Rights First July 2015, 13; Human Rights Watch 2014, 12). According to Human Rights First, sexual minorities "face both general societal discrimination as well as discrimination in access to services, including healthcare, housing, and employment" (Human Rights First July 2015, 8).

In 2014, a coalition of churches organized a rally in St. Andrew against the possible repeal of the anti-buggery law (The Gleaner 30 June 2014; Jamaica Observer 30 June 2014). The Jamaica Observer notes that according to the police, the rally was attended by 25,000 people (30 June 2014). According to a poll conducted on a sample of 1,208 participants in September 2014, commissioned by the Jamaican newspaper The Gleaner, 91 percent of respondents said lawmakers should not repeal the country's buggery law (6 Oct. 2014).

2.1 Employment

Human Rights First indicates that "employment discrimination continues to be a significant issue for the LGBT community" (July 2015, 5). In correspondence with the Research Directorate, a Professor of anthropology at the City University of New York, who specialises in gender, sexuality and human rights studies, and has conducted research on Jamaica, stated that while the country has a high unemployment rate in general, members of sexual minorities who live in the open are "basically unemployable" (Professor 9 Jan. 2016).

2.2 Housing

According to sources, sexual minorities face evictions or are chased out of their homes by family members (J-FLAG July 2014, 1; Human Rights Watch 2014, 43). Sources also indicate that LGBT persons, particularly youth, experience high levels of homelessness (Human Rights First July 2015, 15; Human Rights Watch 2014, 45). According to the Caribbean Vulnerable Communities Coalition (CVC), a project of Caribbean NGOs working with groups that are vulnerable to HIV/AIDS (CVC n.d.), youth identifying as sexual minorities account for 5 to 10 percent of Jamaica's total youth population but make up to 40 percent of its homeless population (ibid. Nov. 2011). Sources report that some LGBT youth who are kicked out of their homes end up living in Kingston's sewer system (Erasing 76 Crimes 6 Jan. 2015; Human Rights First July 2015, 15; NOW 26 June 2014) and engage in robberies (ibid.) or in sex work as a mean of survival (Canadian HIV/AIDS Legal Network. 18 Jan. 2016; Human Rights First July 2015, 15; Jamaica Observer 3 Nov. 2013).

2.3 Healthcare

In a November 2014 interview with the Antillean Media Group (AMG), J-FLAG's Executive Director stated that due to sensitization training "reports of direct discrimination [in healthcare] are becoming more and more infrequent" (AMG 9 Nov. 2014). In contrast, the Senior Policy Analyst affiliated with the Canadian HIV/AIDS Legal Network stated that there is "a significant challenge with gender non-conforming persons seeking and receiving appropriate anti-HIV interventions" (Canadian HIV/AIDS Legal Network 18 Jan. 2016).

The Senior Policy Analyst further noted that

[w]hen the group [of homeless LGBT youth in Kingston] was last tested, nearly 90% of them were positive for HIV. However, few, if any, of them were on effective ARV [antiretroviral] treatment. These youth were
not inclined to visit the health clinics because of the treatment by porters and other hospital staff. Even getting them to the clinics proved difficult. The youth were so verbally and physically assaulted on public transportation that they refuse to go by that route. Taxis charge a premium to transport them and sometimes would only do one way trips, leaving the youth stranded at the clinics. (18 Jan. 2016)

2.4 Social Events

Sources report that in August 2015 the first gay pride event, PRiDE JA, took place in Jamaica (AMG 7 Aug. 2015; The Guardian 10 Aug. 2015; Jamaica Observer 3 Aug. 2015). Sources further note that the Mayor of Kingston attended the opening ceremony (Jamaica Observer 3 Aug. 2015; Out Caribe 3 Aug. 2015), and that the event was endorsed by the Minister of Justice (AMG 11 Aug. 2015; Jamaica 2015; Washington Blade 31 July 2015).

According to the Washington Blade, an American newspaper covering issues relating to sexual minorities (Washington Blade n.d.), the organisers of PRiDE JA remained preoccupied about the safety of attendees (ibid. 31 July 2015). The Gleaner also reports that due to security concerns, the celebration did not include a public parade (July 27, 2015). The same source quotes the Executive Director of J-FLAG as stating that the country was "not ready" for a parade (The Gleaner 30 June 2015). According to The Gleaner, "some years ago, an attempt to host a gay parade was thwarted after anti-gay supporters reportedly planned attacks against marchers" (ibid.).

An article by the Associated Press (AP) states that, according to a representative of J-FLAG, "more and more" persons belonging to sexual minorities are willing to be visible and that even though "there's ridicule on the streets and some people look at you and laugh… it's not as violent as it was" (The Guardian 4 Aug. 2015). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.5 Incidents of Violence

Amnesty International (AI) reports that violence and harassment against sexual minorities continue to be a problem in Jamaica (AI 2015, 2014). Human Rights Watch similarly states that physical and sexual violence is "part of the lived reality" for many members of sexual minorities and that "the level of brutality leads many to fear what could happen if their sexual orientation or gender identity is disclosed" (Human Rights Watch 2014, 21). According to J-FLAG, 63 incidents of violence against sexual minorities were reported to the organisation in 2013 (J-FLAG 2014, 16). Half of the incidents reported took place in the Kingston and St Andrew, and St James area, with incidents in St Catherine, Clarendon and Manchester constituting a "significant portion" of the remaining cases (ibid.). In 2014, 80 incidents of violence were reported to J-FLAG, including physical assault, threats and intimidation, blackmail, sexual violence, kidnapping, discrimination and displacement (ibid. 2015, 14).

Sources report that in July 2013, a transgender teenager was murdered by a mob in St. James after attending a party dressed as a woman (Erasing 76 Crimes 23 July 2015; Human Rights Watch 2014, 1; Jamaica Observer 29 July 2013). According to the radio station Irie FM, the mob "chopped and stabbed him to death" after party-goers discovered that the teenager was a man (Erasing 76 Crimes 23 July 2013). The murder was condemned by the Minister of Justice who called on the police to "spare no efforts in bringing the perpetrators to justice" (Jamaica Observer 29 July 2013). According to an August 2015 article by The Guardian, the murder remains unsolved (10 Aug. 2015).

Human Rights First quotes a senior US official in Jamaica as stating that mob violence against sexual minorities is a "severe problem" in the country (Human Rights First 2015, 7).
Incidents of reported mob attacks against LGBT people include the following:

On 22 September 2015, a gay man was rescued by a police after being cornered by a mob in a parking lot in Half Way Tree (Loop 22 Sept. 2015);

On 15 April 2015, customers of a shopping venue in Kingston "decided to 'cleanse out' the premises of gays" (Erasing 76 Crimes 16 Apr. 2015);

On 10 August 2013, police rescued a cross-dresser "after an angry mob who had seen him in the community threatened to flog him" (The Jamaica Star 13 Aug. 2013). Sources report that sexual violence such as "corrective rape" has been used on bisexual (The Gleaner 3 Dec. 2014) and lesbian women (ibid.; Jamaica Observer 28 Apr. 2015). J-FLAG received reports of 8 cases of sexual violence in 2013, of which 7 were submitted by women (J-FLAG 2014, 16). According to an online survey conducted by Quality of Citizenship Jamaica (QCJ), an NGO that works with women belonging to sexual minority groups to provide them with support and help them "navigate the Jamaican society" (QCJ n.d.), of 103 participants surveyed, 47 percent of respondents were either threatened with or experienced acts of sexual violence or harassment by men, including acts intended to "straighten them out" (The Gleaner 3 Dec. 2014). The survey also indicates that 77 percent of victims did not report the incidents to the police (ibid).

3. State Protection

3.1 Police

According to Human Rights Watch, Jamaica experiences high crime rates and citizens express mistrust towards the police and their effectiveness (2014, 2). The same source indicates that "bias based specifically on gender identity or sexual orientation directly contributes to the inadequate police response" (ibid., 28). Following interviews with LGBT persons in 2013, Human Rights Watch notes that most respondents indicated that they did not report incidents of violence to the police because they believed that police would not take any action (ibid. 2014, 17). Country Reports for 2014 states that while individual police officers "showed sympathy" and worked on cases involving sexual minorities, NGOs reported that "the police force, in general, did not recognize the extent and seriousness of bullying and violence directed against members of the LGBT community and failed to investigate such incidents" (US 2 July 2015, 22).

Conversely, in its 2013 activity report, J-FLAG states that "trust towards police has increased" among members of sexual minorities and that "in every [police] division, at least one ally can be identified that is willing and able to deal with matters concerning sexual and gender minorities" (J-FLAG 2014, 10). J-FLAG also reports that police officers have protected sexual minorities from mob attacks "even placing themselves in harm's way" (ibid.). In its 2014 annual report, the same source cites a case whereby police officers protected an LGBT teenager from a mob attack which occurred in May Pen in 2014 (ibid. 2015, 5).

According to the Jamaican TV program Prime Time News, in June 2014 in May Pen, police rescued a gay man from a shopping mall where he sought refuge after a crowd turned against him for reportedly wearing lipstick (Erasing 76 Crimes 16 June 2014). According to the information obtained by the IACHR, "there have been efforts to investigate thoroughly and impartially acts of discrimination based on sexual orientation and gender identity;" however, Jamaica does not have a specific unit responsible for investigating hate crimes (OAS 2015, para. 194).

Sources indicate that in 2011, Jamaica's police force adopted a Policy on Diversity, which includes guidelines on dealing with sexual minorities as a protected group (Human Rights First July 2015, 9; Human Rights Watch 2014, 48-49; Jamaica 25 Aug. 2011); "directs police" to ensure that sexual minorities are able to file police reports (Human Rights First July 2015, 9; Jamaica 25 Aug. 2011); and "prohibits discrimination and establishes specific protections on the grounds of sexual orientation" (Human Rights Watch 2014, 49). The
policy states that the "subject of diversity" must be taught in the police academy and in the staff college; divisional commanders are responsible for ensuring that their personnel are familiar with, and adhere to the policy (Jamaica 25 Aug. 2011, 3). According to information provided by the Government of Jamaica in May 2015, the policy is taught as part of the police recruitment training, and "refresher courses" are offered to serving officers (Jamaica 15 May 2015, para.79). The Jamaican Information Service reports that in September 2015, 230 new police recruits participated in two-day diversity training sessions that included interventions involving sexual minorities (ibid. 15 Oct. 2015). According to a Deputy Commissioner of Police, this training will be offered to future recruits (ibid.). The Jamaican Observer also states that two-day training sessions on diversity were delivered to 50 police officers in June 2015 (22 June 2015).

Human Rights Watch indicates that police officers have perpetrated violence against sexual minorities themselves (2014, 33). Similarly, according to the IACHR,

petitioners reported abuse and discrimination against LGBTI individuals who were either ignored or laughed at when they attempted to report acts of violence, or were themselves the direct victims of police abuse, including arbitrary detention, blackmail, extortion, threats, and cruel and degrading treatment. (OAS 13 May 2014)

Human Rights Watch observes that while cases of police violence appear to have decreased between 2004 and 2014, "the persistence of even isolated cases is of great concern given the police's role as a source of protection" (2014, 33). Sources also indicate that police extortion of LGBT people in Jamaica is a problem (Human Rights First July 2015, 1; Human Rights Watch 2014, 36-38).

3.2 Judiciary

According to a report published by J-FLAG in December 2013, "there seems to have been little or no thorough investigation and/or prosecutions in the majority of incidents [against LGBT people] except in cases deemed 'high profile'" (Dec. 2013, 3).

IACHR indicates that Jamaica did not offer training programs to criminal justice officials, including judges, on the rights of sexual minorities (OAS 2015, para. 186). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4. Support Services

Established in 1998, J-FLAG describes itself as "the first human rights organization in the history of Jamaica to serve the needs of LGBT peoples" (n.d.a). The organisation is non-profit and carries out advocacy and educational initiatives while providing support services such as crisis intervention for distressed sexual minorities (ibid.), and a telephone helpline (ibid. n.d.b). In 2014 the organisation assisted 448 persons, including 368 men and 80 women, through the following initiatives: outreach (203), HIV prevention (158) and testing (7), counselling (116), follow-up (102), referrals (57), asylum support (23), medical assistance (8), and housing assistance (3) (ibid. 2015, 14). J-FLAG reports that in February 2014, they launched a parent support group that works to reintegrate displaced and homeless LGBT youth with their families (ibid. 2015, 13). According to the same organization, 16 other NGOs provide different support services to members of sexual minorities in Jamaica (J-FLAG Nov. 2014, 24-26). A list of the NGOs and the support services that they offer is attached to this Response.

According to sources, Colour Pink Group is an organization that works to provide homeless LGBT youth with skills training (Human Rights First July 2015, 14; Jamaica Observer 27 July 2014). Human Rights First also states that the organization provides internship opportunities and employment assistance (July 2015, 14).

Sources report that Dwayne's House is an NGO that provides food and clothing, as well as medical and legal
services to homeless LGBT youth (ILGA 22 Apr. 2014; NOW 26 June 2014). According to an article by the online portal of Toronto based NOW Magazine, Dwayne's House was serving 20 to 40 sexual minority youth living in the sewer system (NOW 26 June 2014). A May 2015 article published by The Gleaner notes that the organisation is waiting to be provided with land to start the construction of a shelter (The Gleaner 19 May 2015).

4.1 Health Care Services

The HIV prevention program of the Jamaican Ministry of Health identifies men who have sex with men (MSM) as one of the "at risk" populations that the program targets (Jamaica n.d.). Between July 2013 and June 2014, in partnership with the Ministry of Health and Jamaica's National Family Planning Board (NFPB), J-FLAG trained 60 public health care workers and six staff of the NFPB on providing health services to members of sexual minorities (J-FLAG 2015, 18).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

References


Professor of Anthropology, City University of New York. 9 January 2016. Correspondence with the Research Directorate.


Toronto Star. 11 August 2013. Jennifer Quinn. "A Dangerous Place to be Gay." (Factiva)


Additional Sources Consulted

Oral sources: AIDS-Free World; CariFlags; Jamaica Forum for Lesbians, All-Sexuals and Gays; Professors at
Goldsmiths University of London (UK), University of the West Indies (Jamaica) and York University (Canada); Quality of Citizenship Jamaica.

Internet sites, including: BBC; Canada - Department of Global Affairs, Embassy in Jamaica; ecoi.net; Envisioning Global LGBT Rights; Human Dignity Trust; International Gay and Lesbian Human Rights Commission; Jamaica - Member of Parliament Julian Robinson, Ministries of Justice and Youth and Culture; Pink News; United Nations - Free & Equal, Office on Drugs and Crime, Refworld; United States - Embassy in Jamaica, US Agency for International Development.

Attachment


Copyright notice: This document is published with the permission of the copyright holder and producer Immigration and Refugee Board of Canada (IRB). The original version of this document may be found on the official website of the IRB at http://www.irb-cISR.gc.ca/en/. Documents earlier than 2003 may be found only on Refworld.
TAB 10
Human Rights Committee

Concluding observations on the fourth periodic report of Jamaica*

1. The Committee considered the fourth periodic report of Jamaica (CCPR/C/JAM/4) at its 3310th and 3312nd meetings (see CCPR/C/SR.3310 and 3312), held on 18 and 19 October 2016. At its 3330th meeting, held on 1 November 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Jamaica and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party’s delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/JAM/Q/4/Add.1) to the list of issues (CCPR/C/JAM/Q/4), which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional measures taken by the State party:

   (a) The enactment of the Law Reform (Flogging and Whipping) (Abolition) Act of 2013;

   (b) The enactment of the Disabilities Act of 2014;

   (c) The appointment of the National Rapporteur on Trafficking in Persons, in 2015.

4. The Committee also welcomes the State party’s accession to the 1961 Convention on the Reduction of Statelessness, on 9 January 2013.

* Adopted by the Committee at its 118th session (17 October-4 November 2016).
C. Principal matters of concern and recommendations

National human rights institution

5. The Committee is concerned that the State party has not yet established a consolidated national institution with broad competence in the field of human rights, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134, annex) despite multiple commitments to do so (art. 2).

6. The State party should establish a national human rights institution with a broad human rights mandate in line with the Paris Principles and provide it with adequate financial and human resources to ensure its functioning. The State party should undertake an inclusive consultation process on the model, mandate and functions of a national human rights institution, including with human rights organizations and the broader public.

National mechanism for reporting and follow-up

7. While noting the establishment of the Interministerial Committee for reporting and follow-up under the Ministry of Foreign Affairs and Foreign Trade, which has become the de facto standing mechanism for all human rights treaty reporting and follow-up, the Committee notes that the mechanism is not sufficiently institutionalized in the operations of the Government of the State party (art. 2).

8. The State party should consider establishing by executive directive or other mandatory means a permanent governmental mechanism with a clear mandate to coordinate the engagement of the Government with human rights mechanisms and to follow-up on their recommendations in consultation with civil society.

Application of the Covenant

9. The Committee is concerned by the explanation given by the State party that the provisions of the Covenant cannot be directly invoked before domestic courts and that some provisions of the Covenant, including prohibition of discrimination, are not adequately protected under domestic law (art. 2).

10. The State party should strengthen its legal framework to protect all rights enshrined in the Covenant and take appropriate measures to raise awareness of the Covenant among judges, lawyers and prosecutors to ensure that its provisions are taken into account before national courts.

Optional Protocol

11. The Committee reiterates its regret that the State party does not intend to re-accede to the Optional Protocol that provides the Committee with the competence to examine individual communications on alleged violations of the Covenant by States parties to the Protocol (art. 2).

12. The State party should consider re-acceding to the Optional Protocol to the Covenant that provides for an individual communication procedure, with a view to ensuring the rights of individuals to an effective remedy.

Persons with disabilities

13. While welcoming the enactment of the Disabilities Act of 2014 and the measures taken by the State party to promote inclusion of persons with disabilities, the Committee
expresses its concern that persons with disabilities continue to face challenges, including access to public buildings and services (arts. 2 and 26).

14. **The State party should effectively implement its law on disabilities in order to ensure non-discrimination, promote inclusion of persons with disabilities and ensure access to effective remedies in case of violation of their rights.**

**Prohibition of discrimination**

15. The Committee is concerned that the Charter of Fundamental Rights and Freedoms does not protect all persons against all forms of discrimination and contains saving clauses that are contrary to the provisions of the Covenant. It regrets that the right to freedom from discrimination is based only on the grounds of “being male or female” and fails to prohibit discrimination on other grounds, such as sexual orientation, gender identity, marital status, disability and health status. The Committee reiterates its concern (see CCPR/C/JAM/CO/3, para. 8) that the State party continues to retain provisions under the Offences against the Person Act that criminalizes consensual same-sex relationships, thus promoting discrimination against homosexuals (arts. 2, 3, 17 and 26).

16. **The State party should amend its laws and enact comprehensive anti-discrimination legislation to prohibit all forms of discrimination. It should also decriminalize sexual relations between consenting adults of the same sex in order to bring its legislation into compliance with the Covenant and put an end to prejudices and the social stigmatization of homosexuality. Saving clauses in the Charter of Fundamental Rights and Freedoms relating to the Offences against the Person Act and Sexual Offences Act should be removed where they obstruct the amendment of legislation that enhances the rights of women or any other group.**

**Attacks against lesbian, gay, bisexual and transgender persons**

17. Despite some positive developments, such as the adoption of the Diversity Policy by the Jamaica Constabulary Force, in 2011, and a reported increase in the level of tolerance within Jamaican society, the Committee notes with concern reports of incidents of discrimination, harassment and violent attacks against lesbian, gay, bisexual and transgender persons and the alleged failure of the State party to prevent and investigate such attacks (arts. 2, 6 and 26).

18. **The State party should ensure that cases of violence against lesbian, gay, bisexual and transgender persons are thoroughly investigated, that the perpetrators are prosecuted, and if convicted, punished with appropriate sanctions, and that the victims have access to effective remedies. The State party should conduct a national campaign to disseminate information about human rights and promote respect for diversity and the rights of all persons, especially lesbian, gay, bisexual and transgender persons.**

**People living with HIV/AIDS**

19. The Committee is concerned at the persistence of discrimination and stigmatization of people living with HIV/AIDS and the high proportion of girls aged 15 to 19 years infected with the virus. While welcoming the adoption of the National Integrated Strategic Plan for Sexual Health and HIV (2014-2019) and the National Workplace Policy on HIV/AIDS, the Committee is concerned with the lack of an enabling legislative framework to ensure their effective implementation (arts. 2 and 26).

20. **The State party should amend its legislation to include protection against discrimination based on health status and to ensure better protection of people living with HIV/AIDS, including vulnerable segments of the population, such as lesbian, gay,
bisexual and transgender persons, and women and girls who have contracted HIV, especially as a result of sexual violence. The State party should intensify its work with stakeholders and allocate adequate financial and human resources to implement the National Workplace Policy on HIV/AIDS and to ensure the adequate functioning of the National HIV-related Discrimination Reporting and Redress System. It should also continue its awareness-raising efforts to combat stigmatization and discrimination of people living with HIV/AIDS.

Gender roles and women in decision-making positions

21. While commending the increased participation of women in decision-making positions and the State party’s efforts in this regard, the Committee regrets that women still remain underrepresented in the top decision-making positions. The Committee is further concerned about persisting gender inequality, including in relation to participation in economic life, and stereotypical attitudes with regard to roles of men and women in the public and private spheres (arts. 2, 3 and 26).

22. The State party should strengthen its efforts, including through public gender sensitization campaigns, to promote gender equality and female participation in decision-making positions in public and political life. The State party should consider adopting measures to facilitate balance in parenting and childcare, so as to allow women to seek and occupy higher decision-making positions. In addition, the State party should take appropriate temporary special measures necessary to increase the number of women in decision-making positions in public and political life.

Violence against women, including domestic violence

23. The Committee is concerned that legislation provides women and girls with only limited protection against violence, including domestic violence. It notes with concern that the Sexual Offences Act (2009) reflects a narrow understanding of rape and protects against marital rape only in certain circumstances, the Domestic Violence Act (2004) does not cover sexual abuse and the draft Sexual Harassment Bill does not include sexual harassment in public spaces. The Committee regrets the lack of shelters for victims of domestic violence (art. 7).

24. The State party should amend the Sexual Offences Act and the Domestic Violence Act to increase protection for women and girls and men and boys against sexual violence. It should also enact legislation to protect against sexual harassment, including in public spaces. Furthermore, the State party should expedite its efforts to provide adequate shelters for victims of gender-based violence, including domestic violence.

Voluntary termination of pregnancy

25. The Committee is concerned at the high levels of maternal mortality resulting from unsafe abortions and the lack of official data on the number of clandestine abortions and their linkage to high maternal mortality. It reiterates its concern at the general criminalization of abortion in the Offences against the Person Act (see CCPR/C/JAMCO/3, para. 14), including in cases of pregnancies resulting from rape, incest and fatal fetal abnormality. The Committee is also concerned about the lack of access by girls below the age of 16 years to sexual and reproductive health information and services without parental consent, especially in the light of the high incidence of adolescent pregnancy and incest in the State party (arts. 3, 6, 7 and 17).

26. The State party should, as a matter of priority, amend its abortion legislation to help women address unplanned pregnancies and not resort to illegal abortions that
could put their lives at risk. It should take measures to protect women against the health risks associated with unsafe abortions by improving its monitoring and data collection on women’s access to health care and by enabling access to sexual and reproductive health information and services to all women, including girls under the age of 16.

State of emergency, extrajudicial killings and investigations

27. While noting the 2016 report of the West Kingston Commission of Inquiry into the circumstances surrounding the state of emergency of May 2010 related to incidents in West Kingston/Tivoli Gardens and the decision of the Government to offer an apology and provide compensation to aggrieved persons, the Committee is concerned that the State party’s legislation on states of emergency does not meet the standards of article 4 of the Covenant (arts. 2, 4 and 6).

28. The State party should fully implement the recommendations contained in the report of the West Kingston Commission of Inquiry, including providing victims with a remedy, strengthening accountability for the use of force and dismantling garrisons. It should also review its laws on states of emergency and bring them into line with the provisions of article 4 of the Covenant.

29. The Committee remains concerned at the continued lack of clarity of the mandate and powers of the Independent Commission of Investigations and its interplay with the Office of the Director of Public Prosecutions with regard to the conduct of investigations and prosecutions (arts. 2, 6 and 7).

30. The State party should clarify the mandate and role of the Independent Commission of Investigations to ensure effective and independent investigation of law enforcement personnel and to avoid conflicts of mandate with other organs of the State party.

Prohibition of torture and cruel, inhuman or degrading treatment or punishment and the right to life

31. The Committee remains concerned about the deplorable conditions in the State party’s prisons and detention facilities, including overcrowding, poor sanitary conditions and lack of medical care. It is also concerned about the lack of a clear statutory framework governing the treatment of persons in pretrial detention and failure to hold accused persons separately from convicted persons (arts. 7 and 10).

32. The State party should expedite its efforts to reduce overcrowding in places of detention, including by resorting to alternatives to imprisonment, and improve conditions of detention, particularly with regard to sanitary conditions and access to medical care, in accordance with article 10 of the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela rules) (General Assembly resolution 70/175, annex). The State party should adopt legislation governing pretrial detention and put in place a system to detain accused persons separately from convicted persons.

33. The Committee remains concerned that the State party’s criminal legislation does not adequately ensure that acts of torture as stated in article 7 of the Covenant are fully criminalized. It is also concerned at reports of torture and ill-treatment or excessive use of force by the police or security forces during arrests, in police stations, during interrogation and in detention facilities. It is further concerned that there is no independent complaints authority to deal with such complaints (art.7).
34. The State party should:

(a) Amend its criminal law to ensure that all acts of torture as stated in article 7 of the Covenant and in internationally established norms are prohibited and sanctioned with penalties commensurate with the gravity of the crimes;

(b) Guarantee that allegations of torture and cruel, inhuman or degrading treatment are investigated by an independent authority, that the perpetrators of such acts are prosecuted and, if convicted, punished with penalties commensurate with the gravity of the crime, and that the victims receive adequate compensation;

(c) Improve the training of law enforcement personnel in this regard to ensure that anyone who is arrested or detained is informed of his or her rights;

(d) Provide in its next periodic report detailed information on complaints filed for such violations, the number of individuals prosecuted and convicted, and the reparation awarded to victims.

35. While noting the de facto moratorium on executions since 1988, the Committee notes with regret that the State party does not intend to abolish the death penalty. Moreover, it notes with concern that the conditions on death row remain inhuman (arts. 6 and 7).

36. The State party should consider abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. It should ensure that the death-row regime does not amount to cruel, inhuman or degrading treatment or punishment.

Protection against trafficking in persons

37. The Committee welcomes the adoption of the National Plan of Action to Combat Trafficking in Persons (2015-2018) and the appointment of the National Rapporteur on Trafficking in Persons, in 2015. It is concerned, however, that the ability of the National Rapporteur to execute its functions may be hampered by inadequate resources. It is also concerned that national legislation does not adequately prevent the return of victims of human trafficking to a country where there are substantial grounds for believing that they would be at a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant (arts. 6 and 7).

38. The State party should continue its efforts with regard to training and capacity-building of professionals providing support to victims of trafficking. It should allocate adequate human and financial resources to the Office of the National Rapporteur on Trafficking in Persons and ensure that victims of human trafficking enjoy the rights provided for under the Covenant and are not returned to a country where there are substantial grounds for believing that they would be at a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant.

Refugees and asylum seekers

39. The Committee is concerned about the lack of legislation on the protection of asylum seekers and refugees. It is further concerned that refugees are not provided with identification cards and that unaccompanied minors are formally excluded from access to refugee status determination in the State party (arts. 2, 6, 7 and 24).

40. The State party should enact legislation on the protection of the rights of refugees and asylum seekers, provide refugees with identification cards and facilitate access to asylum procedures for such persons in order to protect them from being returned to a country where there are substantial grounds for believing that they
would be at a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant.

Right to an effective remedy and fair trial

41. The Committee remains concerned at the delays in the dispensation of justice and the limited availability of legal aid (arts. 2 and 14).

42. The State party should pursue the reform of its justice system to ensure speedy and fair trials, including providing adequate budgetary allocations and human resources and strengthening its legal aid capacity for any case in which the interests of justice so require.

Rights of the child

43. The Committee welcomes the efforts of the State party to review the Child Care and Protection Act, including the removal of the possibility of incarcerating a child on the basis of him or her being “beyond parental control”, and provision of psychological and mental health services to children and their families by the Child Development Agency and Department of Correctional Services. Despite the fact that the number of correctional orders has significantly decreased, the Committee is concerned about reports that there are still children serving such orders. It is also concerned that minors are held in police lock-ups on a regular basis, often for more than 24 hours (arts. 9, 10 and 24).

44. The State party should amend its law in a timely manner in order to remove the possibility of incarcerating a child on the basis of him or her being “beyond parental control” and to address gaps in: service delivery to children in conflict with the law, the coordination and oversight of the child protection sector, support to families and rehabilitation of children who experienced exploitation, abuse and other trauma. The State party should detain children only as a last resort and for the shortest possible period provided by law; continue establishing child-friendly holding cells; and provide alternative arrangements to detention, in line with the Covenant. It should continue to provide children in conflict with law with alternative support, including psychological and rehabilitation services and conflict resolution programmes.

Corporal punishment

45. The Committee is concerned that corporal punishment remains lawful in the home and in schools, and that it continues to be practised in the State party and is widely accepted in society (arts. 7 and 24).

46. The State party should take practical steps, including legislative measures, where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment and conduct public information campaigns to raise awareness about the harmful effects of such punishment.

Freedom of expression and human rights defenders

47. The Committee is concerned about reports of obstacles in implementation of Access to Information Act (2004), such as low level of knowledge of information officers and inaccessible complaint procedure. It is also concerned about reports from some human rights NGOs facing obstacles in registration under the Charity Act. It is further concerned about the reports of incitement to threat, harassment and attacks against human rights defenders (arts. 2, 19, 21 and 22, 26).
48. The State party should take measures to enhance full implementation of its law on access to information, including training of officers, conducting public information campaigns and establishing an accessible complaint mechanism. In accordance with the Committee’s general comment No. 34 (2011) on freedoms of opinion and expression, the State party should further ensure that consideration and granting of charitable status to non-governmental organizations is done on a non-discriminatory basis and does not obstruct or delimit the work of human rights defenders as acknowledged in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (General Assembly resolution 53/144, annex). The State party should take all measures necessary to protect the rights of human rights defenders to freedom of expression, association and peaceful assembly.

D. Dissemination and follow-up

49. The State party should widely disseminate the Covenant, its fourth periodic report, the written replies to the Committee’s list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public.

50. In accordance with rule 71, paragraph 5, of the Committee’s rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 26 (voluntary termination of pregnancy), 32 (prohibition of torture and other cruel, inhuman or degrading treatment or punishment) and 44 (rights of the child) above.

51. The Committee requests the State party to submit its next periodic report by 4 November 2021 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country, as well as minority and marginalized groups. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. Alternatively, the Committee invites the State party to agree, by 4 November 2017, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its periodic report. The State party’s replies to that list will constitute its next periodic report to be submitted under article 40 of the Covenant.
TAB 11
This report is part of the Bertelsmann Stiftung’s Transformation Index (BTI) 2020. It covers the period from February 1, 2017 to January 31, 2019. The BTI assesses the transformation toward democracy and a market economy as well as the quality of governance in 137 countries. More on the BTI at [https://www.bti-project.org](https://www.bti-project.org).


This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/).

**Contact**

Bertelsmann Stiftung  
Carl-Bertelsmann-Strasse 256  
33111 Gütersloh  
Germany

**Sabine Donner**  
Phone  +49 5241 81 81501  
sabine.donner@bertelsmann-stiftung.de

**Hauke Hartmann**  
Phone  +49 5241 81 81389  
hauke.hartmann@bertelsmann-stiftung.de

**Robert Schwarz**  
Phone  +49 5241 81 81402  
robert.schwarz@bertelsmann-stiftung.de

**Sabine Steinkamp**  
Phone  +49 5241 81 81507  
sabine.steinkamp@bertelsmann-stiftung.de
<table>
<thead>
<tr>
<th>Key Indicators</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Population</td>
<td>M</td>
<td>2.9</td>
<td></td>
</tr>
<tr>
<td>Pop. growth(^1)</td>
<td>% p.a.</td>
<td>0.5</td>
<td></td>
</tr>
<tr>
<td>Life expectancy</td>
<td>years</td>
<td>74.3</td>
<td></td>
</tr>
<tr>
<td>Urban population</td>
<td>%</td>
<td>55.7</td>
<td></td>
</tr>
<tr>
<td>HDI</td>
<td></td>
<td>0.726</td>
<td></td>
</tr>
<tr>
<td>HDI rank of 189</td>
<td></td>
<td>96</td>
<td></td>
</tr>
<tr>
<td>UN Education Index</td>
<td></td>
<td>0.692</td>
<td></td>
</tr>
<tr>
<td>Gender inequality(^2)</td>
<td></td>
<td>0.405</td>
<td></td>
</tr>
<tr>
<td>Gini Index</td>
<td></td>
<td>45.5</td>
<td></td>
</tr>
<tr>
<td>GDP p.c., PPP $</td>
<td></td>
<td>9299</td>
<td></td>
</tr>
<tr>
<td>Poverty(^3)</td>
<td>%</td>
<td>9.1</td>
<td></td>
</tr>
<tr>
<td>Aid per capita $</td>
<td></td>
<td>20.1</td>
<td></td>
</tr>
</tbody>
</table>

Sources (as of December 2019): The World Bank, World Development Indicators 2019 | UNDP, Human Development Report 2019. Footnotes: (1) Average annual growth rate. (2) Gender Inequality Index (GII). (3) Percentage of population living on less than $3.20 a day at 2011 international prices.

**Executive Summary**

Following its election victory in February 2016, the Jamaica Labour Party (JLP) returned to government, with Andrew Holness as prime minister. The party also won the local government elections in November 2016. Constitutional democracy and a democratic tradition based on a bipartisan parliamentary model are stable, and the two main political parties are deeply rooted in the political culture. However, voter turnout has declined in recent decades, pointing to a “participation and confidence deficit” in Jamaica’s democracy and governance processes. Public trust in politicians is low.

Developing a more inclusive and democratic form of governance will be essential to the country’s economic development and continued public support for democracy. This will involve expanding the narrow representative nature of the parliamentary system while strengthening and sustaining participatory arrangements. Jamaica’s main political and economic actors have continued to resist any attempts to provide “meaningful space and a voice” for the legitimate concerns of marginalized social groups. The lived experiences of these groups demonstrate that Jamaica’s current governance system has been unable to fully ensure their citizenship rights.

Advocacy by diverse non-governmental and community-based organizations, youth clubs, faith-based organizations, networks of both women’s and human rights organizations, and a traditionally free press provide spaces for more diverse views to be heard. The tradition of civil society participation in public life is entrenched, although it is unable to maintain consistent and effective pressure on the political leadership. There is widespread public concern about the dominance of powerful private sector interests and their ability to influence public policy decisions. Increased efforts by the security forces to break the nexus between organized crime, big business and political actors have weakened the threat posed by organized crime to the democratic process, although there is still public concern about it.
The macroeconomic reforms required by the IMF Precautionary Stand-by Arrangement are progressing, and they focus on structural adjustments to achieve fiscal consolidation and debt reduction. While macroeconomic stability and signs of an economic recovery are reported, economic growth has been sluggish overall but especially in agriculture and manufacturing. Successive governments, formed by the two main political parties, have demonstrated their capacity to meet debt obligations and achieve structural benchmarks, but they have not maintained a social security net that adequately provides for the large numbers of Jamaicans living in poverty. Public debt is on a downward trend, but severe fiscal constraints hamper efforts to develop essential sociopolitical safeguards, such as an expanded social security net for the many families experiencing intergenerational poverty, as the market economy evolves. The costs associated with the effects of organized crime on the public health care system are substantial, which undermines the government’s ability to use resources efficiently to provide quality health care and education for the majority of Jamaicans. While most violent crimes have declined, real concerns exist about the sustainability of the police’s crime-fighting strategies without the necessary social intervention programs. Corruption, the high incidence of violent crimes (especially murder and the rape of women and girls) and the high unemployment rates of women and youth are widely perceived as Jamaica’s most pressing problems.

History and Characteristics of Transformation

The historical legacy of slavery and plantations has led to an economy and society in which race, gender and class have been strong determinants of access to economic and political power. These determinants remained relevant during the review period. Jamaica’s political transformation to democracy has not been a linear development from early representative institutions to today’s democracy. Jamaica held its first general election with universal adult suffrage in 1944, followed by a phase of internal self-government and then full sovereignty in 1962. Jamaica is one of the few developing countries to have gained independence during that era, and it has maintained an uninterrupted representative democracy, with 18 changes of government through general elections.

Jamaica’s two leading political parties, the People’s National Party (PNP) and the Jamaica Labour Party (JLP), have together maintained control of the government. The JLP led the country at independence in 1962, with the PNP dominating through the 1970s, 1990s and early 2000s, before the JLP took control of local government in 2003 and the national parliament in 2007. The PNP won the general election in December 2011 and the local government election in March 2012. Most recently, the JLP won the general and local government elections in February 2016 and November 2016, respectively.

This “successful electoral democracy” is also viewed as having democratic deficits given its narrow representative nature and the structural roots of conflict in persistent intergenerational poverty, inequality and social exclusion. There are clear signs of a history of poor management of the country by both political parties, with society generally unwilling to challenge the political
tribalism and accommodate other political parties in this competitive political process. Researchers classify Jamaican democracy as patronage-based, a system in which citizens, especially those in lower-income groups, are integrated into politics through clientelist relationships with their political parties. The business elites are easily integrated into politics through their financial support of both political parties, which helps to maintain the status quo and discourages significant reform of the bipartisan electoral system.

Jamaica’s political system has alternated between high and moderate levels of consensual and tribal politics. Ideological polarization and confrontation between the two parties were severe in the 1970s and peaked in 1980, when approximately 80% of the nearly 900 deaths during that year’s election were from political violence. The polarized political divisions within Jamaica, embodied in the two parties’ leaders, ideologies and foreign policies, reflected a wider global conflict. Under the leadership of Michael Manley, the PNP aligned itself with countries of the Non-Aligned Movement and Cuba, while the JLP, under the leadership of Edward Seaga, collaborated with the United States. The near civil war of 1980, with the entire country divided along party and ideological lines, marked the climax of this period. Reforms of the electoral system in the 1990s and the formation of the independent Electoral Advisory Commission of Jamaica in 2006 removed opportunities for electoral fraud, ensuring elections that are free, fair and peaceful.

The JLP and PNP initially pursued different economic development strategies. In the 1960s, the JLP government relied on modernization theories and tried to industrialize the island with the help of foreign investment. In the 1970s, the PNP based its policies on dependency theories and democratic-socialist ideas, as the government sought a dominant role in the economy. Increased indebtedness and fiscal deficits forced the PNP to enter into an IMF agreement in 1977, which was badly handled and then in 1980 repudiated. This led to an unpopularity that, along with the violence of the period, brought an end to the PNP government. In the 1980s, the JLP went back to the IMF and pursued market-oriented economic policies under a structural adjustment program. Returning to power in 1989, the PNP reversed its previous stance and promoted free-market policies.

Such ideological differentiation is no longer present, as the positions of the two parties have converged toward the center, reflecting the influence of the dominant trends in the global political economy. The structural adjustment policies of the IMF and other multilateral lending agencies have dominated the macroeconomics of the country during the tenure of both the PNP and the JLP governments, with differing levels of austerity at different times. For the most part, the macroeconomic reforms and structural adjustments have been accompanied by negative or very low growth, large fiscal deficits, high unemployment and an unsustainable debt burden. In the last two review periods, strictly applied IMF agreements implemented by the PNP (2012-2016) and the JLP (2016-2019) have begun to show some positive developments: the fiscal deficit is controlled, the debt-to-GDP ratio is gradually reducing, unemployment is on a downward trend (although it is still high) and there has been some minimal economic growth. Important structural changes to the telecommunications, financial services and tourism sectors have taken place alongside significant growth of the informal economy.
The BTI combines text analysis and numerical assessments. The score for each question is provided below its respective title. The scale ranges from 1 (worst) to 10 (best).

Transformation Status

I. Political Transformation

1 | Stateness

The state’s monopoly on the use of force is established nationwide in principle, but it is challenged by well-organized criminal enterprises and armed gangs in two parishes in western Jamaica, two parishes in central Jamaica and the capital, Kingston. Although the homicide rate has declined since 2009, it is still one of the highest in the world (the fourth highest in 2016) with 47 deaths per 100,000 inhabitants.

A large majority of the population accepts the nation-state as legitimate. The right to acquire citizenship through birth or descent without discrimination is protected by the law. The state is sometimes challenged by some vulnerable groups who report that their ability to exercise their full citizenship rights is constrained. These Jamaican citizens include young men and women living in extreme poverty, who are often denied access to certain services and sometimes employment due to their home address or being a member of the lesbian, gay, bisexual and transgender (LGBT) community.

The influence of religious dogmas on legal order and political institutions is evident in the approach of the joint select committees of parliament, which are tasked with amending certain laws (e.g., the Sexual Offenses Act or de-criminalizing abortions). Powerful, well-resourced and influential groups of ultra-conservative religious professionals (such as doctors and lawyers) have stymied the work of these committees with the result being that recommended amendments remain unapproved and are not subjected to public discussion, sometimes for years. The issues affected also include buggery, gambling, prostitution, flexi-work (as it affects Sunday, a day of worship) and sex education in schools.

A recent public opinion poll indicated that 60% of the persons polled supported women’s right to choose and to access legal abortions, under appropriate medical
conditions and with counseling. The government recently announced its intention to hold a referendum on the subject, noting that the importance of this issue requires that the final decision is made with the fullest involvement of the Jamaican people. Jamaica is a pre-dominantly Christian society with the Adventist denomination comprising the fastest-growing religious group.

The state’s administrative structures provide most basic public services throughout the country, but their operation is uneven and is seriously deficient in some areas. In deep rural areas, roads are either very bad or nonexistent, which limits access to affordable transportation and in turn affects access to health care and education facilities. Widespread concerns exist about the reported corruption in the systems used in the repair and maintenance of the roadways on all parts of the island.

An island-wide system of highways has improved access to and from the capital, Kingston, and the main tourism-based parishes. In 2015, only 82% of the population had access to sanitation and 94% to water. In the last two years (during the current IMF program), cuts in government expenditure have seriously impacted the ability of health care facilities to provide good basic health care. A recent dengue fever epidemic revealed the inability of both public hospitals and clinics to provide critical emergency services, which resulted in the death of a number of children.

Very low salaries and unattractive working conditions lead to a brain drain, with large numbers of trained nurses and doctors migrating to the Global North. The refurbishment of some local courts in parish capitals has taken place, but high levels of inefficiency are still reported. Tax administration offices are present in only three out of fourteen parish capitals. Parish capitals and some outlying rural communities have police stations, but they lack the personnel and vehicles for the police to carry out their work effectively. Reports of corruption within the police force are widespread, though there has recently been a stricter use of internal investigation procedures, resulting in the arrest and redundancy or incarceration of more police officers than there used to be.

Jamaica’s telecommunications infrastructure is basically in the hands of two main private service providers. These, along with the publicly owned provider of water and sewerage services, are subject to the regulatory powers of a government agency.
2 | Political Participation

Multiparty general elections are held, conducted properly and accepted as the means of filling political posts. The last national elections took place in 2016, resulting in the return of the Jamaica Labour Party (JLP), with Andrew Holness as prime minister. The JLP also won the local government elections in November 2016. Elections are considered as free and fair, and also free from fear. The Electoral Commission of Jamaica (ECJa), which is the country’s electoral management body, is impartial and effective. Its decisions and supervision of the electoral system alongside the Electoral Office of Jamaica are determined by the Representation of the People’s Act (ROPA). Together, these two independent bodies are responsible for the registration of voters and candidates as well as the preparation of voters’ lists and polling procedures, including counting votes, verifying the results and complaint resolution. Jamaicans generally agree that these procedures are conducted in a transparent, impartial and correct manner. Polling stations are secure and generally accessible except for difficulties experienced by wheelchair users where buildings have not been adjusted to enable wheelchair access. Voting is done in secret to ensure effective participation.

Regulations supporting a 2015 bill for political party registration and for monitoring campaign financing were passed in the parliament in May 2017. The two main political parties have been registered as they are required to be, but there are still public concerns about the regulation of campaign financing – without the required reports, access to information about the sources of campaign finances and levels of spending are not available. It was evident that the then governing party was financially weak, while the then opposition party was well-financed, allowing for greater media access and campaigning across several platforms, including social media. Concerns therefore existed about fairness regarding the use and impact of the media on the outcome of the campaign.

 Democratically elected political representatives have the effective power to govern. However, although unable to veto decisions made in parliament, business elites – through their ownership and control of key sectors of the economy – do publicly and privately advocate for and influence some special-interest policies. They are able to succeed in this through corrupt members of the two main political parties, particularly when it is in the latter’s interest in their quest to gain or retain political power.
Trade unions, human rights and women’s organizations, other civil society groups and individuals can fully exercise their rights of association and assembly, which are guaranteed and protected against interference or government restrictions. For example, they can exercise their right to lead and participate in peaceful demonstrations as prescribed by Jamaican law.

Groups can operate free from unwarranted state intrusion or interference in their affairs, but some levels of intolerance, discrimination and occasional violence are displayed by some citizens in response to different expressions of sexuality, and by elements of the security forces in their treatment of young men living in poor, low-income communities. This is increasingly recognized as interference and attempts to prevent some persons from exercising their full citizenships rights to freedom of association and assembly.

Freedom of expression, free from interference and government restrictions, is guaranteed. Individuals, groups and the press can fully exercise these rights. Evidence of self-censorship by sections of the press continues, and legislation regulating access to information is in place, although it is resisted by elements of the political and business leadership. It is effective and is used increasingly by civil society groups. The structure of the media system provides for a plurality of opinions, but it is recognized that there are overlapping interests between the owners of key sectors of the economy and the larger media houses. Editorial positions, advertisements and specific information supportive of those sectors continue to dominate the larger media groups at the expense of different opinions that represent diverse and divergent interests. The merged super media/communications/advertising group maintains its dominant presence across all major digital and traditional platforms, especially since the introduction of apps during the last two years, which provide instant access to its programs. Almost 30 small community-based radio stations contribute to a very dynamic and diverse radio community through which freedom of expression flourishes.

The 2018 passage of legislation for the implementation of a National Identification System (NIDS) has been challenged by the Press Association of Jamaica. Sections of this legislation have been interpreted as requiring investigative journalists to reveal their sources in respect to certain categories of information. There are reports of journalists and their videographers being attacked as attempts are made to prevent them from accessing certain worksites and police operations in specific communities with a history of violence.
3 | Rule of Law

There is a clear separation of powers in Jamaica, which is in place and functioning. Checks and balances are occasionally subject to interference, for example, when the weight of the executive turns the legislature into a rubber stamp, but a restoration of balance is available and is sought primarily through the judiciary. Aggressive monitoring and advocacy by journalists and NGOs, using the Access to Information Act to force the release of critical information, provides examples of how court actions brought against the state have been successful in restoring the balance. Such cases show that state power can be subjected to the law and court decisions. The Electoral Commission of Jamaica (ECJa) is a statutory agency, established by parliament. The decisions of the commission, which comprises representatives of both political parties and a number of independent members, are fiercely protected by its statute against any undue interference by political parties. The executive is unable to interfere in or influence the final decisions of the commission.

The judiciary is independent and free from both unconstitutional intervention by other institutions and from corruption. It is institutionally differentiated, and there are mechanisms for judicial review of legislative or executive acts, including pressure from the wider public. In a celebrated public case, the current chief justice was subjected to an “acting appointment” by Prime Minister Holness, for which there is no recorded practice or precedent. The tenure, independent appointment and functioning of the chief justice are fiercely protected by the judiciary, the Jamaica Bar Association and the human rights community.

Amid allegations and fear of interference by the political directorate, the full body of judges publicly protested with significant support from key professional bodies, the opposition party, the private sector, and human rights and civil society organizations. The chief justice was immediately appointed with no stated conditions and with public commitments to non-interference with his efforts to carry out his duties independently.

There are attempts to link the disappearance of case files and inordinately long waiting periods for cases to be heard with acts of corruption, and there are unsubstantiated reports of that happening. It is well-established that there are too few courts, especially in rural parishes, which severely restricts the capacity of the judiciary to function optimally in the service of large sections of the country. The physical and technical infrastructure of the judicial system are inadequate for the large number of criminal cases, as are the available human resources. It is partially restricted by insufficient territorial or functional operability.

Ongoing legal education is provided for judges and attorneys, and up-to-date registration is required. Channels of appeal do exist. In recent times, various reforms of the court administration have been undertaken, including appointing more judges,
opening night courts, refurbishing and expanding the capacity of a number of courts in some urban centers in rural Jamaica, referring certain non-criminal cases for mediation, and introducing technology for taking notes and preparing judges’ opinions. There is a perceived class bias on the part of some members of the judiciary, and citizens from lower socioeconomic groups express less confidence in the justice system.

Officeholders who break the law and engage in corruption are not adequately prosecuted, but they occasionally attract adverse publicity. Politicians and senior public officials are rarely convicted of corruption. The Integrity Commission Act was passed on January 31, 2017, supported unanimously by both sides of parliament. This established a single anti-corruption body to investigate, detect, prevent and prosecute acts of corruption by senior public sector officials and politicians in Jamaica. Previously, the three different state agencies, which were involved in this process, did not have the legal power to ensure that public servants and politicians would be held accountable for breaking the law and engaging in corruption.

In January 2019, the chairman of the Integrity Commission of Jamaica (ICJ) disclosed that the annual reports detailing the statutory declarations of all assets, liabilities and incomes of parliamentarians for the years from 2014 to 2016 had been in the possession of the prime minister’s office, but no action had been taken. The prime minister is required to table each annual report in the lower house of parliament, but the last report tabled was in 2013. Widespread public complaints, led by National Integrity Action, described this as unacceptable. Conflicts of interest and ethical misconduct are addressed under a legal provision that allows a politician or senior public official to simply declare their role or involvement in any company that may be providing services or goods to a government agency.

Civil rights are protected under the law, especially by the constitution and the Charter of Rights. However, they are often not properly respected and protected. Through its legal team, Jamaicans for Justice (JFJ) receives credible reports of the serious physical abuse of detainees while in police custody from family members of persons detained at police stations. Without the intervention and legal action of NGOs like JFJ and Jamaica Aids Support for Life, or state agencies like the Public Defender (when the offending party is a state agency), the rights of detainees are not properly respected and protected, and detainees face threats to their life, safety and fundamental human rights. Mechanisms and institutions to prosecute, punish and redress violations of civil rights exist, but they are not consistently effective, as many vulnerable citizens, primarily young black men, do not have access to legal services.

Discrimination on the basis of sexual orientation is given as a key reason that LGBT people are afraid to report incidents of assault against them, as they fear further abuse from police officers while in police custody. A 2016 study commissioned by J-FLAG...
found that many LGBT people continue to suffer in silence, despite the efforts of the police to encourage vulnerable people and marginalized groups to report incidents. Close to one in four (24.6% of respondents) feared a homophobic response from the police, while close to one in five (19.1%) felt too ashamed or embarrassed to report harassment. Meanwhile, 18.6% of respondents dealt with the matter themselves, 15% feared a reprisal attack from the offender and close to one in 10 were discouraged from reporting the matter (8.5% of respondents).

Women who are victims of intimate-partner violence frequently face discrimination from police officers when they try to report cases of assault. Included in this category of domestic violence are increased cases of child abuse, including sexual and physical abuse.

4 | Stability of Democratic Institutions

Democratic institutions generally perform their functions, but they are not free from extensive, counterproductive friction. Both national and local governments often experience this friction along partisan lines when the ruling party seeks to pass policies or enact bills but is unable to do so because of persistent opposition. Institutions such as the two houses of parliament are also often inefficient. This is due to the basic Westminster parliamentary model, which constrains the extent to which consultations outside of the formal parliamentary structure can inform the work of parliamentary committees that comprise only politicians. These committees therefore do not benefit from the research, analyses and experiences that would be available through wider interventions and consultations. They are obliged to hold consultations with state agencies and public officials from relevant government departments, during which friction is sometimes evident. Representatives of the wider public (e.g., women’s and youth organizations, faith-based and human rights organizations, and environmental groups) can make presentations at the formal sittings of the committees. Inefficiency arises from the inability of various public institutions to incorporate broader public interests as expressed by civil society organizations into their decision-making. Friction between institutions arises when various state agencies resist or resent interventions from civil society. The judiciary does not get involved in such political decision-making and is free from extensive counterproductive friction.
Democratic institutions are accepted as legitimate by most relevant actors. However, this legitimacy and long-term commitment is increasingly questioned in view of the inability and unwillingness of the political and economic elites to engage in respectful, meaningful, broad-based and inclusive dialog. There are also calls from the private sector and civil society organizations for more transparent decision-making processes in the national parliament and local government authorities, which would improve the credibility of these institutions. In recent times, the governing party has resisted taking this approach, which would be an important component of a more inclusive and democratic governance process that does not rely primarily on consultations with the dominant economic and business elites and a party’s own supporters. Pressure from key civil society groups has had some impact and remains necessary. Strong and persistent advocacy from diverse civil society coalitions is required to guide the government in a direction that acknowledges the value of being genuinely more inclusive in making decisions that have national impact.

5 | Political and Social Integration

The party system is stable and socially rooted. It is dominated by two political parties, which have each contributed significantly to Jamaica’s modern political history. Each party has a core membership base, each contributing almost equally to the results of the last national elections held in February 2016. The use of digital communication and multiple social media platforms has increased the parties’ attempts to attract wider societal interest, especially among the youth population.

Both parties are well-established. They are supported by clientelism, corruption and political patronage, which run deep in the political culture. These factors mean that political fragmentation is low and other political parties have historically been unable to take root and survive.

Low voter volatility and low polarization are characteristics of this political system. In recent times, the two parties have not reflected substantial ideological differences, as Jamaica’s indebtedness has resulted in the strict implementation of IMF-driven macroeconomic reform programs during the administration of both parties. The aggressive use of technology and social media platforms to “sell” the benefits of adhering to such programs is more evident on the part of the current ruling party, as it seeks to aggregate social interest in its own approaches and policy prescriptions.
There is a moderate number of interest groups that reflect most social interests. However, a few strong interests dominate in the main sectors. The culture has not been to avoid the dominance of a few strong interest groups, and the different competing social interests are not all incorporated. The strong interest groups that are dominant typically represent the economic and social elite, empowered by their control of key economic sectors and the media (e.g., the Private Sector Organization of Jamaica). More recently, the dominant religious voices are those of the conservative, right-wing sections of the Christian community, which are well-funded and easily establish a media presence when necessary. The interests of vulnerable people and the lowest income groups are traditionally under-represented in the broader political governance system. There are no organized social or political groups that aim to undermine democracy or civil society.

During the period under review, several civil society organizations, including social interest groups and community-based organizations, have faced serious resource constraints, including human resources, finances and infrastructure, as traditional funding partners are less accessible. However, a spectrum of interest groups does exist, ranging from community-based organizations with a local and/or rural focus to non-governmental organizations with a national focus. The Jamaica Civil Society Coalition continues as a public forum.

Cooperation between different interest groups tends to take place around specific issues such as the environment, corruption, and violence against women and children. Dominant environmental interest groups include the Jamaica Environment Trust (JET), whose public advocacy against state agencies that break the law enjoys increasing support from other organizations. Jamaicans for Justice (JFJ) is the most vocal and respected presence in the human rights sector and enjoys significant public support. J-FLAG remains the strongest advocacy group for members of the LGBT community. The Women’s Resource and Outreach Centre (WROC) and the Jamaica Household Workers’ Union are strong national voices, combatting violence against women and promoting women’s human rights and empowerment. WE-Change runs a targeted education program in support of women’s human rights and empowerment, and against all forms of discrimination and abuse, in particular sexual abuse.

Although trade unions have been significantly weakened nationally, they are present in certain sectors of the economy, such as sugar, bauxite, tourism and the public sector where they represent doctors, nurses, teachers and the police. There is also a spectrum of professional associations for lawyers, engineers and architects.
Approval of democratic norms and procedures is fairly high and a reasonable level of support for the notion of democracy continues. The 2016/17 LAPOP survey reported that 55.8% of Jamaicans support the idea of democracy as the best form of government. The survey also showed that higher levels of support for democracy (68%) exist among the more educated (those with post-secondary level education or higher). The lowest levels of support for democracy (47%) exist among the lowest quintile of wealth. Those with the highest level of wealth recorded higher levels of support for democracy (63%).

One sign of somewhat weaker support for democracy is the decline in voter turnout. In the February 2016 national elections, the Electoral Office of Jamaica reported that 48.37% of the approximately 1.8 million eligible voters voted, five percentage points lower than in the 2011 elections. The reduced participation of voters in national and local elections is interpreted as an increasing sign of dissatisfaction with the bipartisan political system and the democratic process it supports. Beyond the core membership of the two parties, the majority of people in the poorest socioeconomic groups assess that their interests and needs are not being adequately addressed regardless of which of the two parties form the government.

LAPOP 2016/17 reported that 41% of Jamaicans identify with a political party. The perceived and often real benefits the two parties’ core supporters derived through their participation in the system and often through clientelism contribute to their identification with a party as well as their support for the associated democratic norms and procedures. LAPOP also reports that only 22.5% of Jamaicans trust political parties. The majority of both parties’ core supporters come from the lower socioeconomic groups with less well-educated Jamaicans being more likely to trust political parties than well-educated Jamaicans.

There seems to be low satisfaction with the performance of democracy as experienced through some institutions outside the formal political party system. Regarding the military, the 2016/17 LAPOP survey reported that support for coups in Jamaica had been on the rise since 2010. 59.3% of survey respondents said that a military coup would be justifiable when there are high levels of crime. This is a 7.1 percentage point increase since the 2015 report and the highest percentage in the western hemisphere. The survey also showed decreased trust in elections (31.8%) and in political parties (22.5%).

National Integrity Action (NIA) commissioned a national survey, completed in late 2016, looking at corruption-related issues. Though not specifically addressing levels of public trust, this survey found that the percentage of respondents who believed that the government was doing an effective job as “leader of the anti-corruption drive” declined from 44% in 2014 to 31% in 2016. However, over the same period, those satisfied with the performance of the Major Organized Crime and Anti-Corruption Agency (MOCA) increased from 25% to 49%. 
There are a substantial number of autonomous, self-organized groups, associations and organizations in Jamaica. They are typically found at the local and community levels. They generally coalesce around sports, music and charitable services providing food and clothes, and targeting under-privileged communities. Increasingly, these groups appear to be led by younger citizens under 35 years of age, including recent university graduates. Generally, the groups appear and carry out their work for a specific period of time; however, they may then go dormant and later re-appear in response to another identified need in their community, sometimes in collaboration with the church.

At the community level, trust manifests itself through collaboration between groups who decide to address particular community challenges. Press reports of community activities (e.g., educational programs, protests against violence against women and girls, and fundraising for the victims of violence and back-to-school needs) organized by more than one group indicate a fairly high level of trust at this level – outside the more rigid partisan communities, there is a fairly high level of trust among the population. However, expressions of distrust do occur across class and racial lines.

A number of community-based organizations work together in order to benefit from the corporate social responsibility programs of foundations created by the largest private sector organizations, which often provide both material benefits and access to free services (e.g., dental care, medical services or resources for schools such as books and sports gear). Members of the Jamaican diaspora also work through groups of community-based organizations to provide similar services. These types of initiatives have become the preferred option for many at the community level who face increasingly difficult personal and organizational financial challenges with fewer resources to keep their autonomous organizations going. This increases the likelihood that such organizations become unevenly distributed and temporary even while they try to remain autonomous and self-organized.
II. Economic Transformation

6 | Level of Socioeconomic Development

Poverty and inequality are pronounced and partly structurally ingrained. Jamaica is rated as a country with a high level of human development. Jamaica scored 0.732 on the UNDP’s 2018 Human Development Index, ranking 94 out of 188 countries – a relatively high ranking, which continues to mask the realities of severe social and economic inequalities.

The most recent Survey of Living Conditions (SLC) in 2015 reported a reduction of the gap in mean per capita consumption between the poorest and the wealthiest quintiles in Jamaica. While consumption in the fifth quintile was almost seven times that in the first quintile, it was a decrease from 2013, when the difference was 8.2 times. The top 20% of households accounted for 44.8% of national consumption expenditure, while the Gini coefficient remained almost unchanged at 0.380 (compared to 0.379 in 2014). Jamaica scored 0.412 in the Gender Inequality Index (2016 and 2017), meaning the inequality level for women was above the mean for countries in the BTI sample. Gender is a key factor in how households interact with both the formal and informal markets. The SLC 2015 reported that per capita consumption expenditure was 23.9% higher in male-headed households than in female-headed households, a small decrease compared to the 2013 figure of 27.9%. Male-headed households continue to register a higher level of average expenditure in all commodity groups.

Concerning poverty, SLC 2015 reported that 21.2% of Jamaicans live in poverty, a decrease from a poverty rate of 24.6% reported in 2012. Rural areas continued to record a higher level of poverty with an increase to 28.5% from 24.9% in 2012. It was 14.3% in the Kingston metropolitan area, which decreased from 15.3% in 2012. Some 6.9% of individuals were consuming at a level below the individual food poverty line (i.e., they were unable to meet basic nutritional requirements, were living in extreme poverty and were classified as food poor). The majority of the population remains at risk of poverty, as indicated by persistent high levels of extreme poverty both nationally and rurally, and among youth, especially those under 18 years of age. Persons from lower consumption groups who live in communities that are dominated by sub-standard housing and social infrastructure regularly face discrimination on the basis of “their address,” and they are excluded from employment opportunities.
### Economic indicators

<table>
<thead>
<tr>
<th></th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>GDP</strong> $M</td>
<td>14145.5</td>
<td>14072.1</td>
<td>14781.1</td>
<td>15717.9</td>
</tr>
<tr>
<td><strong>GDP growth</strong> %</td>
<td>0.9</td>
<td>1.4</td>
<td>1.0</td>
<td>1.9</td>
</tr>
<tr>
<td><strong>Inflation (CPI)</strong> %</td>
<td>3.7</td>
<td>2.3</td>
<td>4.4</td>
<td>3.7</td>
</tr>
<tr>
<td><strong>Unemployment</strong> %</td>
<td>13.5</td>
<td>13.2</td>
<td>11.7</td>
<td>9.4</td>
</tr>
<tr>
<td><strong>Foreign direct investment</strong> % of GDP</td>
<td>6.5</td>
<td>6.6</td>
<td>6.0</td>
<td>4.9</td>
</tr>
<tr>
<td><strong>Export growth</strong> %</td>
<td>4.4</td>
<td>0.9</td>
<td>2.6</td>
<td></td>
</tr>
<tr>
<td><strong>Import growth</strong> %</td>
<td>-2.1</td>
<td>-3.0</td>
<td>5.0</td>
<td></td>
</tr>
<tr>
<td><strong>Current account balance</strong> $M</td>
<td>-430.1</td>
<td>-43.5</td>
<td>-385.6</td>
<td>-463.5</td>
</tr>
<tr>
<td><strong>Public debt</strong> % of GDP</td>
<td>121.9</td>
<td>113.6</td>
<td>101.1</td>
<td>94.4</td>
</tr>
<tr>
<td><strong>External debt</strong> $M</td>
<td>14113.3</td>
<td>14097.2</td>
<td>14722.0</td>
<td>16306.7</td>
</tr>
<tr>
<td><strong>Total debt service</strong> $M</td>
<td>4073.1</td>
<td>1909.8</td>
<td>1403.1</td>
<td>1242.6</td>
</tr>
<tr>
<td><strong>Net lending/borrowing</strong> % of GDP</td>
<td>-0.3</td>
<td>-0.2</td>
<td>0.5</td>
<td>-</td>
</tr>
<tr>
<td><strong>Tax revenue</strong> % of GDP</td>
<td>24.8</td>
<td>26.0</td>
<td>26.2</td>
<td></td>
</tr>
<tr>
<td><strong>Government consumption</strong> % of GDP</td>
<td>13.8</td>
<td>13.8</td>
<td>13.4</td>
<td>-</td>
</tr>
<tr>
<td><strong>Public education spending</strong> % of GDP</td>
<td>5.5</td>
<td>5.3</td>
<td>5.3</td>
<td>5.4</td>
</tr>
<tr>
<td><strong>Public health spending</strong> % of GDP</td>
<td>3.6</td>
<td>3.7</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>R&amp;D expenditure</strong> % of GDP</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Military expenditure</strong> % of GDP</td>
<td>0.9</td>
<td>1.0</td>
<td>1.0</td>
<td>1.4</td>
</tr>
</tbody>
</table>

Sources (as of December 2019): The World Bank, World Development Indicators | International Monetary Fund (IMF), World Economic Outlook | Stockholm International Peace Research Institute (SIPRI), Military Expenditure Database.
Market competition operates under a somewhat stronger institutional framework but still with uneven rules for market participants and a large informal sector. The 2019 Doing Business Report ranked Jamaica 75 out of 190 countries, down from 70th in 2018. However, starting a business improved—it now takes two procedures and three days, and it costs 4.4% of GNI per capita, resulting in rank 6 out of 190 countries. Corruption, violent crime and inefficient government bureaucracy remain the most critical challenges to the institutional framework. Above all, negotiating the bureaucracy remains a complaint of investors in Jamaica, with costs more burdensome on small enterprises (who make up the majority of informal sector businesses).

During the period under review, the JLP government continued the policy thrust that it adopted after the February 2016 elections. This is still guided by the three-year IMF Precautionary Stand-By Arrangement (SBA), which was approved in November 2016. In November 2018, the IMF noted that program implementation remains strong after five years of economic reforms. It also said that structural impediments need to be addressed to foster private capital formation, accelerate growth and promote job creation, and that modernizing the central bank would help facilitate the needed move to fully-fledged inflation targeting.

The informal sector remains large. A 2014 International Labour Organization study, based on estimated informal sector employment between 2008 and 2012, suggested that although informal employment has declined in absolute terms, it has remained fairly constant as a share of total employment, accounting for 43% of official GDP.

There is considerable state intervention in sectors the government regards as strategically important. The divestment of both international airports has taken place, and the sale of the state-owned Wigton Wind Farm is under active consideration. The government still has shares (20%) in the Jamaica Public Service. The government continues to seek local and foreign direct investment and increased competition by developing a logistics hub, which is expected to play a central role in the country’s long-term economic development.

There are no price controls in Jamaica—sellers are free to sell at whatever price they want and then add VAT (GCT) at 16.5%. The Jamaican dollar, the official national currency, is not freely convertible outside of Jamaica, as the currency is too weak and is unstable in relation to the major currencies. Access to the main convertible currencies is not restricted. The freedom to launch and withdraw investments continues with no barriers to foreign ownership except in cases where local assets are registered as national heritage sites.
Some regulation to prevent monopolistic structures and conduct exists, but it is rarely enforced. Current competition laws do not prevent the formation of monopolistic structures or behavior. A competition law (The Fair Competition Act) exists, but it is not strictly anti-monopoly, and the Fair Trading Commission (which administers the law) cannot rule in the case of a merger unless the new entity engages in anti-competitive behavior or conduct. So, while there is regulation to prevent anti-competitive conduct, it does not prevent the formation of monopolistic structures. The foreign-owned Jamaica Public Service Company’s monopoly on energy distribution continues. There continues to be debate on this matter, with a challenge in court outstanding. The company still has multi-decade, exclusive rights to transmit, distribute and supply electricity in Jamaica. It is also worth noting that the current government has signaled its intention to sell the remaining 20% it owns.

Institutions actively involved in regulatory and monitoring functions include the Fair Trading Commission (FTC), the Consumer Affairs Commission (CAC), the Bureau of Standards Jamaica (BSJ) and the Trade Board (TB).

Jamaica’s revised foreign affairs/foreign trade policy was approved in October 2017. Through its implementation, Jamaica is working to be competitive in national, regional and international markets. Foreign trade is liberalized in principle, and barriers have been successively reduced. Jamaica is an original and active member of the WTO. Though in principle a proponent of free trade, the country is also a strong supporter of special and differential treatment for developing countries within WTO negotiations, maintaining that the priorities of small economies must be addressed fully and in all areas of the WTO. Jamaica grants at least most-favored nation treatment to all trading partners. Jamaica imposes no taxes or quantitative restrictions on exports and has a number of tax incentives that attempt to encourage exports.

Jamaica applies the Caribbean Community and Common Market (CARICOM) common external tariff (CET) with several (permitted) exceptions. According to the Heritage Foundation, the average applied tariff rate was 10.8% in 2018. The average most-favored nation tariff applied rose from 9.4% in 2010 to 10.4% in 2017, mainly due to increases on some items in CARICOM’s CET, but it decreased to 8.5% in 2018. According to Jamaica’s fourth Trade Policy Review by the WTO, tariff protection for agricultural products (20.8%) remains substantially higher than for non-agricultural products (7.9%). About half of the tariff lines are duty-free. When additional stamp duties (mostly on agricultural products) are taken into account, the overall average border protection for 2017 increases from 10.4% to 12.6%.

The contribution of tax revenues remains critical in light of the country’s structural fiscal deficit. The total collected from international trade charges was 40% of tax revenues in 2016/17, with tariffs representing 7.5% of total taxation revenue. In its fourth Trade Policy Review (TPR 2017), the WTO reported that Jamaica applies few non-tariff barriers. When it does, it is mostly on import and export licensing. In
addition, Jamaica repealed the four incentive schemes that were notified to the WTO as containing export subsidies.

The value of exports and imports taken together equals 77% of GDP, indicating the importance of trade to Jamaica’s economy. Jamaica continues to experience increasing merchandise trade deficits with its main trading partners – the European Union (EU), the United States of America and the United Kingdom. The Caribbean Single Market and Economy (CSME) is the highest level of trade liberalization to which Jamaica has committed. Jamaica continues to enjoy preferential access to the U.S. market under the Caribbean Basin Initiative, which covers over 90% of Jamaican exports to the United States. CARICOM continues to trade with Canada under the 1986 CARIBCAN agreement. CARICOM has signed trade agreements with five Latin American countries and through CARICOM, Jamaica also qualifies for generalized system of preferences (GSP) treatment from a number of other countries.

The banking system is solid and oriented toward international standards with functional banking supervision and minimum capital equity requirements. However, in its 2018 Financial System Stability Assessment, the IMF stated that although Jamaica’s banking system does target Basel standards, the country needs to strengthen the entire regulatory framework by introducing Basel III capital adequacy and liquidity requirements. Nevertheless, the IMF also stated that the architecture of the supervisory framework has substantially improved. Capital markets are open to domestic and foreign capital with sufficient resilience to cope with sudden stops and capital flow reversals. The 2015 Banking Services Act provided legislation to further strengthen oversight of the deposit-taking financial sector and achieve greater conformity to the Basel Core Principles. According to Bank of Jamaica (BOJ) data from March 2018, the capital adequacy ratio has been 14.5% since 2016, and 3.5% of loans are non-performing.

The Bank of Jamaica supervises deposit-taking financial institutions in Jamaica as required by the Bank of Jamaica Act. These financial institutions are licensed under the Banking Services Act, and they include commercial banks, merchant banks and building societies. The Jamaican minister of finance has designated credit unions as “specified financial institutions” under the Bank of Jamaica Act, as a preliminary step toward placing these institutions under the supervisory oversight of the Bank of Jamaica. This specification currently enables the central bank to obtain information on their operations. The Banking Services Act and related regulations provide a standardized legal framework for the operations of the licensed deposit-taking intermediaries and provide the statutory principles on which supervision is conducted. The principal aims of this supervision are to promote the safety and soundness of banks and banking groups as well as the stability of the financial system.
8 | Monetary and fiscal stability

Controlling inflation and an appropriate foreign exchange policy are recognized goals of economic policy, and some recent efforts have been made to strengthen the institutional framework. The Bank of Jamaica (BOJ), which is responsible for currency and price stability, is still not de jure independent—the Bank of Jamaica Act states that monetary policy is to be guided by the minister of finance. However, it has become more independent over time, with critical supervisory functions being transferred from the Ministry of Finance to the governor of the Bank of Jamaica, although government influence persists. In October 2018, the minister of finance presented a bill to amend the Bank of Jamaica Act to grant the bank de jure operational independence in order to pursue a fully-fledged inflation-targeting regime.

The inflation targets under the IMF’s SBA were meant to be adjusted over time. As part of the IMF’s third review under the SBA, the inflation target band for 2018 was revised from 3.0% to 8.0%, to 3.5% to 6.5% and then to 4.0% to 6.0% for 2019. STATIN reports the 2017 inflation rate as 4.4% and the 2018 rate as 3.4%, both within the central bank’s 2019 target range of 4.0% to 6.0%. These rates indicate some volatility over time but still meet the central bank’s target of single-digit inflation.

The Bank of Jamaica has persistently sought to achieve an exchange rate that was realistic in terms of its relations to Jamaica’s main trading partners. In July 2017, it introduced the BOJ Foreign Exchange Intervention & Trading Tool (B-FXITT), which intends to facilitate the buying and selling of foreign exchange. In June 2018, Jamaica’s de facto exchange rate arrangement was classified as “floating,” retroactively from September 2017. According to the IMF, the classification is supported by the two-way exchange rate movements that have been a characteristic of the system since the Bank of Jamaica introduced FX auctions in 2017. On the basis of this de-facto floating classification, the IMF considers Jamaica’s current FX reserves as broadly adequate. According to the IMF’s fourth review under the SBA, there was a slight but steady depreciation between FY 2014/15 (-0.2) and FY 2016/17 (-2.6), but an appreciation of 3.2% in 2017/18.

The government’s fiscal and debt policies generally promote macroeconomic stability, and institutional safeguards have been strengthened since 2013. To address any potential weaknesses, structural benchmarks and other commitments under the new IMF Precautionary Stand-by Arrangement (PSBA) are now monitored by three oversight bodies, including the Economic Program Oversight Committee (EPOC). The Economic Growth Council (EGC) monitors specific measures related to eight growth initiatives. The Public Sector Transformation Oversight Committee (PSTOC) monitors measures related to public sector reform. Under the 2016 PSBA agreement, the IMF noted that “considerable progress” has been achieved on macroeconomic
policies and outcomes. Fiscal discipline, which is anchored by the 2014 Fiscal Responsibility Law, has contributed to reducing public debt and securing macroeconomic stability.

The government’s November 2018 interim report indicated that the macroeconomy registered improvements in most areas in the 2017/18 fiscal year. Central government operations generated a primary surplus of 7.4% of GDP, representing an over-achievement on the 7.0% targeted under the PSBA and resulting in an overall fiscal surplus of 0.5% of GDP (after deficits of 0.5% in 2014/15, 0.3% in 2015/16 and 0.2% in 2016/17). This positive performance was achieved due to stronger revenue flows in 2017/18. Government consumption decreased from 16.3% of GDP in 2012 to a moderate 13.7% in 2017.

STATIN also reports that Jamaica had net international reserves of $3.2 billion in December 2017 and $3.1 billion in April 2018, surpassing the benchmark of $2.54 billion outlined by the IMF. There have also been significant improvements in the debt-to-GDP ratio, where targets aim to bring it down from historical highs in 2012 (145%) to 60% by 2026. During the review period, growth in the real sector accelerated and various debt-management strategies were implemented. As a result, public debt (including debt to the IMF held by the Bank of Jamaica) decreased from 139.7% of GDP in 2015 to 121.8% in 2017 and 109.1% in 2018, according to IMF’s fourth review of the SBA in November 2018.

9 | Private Property

Property rights and regulations on acquisition, benefits, use and sale are defined in the constitution. Problems in enforcement and implementation are often related to difficulties in accessing a title (e.g., excessive bureaucratic delays, a high government stamp duty, legal fees and transfer taxes). Out of 140 countries in the 2018 Global Competitiveness Index, Jamaica ranked 57th on property rights and 59th for intellectual property protection. For incidence of corruption, which is also a challenge, Jamaica ranked 59th. The most problematic factor for doing business mentioned by respondents to the World Economic Forum’s Executive Opinion Survey is crime and theft (16.5%). Family property, its titling and its sub-division is a large area that has not been firmly worked out and implemented.

Private companies are viewed institutionally as the primary engines of economic production and are given legal safeguards. A policy of privatizing state-owned commercial or productive enterprises has also been steadily pursued for several years. In practice, legal safeguards suffer somewhat from lengthy judicial procedures and the judiciary’s dysfunctions. According to Doing Business 2019, Jamaica ranks 127 out of 190 economies with respect to enforcing contracts, mainly because it takes 550 days on average, but also because of the low quality of judicial processes. While Jamaica is one of the easiest countries to start a business globally and to resolve
insolvency (33rd place), this applies less to the protection of minority investors (89th) and registering property (131st).

As a condition of the SBA with the IMF, the government intends to privatize a number of public enterprises in various sectors, particularly the most inefficient. Jamaican public enterprises are mainly active in agriculture, mining, energy and transport, although they have to compete on an equal footing with private enterprises. Privatization is generally carried out in accordance with market principles. Transactions are usually conducted through public tenders. Foreign investors have won most privatization bids in the last decade. Recent major privatizations include the Kingston Container Terminal Port Facility (2015) and Kingston International Airport (currently underway).

10 | Welfare Regime

Social safety nets, though comprehensively designed, are not well-developed and do not cover all risks for all strata of society. The majority of lower-income people struggle to survive, as indicated by increasing levels of extreme poverty, both nationally and rurally.

The mandatory contributory National Insurance Scheme (NIS) covers all employed persons and offers some financial protection against loss of income arising from injury on the job, sickness, retirement and/or the death of the breadwinner. However, the value and purchasing power of retirement benefits are undermined by regular increases in inflation and the devaluation of the Jamaican dollar. Only 46% of the workforce was contributing to the NIS during the period under review, including many who only qualify for half pensions because they do not meet the minimum 39 weeks of contributions required to receive full benefits. The pension system suffers from a lack of compliance on both the part of employers and employees, as well as from the low participation of persons in the informal sector.

Jamaica’s health care system is composed of public and private systems. The public system offers its services free of charge but is severely underfunded and has many institutional and professional deficiencies. The private system fares better, but it is not affordable to most citizens. Public health expenditure was 2.8% of GDP in 2014 (the latest figure available), the fifth lowest in Latin America and the Caribbean. The role of international and non-governmental organizations in funding social and poverty programs remains important.

The National Policy on Poverty (NPP) and National Poverty Reduction Policy (NPRP) are aligned to existing government policies and strategies, such as the Jamaica Social Protection Strategy (SPS) and Vision 2030’s Jamaica Poverty Reduction Strategic Plan. The Social Protection Strategy views poverty reduction as a cross-cutting issue, requiring a multidimensional approach to identifying the
various forms of poverty. The Programme of Advancement Through Health and Education (PATH) is Jamaica’s main pro-poor policy. It is a conditional cash transfer program, providing two basic types of grants – a health grant and an education grant – for vulnerable families. The Ministry of Education also provides meals for students from early childhood to grade 13 under its school feeding program, including lunch for PATH beneficiaries.

Despite providing coverage for an average of 45% more people than initially targeted under previous social protection measures, the World Bank (one of the funders of PATH) reports that approximately 50% of the poorest Jamaicans still receive no coverage. Also, PATH needs to be urgently reformed to provide greater and more targeted support to women who are pregnant, in keeping with the National Social Protection Strategy. Further evidence of the state’s inability to provide a social protection floor can be inferred from the fact that the $4.63 billion disbursed under PATH in 2016 represented 0.26% of GDP, which is significantly lower than the 1.9% that the International Labour Organization encourages for countries such as Jamaica.

Equality of opportunity is only partly achieved – there are significant disparities related to gender and social strata. There are laws providing a minimum wage for 40 hours of work and ensuring equal pay for work of equal value. However, women who work as household workers and in wholesale and retail outlets, for example, face discrimination as they are often paid below the national minimum wage, subjected to dehumanizing working conditions and abuse, and living in fear of being fired if they complain or report their employers to the authorities. Enforcement of such laws is poor and sometimes nonexistent, as state organizations do not provide the support and guidance these workers need.

Women and members of minority ethnic or religious groups have equal access to education and public office. However, young women and men of darker complexion are frequently denied access to employment opportunities in both the public and private sectors when their addresses and school attendance indicate that they live in certain inner-city communities associated with poverty and violence. In the two political parties and in private sector boards, women face barriers to accessing positions of power and decision-making at the highest levels.

The 2017 Gender Parity Index was 1.0 for primary education, 1.1 for secondary and 1.7 for the tertiary level. This indicates that boys have much higher drop-out rates than girls and are more disadvantaged, resulting in highly skewed tertiary education enrollment rates. While equality of opportunity at the tertiary level exists structurally for both girls and boys, certain stressors significantly affect boys (such as gender expectations, dominant role models and successful informal business activities), making tertiary education an unattractive option. Women face different stressors, as large numbers drop out of high school because of teenage pregnancy. They face
stigma and discrimination, often from their own families, and find it difficult to complete their high school education.

Discrimination based on sexual orientation and HIV/AIDS status also exists. There are legal provisions against discrimination (e.g., Jamaica’s constitution and the Charter of Fundamental Rights and Freedoms), but their implementation is highly deficient and uneven with gaps in access and consistency.

11 | Economic Performance

On the whole, economic performance has not been robust; however, the trend for critical indicators is currently moving in a positive direction. The Interim Report Fiscal Policy Paper 2018/2019 recorded that during 2017/18 fiscal year (FY) the macroeconomy improved in most areas. The least promising figure is still GDP growth per capita, which has averaged below 1% for decades. It was 1.0% in 2015/16, 1.4% in 2016/17 and 0.9% in 2017/18, which resulted in an almost stagnant GDP per capita (PPP) of $8,995 in 2017. Jamaica’s relatively low inflation is partly a reflection of this – it was 3.0%, 4.1% and 4.0% for the fiscal years 2015/16, 2016/17 and 2017/18.

Fiscal performance continued to improve during that time. Central government operations in fiscal year 2017/18 generated a primary surplus of 7.4% of GDP, thereby exceeding the target of 7.0% of GDP under the Stand-By Arrangement with the IMF. The central government also recorded a fiscal surplus of 0.5% of GDP. The government’s positive performance was achieved within the context of robust revenue flows that facilitated the implementation of significant projects included in the 2017/18 budget. The public sector, comprised of the central government and public agencies, generated an overall balance surplus of 1.3% of GDP relative to the programmed budget deficit of $3.5 billion. Various debt-management strategies have resulted in the debt decreasing from 139.7% of GDP in 2015 to 121.8% in 2016/17 and 109.1% in 2017/18, dipping below the target of 111%.

STATIN reported an unemployment rate of 8.7% in October 2018, a decline from 10.5% in October 2017. The male unemployment rate decreased by 2.2 percentage points to 5.8% and the female rate by 3.8 percentage points to 11.4%. The youth unemployment rate fell to 19.40% in October 2018, down from 22.40% the year before.
12 | Sustainability

Environmental concerns are only considered sporadically and are often subordinated to economic growth efforts. Environmental regulation is weak and frequently not enforced, and a deeply engrained awareness of the environment is not well-developed. The effective integration of environmental protection in large-scale development projects (e.g., tourism, highways and large housing communities) is rare. Subjects such as the environment, climate change, land and sustainable development continue to be addressed through the Ministry of Economic Growth and Job Creation (MEGJC), which is supposed to provide the blueprint to drive economic growth and sustainable development.

In December 2017, the government announced the National Policy on Environmental Management Systems (EMS) to improve environmental performance in support of sustainable development and the development of a green economy. This aims to integrate environmental considerations into economic and social decision-making while addressing both risks and opportunities. There are indeed some examples of EMS implementation in both the public and private sectors, such as some adherence to International Organization for Standardization (ISO) standards, including those that relate to the global environment. However, in the public sector, EMS certification has not been effectively pursued. The 2017 EMS policy document reported that initiatives had been launched to incorporate environmental considerations into the corporate plans of all ministries, departments and agencies. These include the Environmental Guide to Green Procurement and the greening of government projects such as the Public Sector Energy Efficiency and Conservation Program.

It remains unclear whether this approach will make a difference to the frequent breaches of environmental laws by various departments and agencies. There are concerns that these breaches will continue because that has happened until now. However, as part of their corporate social responsibility, several corporate bodies support and/or partner with government institutions like schools and those involved in community development to promote environmentally friendly practices in schools, households and communities.

Aggressive advocacy and public education by the Jamaica Environment Trust (JET), with endorsement from a growing number of other environment organizations, has significantly increased the public scrutiny of major Chinese-led developments. The significant presence of major Chinese investors as “sole source service providers” in major island-wide infrastructure developments and the construction of government buildings (e.g., the Ministry of Foreign Affairs and Foreign Trade) continues to be a concern. It makes it very difficult to monitor major projects’ breaches of environmental law.
Education policy ensures a nationwide system of education and training. However, the problem of varying levels and types of resources between schools, accompanied by qualitative deficits in early childhood, primary and secondary education, remains a challenge. In the United Nations Education Index, Jamaica ranks 51 out of the 133 BTI countries considered, with a score of 0.690, similar to Peru, Turkey and Macedonia.

Since 2016, the main policy focus of the JLP administration has been to maintain a no user fee policy for tuition in public schools; however, this has not adequately addressed the serious challenges that families in lower-income groups face when schools charge auxiliary fees to cover the costs of maintaining related services (e.g., libraries, sports and audio-visual equipment). Wealthy schools in wealthy communities benefit from the capacity of parents and former students to raise and contribute the additional financial support needed. Government policy also directs additional government funds to early childhood intervention programs as well as the training and certification of primary school teachers. A complementary social intervention policy provides education grants to vulnerable families through the PATH program. For wards of the state and students on the PATH program, the government pays the full cost of their external exit examinations from high school if their academic profile qualifies them. The highest level of funding has been provided to schools that accommodate students who have difficulty learning and are from the poorest socioeconomic backgrounds. However, the country still faces challenges in achieving satisfactory enrollment rates at secondary and tertiary levels (see also section 10.2). Jamaica’s public spending on education was 5.3% of GDP in 2017, unchanged from the previous year.

Data on the amount given to R&D is difficult to obtain, but the 2018 World Bank Development Indicators report public spending of less than 0.1% of GDP. Reduced support for public tertiary institutions has resulted in a marked reduction in staff and other resources for research at undergraduate and graduate levels. There has been an increase in competitiveness in the tertiary sector with the establishment of several local and foreign private universities, many of which increasingly offer online study and have smaller campuses in selected rural areas.
Governance

I. Level of Difficulty

The structural constraints on Jamaica’s governance are fairly low, but they are not negligible. They include significant levels of poverty for decades and a labor force in which too few workers have adequate skills and qualifications, especially in the fields of science, innovation and technology, which are now required to take advantage of new opportunities available in the labor market. In addition, the social exclusion of many citizens along the lines of race, class and gender is structurally ingrained. The same is true for Jamaica’s long-standing crime crisis with a homicide rate of about 40 per 100,000 population.

Jamaica is a small, mountainous island-state, which creates further constraints on domestic issues (such as infrastructure and poverty) and global development capacities. Natural disasters and extreme weather events associated with climate change have in the past disrupted the normal budgeting process, requiring additional resources for the reconstruction and repair of critical infrastructure and key sectors of the economy.

There are also cultural constraints, notably the marginalization of the LGBT community and people living with HIV/AIDS. Homophobia is deeply ingrained, driven by widespread strong religious beliefs. Other deep-seated cultural constraints stem from the legacy of slavery and colonialism. These include a very weak family structure and severe beatings of male children, which are a major contributor to the violence they impose on others. There are also strong feelings of inferiority and dependency, which readily fit in with the clientelism used by politicians to win votes and exercise control.

Traditions of civil society are moderately strong. There is a long-term presence and culture of civil society engagement, although the traditional forms of engagement appear to be less important to some parts of Jamaica’s youth population, who now more often use social media for their advocacy and civil society engagement. Many active civil society associations exist, most with ongoing local community impact. They support community development by providing critical services (e.g., sports activities, homework centers and health care) that the government does not adequately provide. This contributes concretely to building and maintaining social capital at the local level.
Fewer civil society associations can maintain a noticeable national impact due to human resource and financial constraints. Evidence of reduced social trust (social capital) exists in certain communities that have been plagued by organized crime and gangs. Organized criminal networks and gangs challenge, undermine and often replace traditional community leaders, and they damage the social trust that guides such leadership and civil society traditions.

Society as a whole, but to a certain extent also business and political elites, is divided along social, ethnic and class lines, and tensions exist. However, exacerbated conflict, politically motivated violence and divisive mass mobilization are rare, and extremist political actors have very limited success in mobilizing along existing cleavages.

Non-political violence is nonetheless an endemic problem due to high rates of crime and murder. Violence involving young men as both perpetrators and victims is now more often directed against other members of the same class. Rather than being for ethnic, religious or political reasons (as it was in the 1970s and 1980s), it is now generally for economic power over turf or for domestic conflict reasons. Nevertheless, some observers see Jamaica as being in fact “two Jamaicas,” the dividing line being one of class with a latent unacknowledged racial factor. Violence and murder therefore also carry an element of rebellion, which surfaces from time to time.

II. Governance Performance

14 | Steering Capability

The Jamaica Labor Party (JLP), elected in 2016, has been the governing party for the full two years of this review period. Decisions on public policy priorities, strategies and actions continued to be influenced primarily by the IMF Stand-By Arrangement. The Extended Fund Facility, implemented by the previous PNP government, was successfully concluded and provided the foundation for the IMF to approve a three-year Precautionary Stand-by Agreement (PSBA) in 2016, which is in place at the time of this writing and comes to an end in June 2019.

The PSBA macroeconomic policy framework determines economic priorities. A recent review indicated that the government will meet the PSPA’s targets for the quantitative performance criteria, as well as the indicative targets. Meeting the structural benchmarks agreed to also remained a priority.

It is widely agreed that there is a need to re-orient public resources toward social protection, government security services and infrastructure development, while delivering more efficient public services. During the period under review, Jamaica’s
fiscal performance continued its positive trend, one of the government’s strategic
priorities. An independent fiscal council has been formed to direct this process, while
the Economic Programme Oversight Committee (EPOC), introduced by the PNP, is
responsible for ensuring that the country reaches agreed benchmarks for each quarter
and for reporting to the public accordingly. The JLP government also introduced the
Public Sector Transformation Oversight Committee to monitor the implementation
of the country’s public sector transformation program, which is a central demand of
the current IMF agreement. However, a longer period of assessment is necessary to
determine whether the government is able (or willing) to maintain priorities over
extended periods of time outside of a strict agreement with the IMF or whether it
would postpone them in favor of short-term political gains.

While economic priorities appear to be mostly in place, a short-term social/socioeconomic goal appears to be prevalent, which could be read as a measure
to ensure victory in the next general election. While reducing crime remains one of
the government’s major priorities, including within the context of its policy program
supported by the SBA, its hard-handed approach seems to be guided mostly by the
desire for fast success. Rather than tackling the source of the violence and murder,
there is a heavy emphasis on tackling the problem through states of emergency (i.e.,
police and military suppression) instead of targeted social intervention. Last but not
least, the JLP government has maintained its commitment to protecting the poor and
most vulnerable groups, but only to the extent that resources allow for it.

Historically, Jamaican political leaders have not had a strong record of successfully
implementing government policies. However, in the period under review, the
implementation of economic policies and strategic priorities were closely aligned
with the structural benchmarks and deliverables agreed within the IMF agreements.

A super ministry was established to be the center of policy development, facilitation
and implementation with the overall objective of ensuring a supportive environment
to facilitate the private sector and drive economic growth. The assignment of seven
portfolio ministers with cabinet rank aims to identify roadblocks (e.g., slow
procurement policies and bottlenecks in permit approvals) within and between
ministries and speed up the overall implementation process. Major policy priorities
include reducing the debt-to-GDP ratio, reducing the public sector wage bill to 9%
of GDP, initiating a public sector reform program and stimulating economic growth.
The reduction of the debt-to-GDP ratio is gradually taking place, but the policy
regarding the public sector wage bill has not been achieved due to legal contractual
arrangements that had been made with all public sector unions. The same applies to
the public sector reform program, which is only now taking root and will result in
mergers, some closures and the loss of some jobs in the public sector.

Along with the new minister of finance and planning, the JLP ministers of education,
agriculture, housing and foreign affairs/foreign trade are perceived as “doers,” visibly
seen to be trying to push forward a range of policy reforms within those sectors, with
some success. Questions of capacity arise, both for the political leadership and for some senior public servants. Incompetence in relation to management processes and styles, the prevalence of corrupt decisions and practices, and slow adaptation to and use of new information technologies all contribute to implementation deficits. The lack of meaningful and timely actions to deal with established corrupt decisions and practices in many government agencies is widely acknowledged.

Both parties, during their respective times in government, have attempted a broader governance process through the establishment of the Partnership for Jamaica, a social partnership model that includes key civil society actors, the private sector, trade unions and public sector officials. The current JLP government has shown some resistance to consistently incorporating this model of broader and more democratic governance into its own implementation practices. There is little evidence that this partnership has had any impact on policy implementation.

One important policy that the government has failed to implement is that of acting decisively against corruption. This emerged over the course of 2018 and even into 2019, causing the governing JLP to lose political capital. The prime minister was himself heavily criticized for his handling of the revelations, with their multiple ramifications, and then for taking over the energy portfolio from the disgraced minister and retaining it for many months. However, his decision to take over the ministry, along with the establishment of a so-called super ministry, is part of a centralizing tendency that is in some respects counterproductive to the promised effective government.

Different governments have demonstrated different levels of willingness to engage in policy learning, but flexibility is limited. It continues to be limited by the political culture of elected officials and by some bureaucratic traditions and practices found in the public sector that resist new policy learning and processes. Policy-based lending by some international development partners and policy reforms associated with recent and current IMF agreements are learning spaces. Technical support and policy guidance are normally provided to encourage the successful implementation of the funded programs. This process also limits the options of the government to be flexible if policies fail.

The role the Management Institute for National Development (MIND) in providing advanced education and training for public sector officials continues. It increases exposure to new learning opportunities in some areas, which could affect the body of knowledge on which policies are based. The fact that a part of the culture is affected by corrupt management practices also means that a new political administration often changes policies for reasons other than failure.

The current government’s ability to learn and be flexible is uneven, varying according to the ministry, the minister and the issue’s relationship to election priorities. Some ministers, such as the new finance minister, pay attention to the findings of research,
learn from previous experiences and try new approaches. The prime minister is himself a keen advocate of employing digital technology in the National Identification System. However, in relation to the issue of violence and murder, the “boots on the ground” approach – employed for 57 years without success – is still being adopted.

15 | Resource Efficiency

The government makes efficient use of only some of its available human, financial and organizational resources. Concerns are persistently raised about the inefficient and uneven use of government administrative personnel, and the quality of services provided by key government agencies. The executive (cabinet) is seen as too large, with too many ministries and confusing or competing overlap of tasks, which results in an inefficient use of the limited financial resources.

A public sector transformation program is finally underway. It is now a benchmark of the current IMF agreement and is expected to reduce the public sector wage bill. Vision 2030, a holistic national development plan that was designed and endorsed by both political parties, is a public reference point for complementary policy frameworks and strategies across sectors. Some government agencies that have been converted into “executive agencies” now have to submit revenue earned from fees paid by the public for services to the public “Consolidated Fund,” which is administered by the Ministry of Finance and Planning. These agencies are now also required to submit a budget with justification for funds spent in the fulfillment of their objectives. The agencies have increasingly used modern technologies to deliver improved services and record data. Agencies that have improved the efficiency of their service delivery include the National Land Agency, the National Housing Trust, the Registrar General Department and Tax Administration Jamaica.

Since the last national elections, public and press scrutiny have increasingly led to multiple allegations of politically motivated dismissals and appointments of public servants, as well as members of boards with responsibility for public agencies. The auditor general’s reports point to the inefficient and corrupt use of budgetary resources by several government agencies. The auditor general independently audits government agencies and frequently reveals corrupt practices and decisions about the use of public funds. This often also reveals breaches of government procedures and the discrepancies between actual budget expenditures and planned expenditures, but penalties are rarely enforced.

Local government reform efforts in recent years have provided local government authorities with some legal and financial autonomy. For the most part, these authorities still lack the effective and professional management skills to deal with the implications of supervision by a central political authority. This often results in the inefficient use of scarce resources and poor implementation levels. Other rather
specific inefficiencies can be seen in the postponement of the privatization of Kingston’s dump site (which presently causes serious respiratory illness for citizens in the local neighborhood) and in the preference for more costly security force repression over social intervention.

The government often fails to coordinate between conflicting objectives. This is sometimes related to the influence of special interest groups (e.g., large business interests that make contributions to campaign financing) on certain policy decisions, which undermines policy objectives in other areas. There are also conflicts between different agencies, which are either created by parliament or by provisions of the constitution, when there are differing interpretations of their respective mandates, thereby affecting policy decisions.

The Integrity Commission Act, passed on January 31, 2017, established a single Integrity Commission to investigate, detect, prevent and prosecute acts of corruption by senior public sector officials and politicians. The act merged the three different state agencies that were previously involved in this process, including the Office of the Contractor General, as they did not have the legal power to ensure that both public servants and politicians would be held accountable. One of the newly created agency’s main objectives is ensuring that the public sector procurement process delivers value to the taxpayer, is free from corruption and impropriety, and is transparent, competitive and efficient. It is not clear what the relationship will be between this new Integrity Commission (which is empowered to make recommendations for criminal proceedings against any persons involved in corruption) and the director of public prosecutions (who will independently assess the evidence presented and decide whether to prosecute). For the government to successfully resolve conflicts, which arise and may undermine policy coordination, the legal mandate of one of these would have to be changed. There have also been conflicts between the Independent Commission of Investigations (INDECOM), which investigates police misconduct, and the director of public prosecutions and the Jamaica Constabulary Force (JCF).

Other areas of incoherence include: the relationship between the projected new “city” on prime agricultural land and the fresh approach to agriculture proclaimed by the minister of agriculture; the connection between the disposal of agricultural produce and the needs of hotels; the question of whether locally manufactured products (e.g., furniture) that are encouraged by the minister of tourism are preferred by hotels over imported items; and the question of how the huge subsidy to the state-owned and -operated bus company can be reduced without some regulation of the current “unlicensed” behavior of many taxis and “coaster” buses. What is unclear is the extent to which decision-making on many of these issues is driven by short-term partisan interests (e.g., not alienating the police, with many police officers privately owning many taxis and minibuses or big business owners with an interest in getting contracts in the planned new “city” on Bernard Lodge lands).
The government is only partly willing and able to contain corruption. Auditing of state spending is carried out by a respected agency (the auditor general), with reports shared publicly in the media. However, reports rarely lead to any action taken against public servants or political leaders.

The Integrity Commission Act, which was passed in January 2017, established a single Integrity Commission to investigate, detect, prevent and prosecute acts of corruption by senior public sector officials and politicians. This act merged the three different state agencies that were previously involved in this process, including the Office of the Contractor General, as they did not have the legal power to ensure that both public servants and politicians would be held accountable for breaking the law and corruption.

The Integrity Commission is expected to tackle the high levels of corruption by monitoring and implementing the relevant laws and regulations. Criticism of the Integrity Commission and its accompanying legislation relates to a requirement that states: “Until the tabling in parliament of a report under Section 36, all matters under investigation by the director of investigation or any other person involved in such investigation shall be kept confidential, and no report or public statement shall be made by the commission or any other person in relation to the initiation or conduct of an investigation under this act.” There is a view that this lack of action prevents the public from holding public servants and politicians accountable for breaking the law and corruption when reports from the Integrity Commission’s director of investigation provide the relevant information.

It is public knowledge that reports on parliamentarians’ statutory declarations for 2014, 2015, 2016 and 2017 have been submitted to the prime minister’s office, which is required to submit all such reports to parliament for the public’s attention and discussion. However, these reports have not been submitted to parliament. There is growing concern about this lack of action, especially in the face of public cynicism about the trustworthiness of public officials and politicians and about the consequences that should follow any breaches of relevant laws and regulations.

Occasional media reports of parliamentary sessions refer to the settlement of conflict of interest matters involving parliamentarians. The majority of politicians are reported to be in breach of the requirement for the declaration of assets and conflicts of interest. A bill on elections and political party financing (including campaign funds) is now in force and is expected to be applied in the upcoming 2019 elections. A libel and defamation law was passed, but it is still seen by some as a restriction on journalists reporting on allegations of economic and political corruption. Public access to information is greatly enhanced by the Access to Information Act, which is extensively used by civil society organizations.
16 | Consensus-Building

The majority of Jamaicans defend the notion of democracy in principle but question certain practices and decisions that seem to undermine it or undermine some aspects of their ability to fully exercise their citizenship rights. The two main political parties have demonstrated a commitment to the bipartisan parliamentary model, which ensures free and peaceful elections every five years – an outcome that most Jamaicans perceive as central to democracy. However, as highlighted by the decreasing numbers of registered voters, more and more citizens are questioning how the majority of the population, mostly poor and vulnerable, can ensure that their voices and concerns are sufficiently incorporated into the decisions that are made on their behalf by the political and financial elite.

There is consensus on the general principles of the market economy, which is seen as necessary to the long-term goal of transformation. There is also little difference between the two main political parties, both of which have been instrumental in ensuring that the macroeconomic reforms associated with the IMF programs are implemented in a timely manner. There are different views on what the strategic priorities should be to develop a market economy while maintaining necessary sociopolitical safeguards such as social justice, overcoming poverty and gender inequality, and extending the freedoms of action and choice to the largest possible share of the population. There is a lack of consensus between the main political actors and the business elite on the one hand and sections of civil society and vulnerable groups on the other about how the burdens of macroeconomic adjustment should be shared. As the gap between the wealthiest and poorest sections of society widens, poor and vulnerable groups increasingly observe that the interest groups and economic actors with political power benefit more from the developing market economy.

There are no strong actors with anti-democratic interests who might be excluded or co-opted. An increasing challenge still comes from organized criminal networks, which have access to impressive human and financial resources through global and hemispheric connections. These criminal networks, which by definition do not comply with constitutional rules, could implicitly become an anti-democratic force and influence political actors at the local community level in the absence of state support and provision of essential resources. Collaboration with civil society, the private sector and faith-based groups at community and national levels has to date successfully contained any anti-democratic interests.
Jamaica’s political leadership prevents cleavage-based conflicts from escalating. The political parties have traditionally included in their ranks social groups that cut across race, class and gender divides, generally reflecting society’s divisions and composition but perpetuating leadership along the traditionally stratified lines. In recent times, political tensions along these divides and between parties have decreased, although they do still exist. The respective party leaderships have distanced themselves from conflict, especially those that result from criminal gang activity, and encouraged more civil and non-confrontational partisan rivalry as demonstrated in the most recent elections.

In Jamaica, there is a general concern that civil society participation in consultations does not sufficiently influence agenda setting or policy formulation. The Partnership for Jamaica, headed by former Prime Minister Simpson-Miller, facilitated consultations with not only the private sector, but also with representatives of all main civil society groups and trade unions. There is no evidence that this process had any influence on policy formulation, but the current prime minister has demonstrated a continued interest in this broad-based stakeholder consultation process. Discussions that are part of it are rich, but there is no evidence of their impact on national decision-making. There are also major concerns that, despite high levels of violence against women and girls, the current government has not demonstrated urgency in either finalizing the passage of a long overdue sexual harassment bill or in supporting the efforts of large numbers of women’s, civil society and human rights organizations to decriminalize an old abortion bill.

Past injustices, such as human rights violations during the military dictatorships in Chile or Argentina, have not been present in Jamaica’s more recent past. Major historical injustices in Jamaica are associated with slavery, post-emancipation, and social and political uprisings in the early 20th century. Since independence, there have been two cases where reconciliation might be an issue, but they do not represent hard cases as intended in the BTI indicator question on reconciliation.

The first is connected to the recorded discrimination and physical abuse of large numbers of Rastafarians. The public defender has published a report on the tragic events that took place in April 1963 at Coral Gardens, where eight Rastafarians were killed and two policemen died. In April 2017, Prime Minister Holness acknowledged the report as an important first step in a national effort to reflect on an unfortunate chapter in Jamaica’s history. He committed to working with the public defender and members of the Rastafari Coral Gardens Benevolent Society to locate survivors and gather important background information about them and their families. In addition to providing access to other resources, a trust fund of no less than $10 million will be established for the benefit of survivors of the Coral Gardens incident.

The second unresolved issue is more recent. It relates to the death of between 70 and 75 persons, both citizens and members of the security forces, during the violent confrontation between state security forces and organized criminal gangs in Tivoli.
Gardens, Kingston, in May 2010. A public inquiry into this confrontation finally took place (2014-2016) and reports from affected individuals were presented to a panel of commissioners headed by a retired justice. The inquiry provided a better understanding of the events, publicly identified some of the main offenders and made recommendations for appropriate follow-up actions. However, it was not a court of law and could not pronounce the guilt (or otherwise) of any individuals. The inquiry recommended that the government makes an apology and the current prime minister did just that. Recompense for loss of life and material damage was also made on the basis of a careful assessment by state officials and the Office of the Public Defender. However, prosecution of the offending security officers, which is in the hands of the Independent Commission of Enquiry, has not been possible because most of the forensic data on which it would rest was lost or destroyed by the police. The police failed to collect evidence expeditiously, which drew “adverse comments” from the Commission of Enquiry against specific police officers.

17 | International Cooperation

Jamaica’s political leadership effectively uses international assistance as part of its own development agenda but has some deficits in accommodating this assistance consistently into its own long-term strategy. These deficits relate to, above all, upholding national labor laws, effectively protecting the environment, and creating an attractive environment for both local and foreign investors.

The country’s international cooperation with China is a case in point. Over the last decade, China has loaned Jamaica funds that account for about 4% of the national debt and have been invested mainly in major infrastructure projects throughout the country. Jamaican construction companies have reported being squeezed out of the domestic market by Chinese firms for three main reasons: Chinese firms are much larger, which affords them economies of scale; access to cheap labor and investment capital from China; and tax waivers on much of their imports. There are genuine concerns about the failure of Chinese firms to abide by Jamaica’s labor laws and about whether or not there is lax implementation of environmental regulation for projects administered by Chinese companies. The longer-term damage both to labor market practices and to sensitive parts of Jamaica’s environment are a concern – the nature of such public-private partnership agreements does not allow for effective public scrutiny or ongoing review of these infrastructure projects.

Much international assistance from funders and development partners is provided through projects (although sometimes programs) with finite – and sometimes too short – timelines for effective implementation and conclusion. Given the existing implementation weaknesses, devising a strategy for ensuring the policy coherence of such projects on a long-term basis is challenging. Vision 2030 is the roadmap for the country’s long-term national development plan with clearly stated goals, objectives,
sectoral strategies and outcomes. It is now more frequently used as the overall policy framework. However, there is often a disconnect between strategies and the policy prescriptions driven by IMF agreements in the short to medium term, although this support as such is used effectively.

The government mostly acts as a credible and reliable partner. In relation to macroeconomic reforms and stabilization, Jamaica has overcome its “trust deficit” and now has a working relationship with the IMF. The successful completion of the IMF agreement, and the continued adherence by the current government to fiscal consolidation, debt reduction and maintenance of economic stability, resulted in the country getting a three-year IMF Precautionary Stand-by Agreement in 2016.

Corruption causes a massive loss of financial resources and of confidence in the bureaucracy, and it is also related to high levels of violent crime. International development partners consider these issues as powerful constraints on economic growth and also note the failure of governments (past and present) to aggressively take on and reduce corruption. Statements from several large foreign investors indicate that they are also concerned.

Jamaica has a well-established presence in regional and international development cooperation efforts. However, the Jamaican government has not always been compliant in carrying out its obligations under certain international covenants regarding human rights. Examples include obligations related to the care and protection of children in state custody, the care and support of female survivors of rape and incest and supporting members of the LGBT community in exercising their full citizenship rights.

Jamaica’s invitation to attend Group of Seven summits in Canada and Argentina during the period under review is a sign of the country’s international credibility. However, one of the current administration’s stances that shocked friendly observers outside and inside Jamaica was its abstention from a United Nations General Assembly vote calling on U.S. President Donald Trump to reverse his endorsement of Jerusalem as Israel’s capital. This was accompanied by the Jamaican prime minister’s visit to Israel and efforts to obtain Israeli assistance in some areas.

Jamaica’s political leadership actively develops cooperative regional and international relationships. A large proportion of these relationships (above all concerning trade agreements) involve CARICOM or other regional initiatives (e.g., the Caribbean Basin Initiative and the EU-CARIFORUM Agreement). The current government has been more assertive than its predecessor in its role in the CARICOM regional integration process, related to Prime Minister Holness’s role as chairperson of CARICOM for a stipulated six-month period. Jamaica has also maintained diverse bilateral relations with countries in the Americas, such as the United States (its most important trading partner), Canada and other Caribbean and some Latin American countries (e.g., Cuba, Dominican Republic and Venezuela). In 2018, relations with
Venezuela were severely affected by the Trump administration’s decision to apply strict sanctions against the Maduro government. Such sanctions have implications for the Jamaica-Venezuela relationship under the Petrocaribe agreement. Collaboration agreements with Cuba in the areas of trade, tourism, health, climate change and disaster mitigation, culture, and education remain in place.

Relations with the United States have generally been close, but during the Trump era, they have become more tense. They have required frequent dialog to ensure that countries engaged with countries that Trump has imposed penalties on did not likewise suffer. One of those situations arose in relation to bauxite, as this mineral has been the object of substantial Russian investment in Jamaica.

Another has been Venezuela’s investment in an oil refining and distributing company in Jamaica. Jamaica was quite ambivalent toward Venezuela (which had previously provided it with significant aid) during the period under review. On the one hand, Jamaica was represented at the ceremony marking the start of President Maduro’s current term in office; however, on the other hand, Jamaica signed a resolution brought to the Organization of American States (OAS) by North American countries condemning Maduro as not being the legitimate president of Venezuela.
Strategic Outlook

Jamaica is a Small Island Developing State committed to the development of a market economy and democratization. Its ability to accomplish these goals is challenged by its limited resource base, divisive political culture, high levels of social stratification and exclusion, corruption, vulnerability to natural disasters, and small open economy. Jamaica’s economic development is taking place in an increasingly globalized environment in which information and communication technologies are advancing rapidly, and most tariff and non-tariff barriers are gradually being removed from the global trading system.

Jamaica has maintained a stable political system and a generally democratic environment. It has made some progress toward the development of a market economy. The main challenge involves achieving both sustained economic growth and social equity, including reduced poverty, unemployment, violent crime and corruption. In the short term, strict fiscal discipline and aggressive debt reduction are required by the current IMF Precautionary Stand-by Arrangement. The current government will have to lead a process of social and political consensus-building at a time when there is a significant “participation and confidence deficit” in the overall governance process. An improved process must enable diverse social groups to meaningfully participate in a dialog to guide the country toward economic growth and social equity. Strong leadership and political will are required to demonstrate the importance of more equitable sharing of the burdens of fiscal adjustments and to show that, regardless of the party in power, the policy options are severely limited.

Even limited success in achieving economic development and social equity will require efficient management of the reform process. This will ensure that there is policy coherence, that there is effective coordination of government agency activities and that the government tackles the corrupt relations between big business, political elites and organized crime. More support needs to be given to rural and urban small- and medium-sized enterprises to help them develop sustainable businesses, contribute to job creation with livable wages, reduce pervasive intergenerational poverty, contribute to overall economic growth, and meet gender equality standards and climate change requirements. The educational and training system must ensure the certification of a larger proportion of young Jamaicans, enabling them to take advantage of the opportunities presented by new growth centers in the national and global economies.

Initiatives that have contributed to a moderate reduction of violent crime rates have to be sustained and strengthened while also respecting the human rights of citizens who live in the most affected communities. While retaining such suppressive measures as are required, the government must recognize that these alone will not do away with violence and murder. Major social interventions are essential – and they should target a combination of issues, particularly the family life in which male children are abused through excessive beatings, the deprivation experienced by high-risk youth and overall community deprivation. Determined steps need to be taken and maintained to reduce the influence of organized crime on political and business decisions. To this end, the police
force must be thoroughly reformed. The recently established Integrity Commission needs to be fully resourced and supported to fulfill its mandate to investigate, detect, prevent and prosecute acts of corruption in Jamaica by senior public sector officials and politicians.

The government must maintain a united leadership, which – by taking action – demonstrates a strong commitment to reducing corruption and improving transparency in government affairs. The ruling party’s strong inclination toward acts of brazen partisanship in byelections, especially if accompanied by vote buying, must be brought under control. If it is not, the opposition will be tempted to follow suit. This would challenge the government’s ability to successfully lead the required consensus-building process, which could undermine fiscal discipline and debt management, both critical to ensuring the development of a market economy with economic growth and social equity. The current opposition party, the People’s National Party (PNP), has not demonstrated that it possesses a united leadership with the skills, capacity and commitment to overcome these challenges.
Jamaica

Types of criminalisation

- Criminalises sex between men

Commonwealth member state

Enforcement

2018

According to the US Department of State Human Rights Report on Jamaica, “the government enforced the portion of the law that criminalizes anal sex, or ‘buggery’, only in cases of sexual assault and child molestation. Officials did not prosecute consensual same-sex sexual conduct between men.”

2017

The US Department of State Human Rights Report on Jamaica noted that the laws that prohibit acts of gross indecency and buggery were not used during the year to prosecute consensual same-sex sexual conduct between men. These laws were only used in cases of sexual assault and child molestation.

2013

In February, two men caught naked in their car were arrested. Each pleaded guilty and was convicted of gross indecency. The men were sentenced to a fine of $250,000 each or imprisonment for six months.

Statements by Public Figures

2018
In April, Prime Minister Andrew Holness said he would not object to a gay person serving in his cabinet, in response to a direct question on whether he would ban a gay person from serving under him.

2015

In August, the Mayor of Kingston, Angela Brown-Burke, spoke at Jamaica’s first pride event. In an interview before the event she said: “I come from the point of view that I, as Mayor, have a responsibility to all the individuals of Kingston.” Jamaican Justice Minister, Mark Golding, also endorsed the event in a statement: “All Jamaicans, regardless of race, class, creed or indeed sexual orientation are citizens deserving of being treated with civility and human kindness.”

All Jamaicans, regardless of race, class, creed or indeed sexual orientation are citizens deserving of being treated with civility and human kindness.

Mark Golding, Justice Minister

In July, Minister for Education, Ronald Thwaites, announced the launch of a new manual aimed at reducing homophobic bullying in schools: “Bullying not only affects this society (LGBT), as we have heard reports of issues with regards to older students interfering with younger students, issues of gender also arise.”

An Anglican priest in Kingston, the Rev. Sean Major-Campbell, wrote an article in Jamaican paper, The Gleaner, in June in which he stated “Sexuality is a justice issue. Sexuality is a human-rights issue. Gender concerns are at the heart of how people live and move and have their being.” In December 2014, Pink News reported that Rev. Major-Campbell had received a “backlash from his congregation” after washing the feet of two lesbians to show respect for the LGBT community.

The Gleaner published an editorial supporting the U.S. Supreme Court’s marriage equality ruling and calling on Jamaica to take a similar course. A year earlier, in another editorial, The Gleaner stated that “[the prohibition on same-sex unions is] an assault on the principle of equality of people, people’s right to forge relationships, and their right to equal protection under the law.”

In its national report submitted for the UPR second cycle in April, the Jamaican delegation stated that the Jamaica Constabulary Force’s Diversity Policy “guides members of the police force in their professional dealings with persons of particular groups, including LGBTs.”

During a visit to Jamaica in April, Barack Obama took the opportunity of a town hall meeting at the University of the West Indies to recognise LGBT advocates from the country including Angeline Jackson, executive director for Quality of Citizenship Jamaica. “She cares about her Jamaica, and making it a place where everybody, no matter their color, or their class, or their sexual orientation, can live in equality and opportunity.”

2014

Then Leader of the Opposition in Jamaica, Andrew Holness, said in May that he would have no problem working with gay people in his cabinet. This stands in contrast to comments he made on 25 April, where he stated his opposition to repealing the country's sodomy laws: “My sentiments reflect the sentiments of the country.”

In April, Jamaica’s Minister of Health, Dr. Fenton Ferguson, spoke on the need to change social attitudes in order to fight HIV and AIDS within the country: “Strong cultural and religious beliefs have led to the isolation of some high-risk groups such as men who have sex with men and sex workers. It will not be easy to tackle these deeply embedded belief systems but we have to succeed [as] failure is not an option.”

2013

According to the Minister of Sport in Jamaica, gay athletes would not be discriminated against: “Sport is a right and a privilege for all Jamaicans right across the board... We don’t ask as a prerequisite what is your sexual preference, as long as you qualify and apply yourself.”

In September, Jamaican Assistant Police Commissioner, Devon Watkis, denied that a recent escalation of violence towards LGBT victims is specifically related to their sexuality: “I have no specific evidence outside of those isolated
2012

The popular Jamaican reggae musician, Diane King came out as a lesbian in June. In the message, she wrote “honestly speaking, I have always been afraid to admit it openly, because of the unknown, of what it may cause negatively, to me, my career, my family and loved one.”

In relation to a constitutional challenge of the laws criminalising homosexuality where a number of Christian groups have successfully applied as interested parties, a small minority of religious figures have called for greater tolerance of homosexuals. One such leading theologian, Rev. Dr Clinton Chisholm, has reminded his countrymen that Jamaica is not a theocracy.

2011

Portia Simpson Miller, when standing for election as Prime Minister in December 2011, declared that “no one should be discriminated against because of their sexual orientation” and that she would allow a conscience vote to repeal laws criminalising homosexuality.

Persecution and Discrimination

2020

On 7 January, Jason Williams, a 21 year old gender non-conforming Jamaican was hauled off a bus by the driver, conductor and fellow passengers after the driver said he didn’t want a “battyman” on his bus. Jason was then assaulted and left bleeding on the pavement, and was subsequently treated at Kingston Public Hospital for injuries to his lip, eye and back.

2017

The NGO J-FLAG reported that it received 19 reports of physical assault, five mob attacks, six cases in which police failed to respond to adequately to reports and one case of employment discrimination towards LGBT individuals.

2015

In September, a gay man was rescued by police after an angry mob cornered him inside a bank parking lot in Half Way Tree in Jamaica. He was reportedly attacked by a mob while he was walking with three friends in the area.

Over 50 people attended the opening ceremony of Jamaica’s first pride festival, organised by J-FLAG, in August.

In July, the Jamaican Court of Appeal began hearing an appeal filed by activist Maurice Tomlinson, challenging national television stations that refused to air a “tolerance ad” promoting the human rights of LGBT people.

In response to recommendations from Argentina and Slovenia during its second UPR cycle, Jamaica stated that it “considers it is committed to taking steps to end prejudice and stigmatisation affecting all Jamaicans, including [LGBTI] persons.”

Homeless gay teens thrown out by their families were reportedly chased out of a shelter by a mob in Kingston in April. The mob attacked them in a popular shopping venue in Kingston in order to “cleanse” the premises.

A YouTube video in March appeared to show the public execution of a young man stoned in the street by a crowd chanting anti-gay slurs.

In the six months to November 2014, The Jamaica Observer published a number of articles described by critics as overtly anti-gay. One story was headlined ‘The Pushback Against Gays Has Begun’; another “Homo Thugs!” A third, unsourced story, alleged that a group of gay men had assaulted a male jogger.
A Human Rights Watch report in October found that LGBT people in Jamaica face “intolerable levels of violence and cannot rely on the police” for protection. The report documented 56 cases of violence against LGBT Jamaicans, and found evidence of LGBT people being refused housing or employment on the basis of their sexuality.

The US Department of State Human Rights Report on Jamaica found that during the year: “homophobia was widespread in the country, perpetuated by the country’s dancehall culture through the songs and the behavior of some musicians. Lesbian, gay, bisexual, and transgender (LGBT) persons faced violence, harassment, and discrimination.” The report further noted instances of “serious human rights abuses”, including assault with deadly weapons, “corrective rape” of women accused of being lesbians, arbitrary detention, mob attacks, stabbings, harassment of gay and lesbian patients by hospital and prison staff, and targeted shootings of such persons. Within the prison system there were reports of violence against gay inmates, perpetrated by the wardens and by other inmates. Male prisoners identified as gay were held in a separate facility apparently for their own protection.

Human Rights Watch has described Jamaica as one of the most homophobic countries in the world. This was endorsed and fostered by politicians at the highest levels. For example in 2009, then Prime Minister Bruce Golding publicly stated that “[w]e are not going to yield to the pressure, whether that pressure comes from individual organisations, individuals, whether that pressure comes from foreign governments or groups of countries, to liberalise the laws as it relates to buggery.”

2013

In August, a 41-year-old openly gay hospitality worker, Dean Moriah, was stabbed and had his home torched while he was still inside in an incident suspected to be a hate crime.

Also in August, two gay men from Old Harbour were forced to flee the scene of a car accident after witnesses realised the men were gay and pursued them. They were forced to take refuge in the local police station.

Five gay men were subject to attacks from fellow community members in August 2013. They were forced to take refuge in a dwelling until police came to disperse the crowds.

In the same month, a cross-dresser in St Catherine was attacked by a mob.

Another two separate incidents occurred on 1 August. A police officer, presumed to be gay, was mobbed in downtown Kingston. Fellow police officers were forced to disperse the crowds by firing into the air and using teargas. Two men from the parish of St Catherine were set upon by mobs.

In July, Dwayne Long Jones, a 17-year-old, was stabbed and shot to death and thrown into bushes during a public street-dance near Montego Bay. The attack was apparently prompted by the fact that he wore gender non-conforming attire and was dancing with someone of the same sex.

Legislative News

2019

In October, a Joint Select Committee of Parliament decided not to recommend the criminalisation of non-consensual anal sex in a manner that would render it equivalent to the offence of ‘rape’.

“Any amendment to that effect could be construed as an implied repeal of the offence of ‘buggery’. Accordingly, Mr. Speaker, it was determined that the Committee did not have the power to effect that amendment or to recommend it, and the matter should properly be considered by Parliament.”

Minister of Justice, Delroy Chuck
In November, the Court of Appeal ruled against the Public Defender being allowed to join a case involving the constitutional challenge to Jamaica’s anti-sodomy law. The Public Defender argued that her office was created for the purpose of protecting and enforcing the rights of citizens. However, Justice Kissock Laing turned down the application stating that the Public Defender was seeking to insert herself into the centre of a nationally divisive issue and could lose the confidence of many Jamaicans if allowed to join the case.

In October, the Inter American Commission on Human Rights (IACHR) accepted the admissibility of a Petition brought by Gareth Henry and Simone Edwards challenging Jamaica’s anti-buggery laws. The IACHR noted that “if proved, the alleged facts relating to threats to life, personal integrity, interference with private and family life, obstacles to the right of residence and movement, unequal treatment, lack of access to justice and judicial protection, and interference in access to health care, could establish possible violations of [...] the American Convention [on Human Rights]”.

In May, during Jamaica’s second UPR cycle, Argentina, Germany, the USA and Slovenia recommended Jamaica decriminalise sexual activity between consenting adults of the same sex, which Jamaica noted. In response, Jamaica’s Minister of Justice stated that: “The Constitution of Jamaica guarantees basic human rights to all Jamaicans. There is no discrimination based on gender or sexual orientation. No law criminalizes orientation. No credible case of arbitrary detention or harassment of persons on the basis of sexual orientation has been presented.”

In July, an official at J-FLAG, a prominent LGBT NGO, withdrew the petition he had filed with the Supreme Court in 2013 challenging Jamaica’s anti-buggery law. In dropping the legal challenge, the petitioner cited threats against himself and his family.

In June, an estimated 25,000 people attended a rally in Kingston in support of Jamaica’s anti-gay law.

In the same month, the country noted it could not join the consensus on the approval of an OAS resolution on sexual orientation, considering that: “the terminology of gender expression, as proposed, is ambiguous and has the potential to impose one value system over another. Furthermore, this term and other new terminologies used in the text, have not gained international acceptance nor are they defined in Jamaica’s domestic law.”

The Jamaican Sexual Offences Act was set to undergo review in 2014. The Act contains a provision which calls for review every five years. According to a report in the Jamaican Observer, Justice Minister Mark Golding said he “would not be surprised if the contending parties use the opportunity, provided by the review, to make their cases for and against repealing the buggery legislation.”

A new Charter of Fundamental Rights was passed to expand the Bill of Rights but included a savings clause, effectively precluding any constitutional challenge of laws criminalising homosexuality.

At its first UPR cycle, the government stressed it will take all necessary steps to avoid homophobic violence, but rejected the recommendations to repeal all legal provisions which may discriminate against or criminalise people based on their sexual orientation or gender identity.

Footnotes

1. Offences Against the Person Act 1864, S. 76 Unnatural Offences
2. Offences Against the Person Act 1864, S. 77 Attempted Buggery or Indecent Assault

“Whosoever shall attempt to commit the said abominable crime, or shall be guilty of my assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.” Full text.

3. Offences Against the Person Act 1864, S. 79 Outrages on Decency

“Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanor, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding two years, with or without hard labour.” Full text.

4. National Statement to the UN Human Rights Council

UNHRC, National Statement to the 2nd Cycle of the UPR by Senator The Honourable Mark Golding, Minister Of Justice Of Jamaica, 13 May 2015
TAB 13
STATE-SPONSORED HOMOPHOBIA

2019
13th Edition

LUCAS RAMÓN MENDOS
ilga.org
COPYRIGHT

ILGA World owns the copyright to this publication. It is provided free for your use on the proviso that you cite both the author and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World) using the suggested citation below.

Sections written by external contributors, designations employed in this publication and the presentation of material therein contain each author’s personal perspectives. They do not necessarily reflect ILGA World’s official position or the position of its members.

Suggested citation:


<table>
<thead>
<tr>
<th>Author</th>
<th>Lucas Ramón Mendos</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main Research Assistants</td>
<td>Daryl Yang</td>
</tr>
<tr>
<td></td>
<td>Lucía Belén Araque</td>
</tr>
<tr>
<td>Research Assistants</td>
<td>David J. Godfrey</td>
</tr>
<tr>
<td></td>
<td>Martina Olivera</td>
</tr>
<tr>
<td></td>
<td>Alejandro Hilarión Moncada</td>
</tr>
<tr>
<td></td>
<td>Ezequiel Steuermann</td>
</tr>
<tr>
<td></td>
<td>Nahuel Grayani</td>
</tr>
<tr>
<td></td>
<td>Estanislao Segurola</td>
</tr>
<tr>
<td>Footnote Editor</td>
<td>Juan Francisco Mareque</td>
</tr>
<tr>
<td>Project Assistant</td>
<td>Felipe Da Silva Oliveira</td>
</tr>
<tr>
<td>Proofreader</td>
<td>Aengus Carroll</td>
</tr>
</tbody>
</table>
STATE-SPONSORED HOMOPHOBIA

2019
13th Edition

LUCAS RAMÓN MENDOS
ilga.org
# Table of Contents

Co-Secretaries General\' Foreword.  
*By Ruth Baldacchino and Helen Kennedy.*  
11

Author’s Preface.  
*By Lucas Ramón Mendos.*  
13

List of contributors to this edition.  
17

Acknowledgements.  
19

## 1. INTRODUCTION

1.1. Denigration, Distraction and Detraction: Forging Ahead, Even in Crisis.  
*By Cynthia Rothschild.*  
23

1.2. The Rights of LGBTQ+ People and Referendums: An Irreconcilable Marriage.  
*By Elena Brodeală and Vlad Levente Viski.*  
33

## 2. INTERNATIONAL HUMAN RIGHTS LAW

*By Mauro Cabral Grinspan and Julia Ehrt.*  
39

*By Rafael Carrano Lelis and Zhan Chiam.*  
42

*By Diana Carolina Prado Mosquera.*  
47

2.4. UN Treaty Bodies; SOGIESC in the UN Treaty Bodies’ Individual Cases: Analysis of Four Decades of Jurisprudence.  
*By Kseniya Kirichenko.*  
50

2.5. International Labour Organisation: Progress Towards Ending Discrimination Based on SOGI in the World of Work.  
*By Gurchaten Sandhu.*  
56

2.6. UNESCO: UNESCO and the 2030 Agenda for Education Inclusive of Young LGBTI People.  
*By the UNESCO Team.*  
58

### Regional Human Rights Bodies

*By Lucía Belén Araque.*  
63

*By Luíza Drummond Veadoo.*  
66

2.9. Organisation of American States: The Impact of the LBBTQTI Coalition of Latin America and the Caribbean at the OAS.  
*By Marcelo Ernesto Ferreyra.*  
68
3. GLOBAL PERSPECTIVES


By Naoufal Bouzid and Khadija Rouggany.

3.1.2. A brief overview of East Africa.
By Eric Guitari.

3.1.3. The Situation of the LGBT Community in West Africa.
By Ababacar Sadikh Ndoye and Emma Onekékou.

3.1.4. An Overview of Some Central African countries.
By Julie Makuala Di Baku and Jean Paul Onama.

3.1.5. Small Victories Add Up in Southern Africa.
The author wishes to remain anonymous.

3.1.6. Recent SOGI developments in Angola and an overview on other African Lusophone Countries.
By Rui Garrido.

3.2. Latin America and the Caribbean: Before the Challenge of a New Time.
Coordinated by Luz Elena Aranda Arroyo, Dario Arias and Pedro Paradiso Sottil.

3.2.1. Advances in Equality, Setbacks to Overcome: LGBTI agenda in the Southern Cone.
By Alba Rueda.

3.2.2. "Boys Wear Blue and Girls Wear Pink": The LGBTI Agenda in the Face of an Extreme Right-Wing Offensive in Brazil.
By Bruna Andrade Ireneu.

3.2.3. The Andean Region, a Territory in Alert Marked by its Political Uncertainty and the Advance of Anti-Rights Groups.
By David Aruquipa Perez.

3.2.4. Homophobia in Mesoamerica.
By Gloria Careaga Perez.

3.2.5. The Situation in the Spanish-Speaking and French-Speaking Caribbean.
By Dario Arias, Manuel Vázquez Seijido and Francisco Rodríguez Cruz.

3.2.6. A Slow, but Significant Journey – Recent Developments in the Caribbean Region.
By Westmin R.A. James and Luciën D. Govaard.

3.3. North America

3.3.1. The Fight for Rights in North America: Progress and Pushback in the Shadow of the Trump Administration.
By David J. Godfrey and Kimahli Powell.
3.4. **Asia: Lights and Shadows in a Vast Region.**

*Introduction by Daryl Yang.*

3.4.1. A mixed report card for South East Asia.
*By Lloyd Nicholas Vergara and Zach Zhen He Tan.*

3.4.2. Challenges and Opportunities in South Korea, Taiwan, Hong Kong, and Japan
*By Minwoo Jung.*

3.4.3. The People’s Republic of China, Macao and Mongolia.
*By Ripley Wang.*

*By Zhanar Sekerbayeva and Syinat Sultanalieva.*

3.4.5. Stories of Triumph and Resilience from South Asia.
*By Shakhayat Hossain Rajeel.*

3.4.6. In the Persian Gulf, Four States Still Impose the Death Penalty.
*By Nazeema Saeed.*

3.4.7. LGBTI Activists Fight Denial and Erasure in the Middle East.
The author wishes to remain anonymous.

3.4.8. **Inside the Middle Eastern Closet.**
*By Samar Shalhoub.*

*By Arvind Narain.*

3.5. **Europe**

3.5.1. Europe – Increased Visibility, Populist Backlash and Multiple Divisions.
*By Manon Beury and Yury Yoursky.*

3.5.2. Banishing devils - Chechen authorities against laws of life?
*By Ekaterina Petrova.*

3.6. **Oceania**

*By ILGA Oceania.*

4. **GLOBAL OVERVIEW**

4.1. **Criminalisation and Restriction**

*By Daryl Yang.*

4.1.2. Consensual Same-Sex Sexual Acts: LEGAL

4.1.3. Consensual Same-Sex Sexual Acts: ILLEGAL

4.1.4. Legal Barriers to Freedom of Expression on SOGIESC issues
The Censorship “Propaganda” Legislation in Russia
*By Alexander Kondakov.*

4.1.5. Legal Barriers to the Registration or Operation of Sexual Orientation-Related CSOs

4.2. **Protection**

4.2.1. Constitutional Protection against Discrimination based on Sexual Orientation
4.2.2. Broad Protections Against Discrimination Based on Sexual Orientation 235
4.2.3. Protection Against Discrimination Based on Sexual Orientation in Employment 245
4.2.4. Criminal Liability for Offenses Committed on the Basis of Sexual Orientation
   Prohibition of Incitement to Hatred, Violence or Discrimination based on Sexual Orientation 257
4.2.6. Bans against "Conversion Therapy" 263

4.3. Recognition
4.3.1. Same-Sex Marriage 277
4.3.2. Partnership Recognition for Same-Sex Couples 283
4.3.3. Joint Adoption by Same-Sex Couples 289
4.3.4. Second Parent Adoption by Same-Sex Couples 295

5. CRIMINALISING STATES UPDATES

5.1. Africa

<table>
<thead>
<tr>
<th>Country</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>305</td>
</tr>
<tr>
<td>Botswana</td>
<td>307</td>
</tr>
<tr>
<td>Burundi</td>
<td>310</td>
</tr>
<tr>
<td>Cameroon</td>
<td>312</td>
</tr>
<tr>
<td>Mauritania</td>
<td>347</td>
</tr>
<tr>
<td>Mauritius</td>
<td>349</td>
</tr>
<tr>
<td>Morocco</td>
<td>352</td>
</tr>
<tr>
<td>Namibia</td>
<td>355</td>
</tr>
<tr>
<td>Nigeria</td>
<td>358</td>
</tr>
<tr>
<td>Senegal</td>
<td>363</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>365</td>
</tr>
<tr>
<td>Somalia</td>
<td>367</td>
</tr>
<tr>
<td>South Sudan</td>
<td>369</td>
</tr>
<tr>
<td>Sudan</td>
<td>371</td>
</tr>
<tr>
<td>Tanzania</td>
<td>373</td>
</tr>
<tr>
<td>Togo</td>
<td>378</td>
</tr>
<tr>
<td>Tunisia</td>
<td>380</td>
</tr>
<tr>
<td>Uganda</td>
<td>383</td>
</tr>
<tr>
<td>Zambia</td>
<td>388</td>
</tr>
<tr>
<td>Zimbabwe</td>
<td>391</td>
</tr>
<tr>
<td>Antigua and Barbuda</td>
<td>397</td>
</tr>
<tr>
<td>Barbados</td>
<td>400</td>
</tr>
<tr>
<td>Saint Kitts and Nevis</td>
<td>418</td>
</tr>
<tr>
<td>Saint Lucia</td>
<td>420</td>
</tr>
<tr>
<td>Saint Vincent and the Grenadines</td>
<td>423</td>
</tr>
</tbody>
</table>

Local Perspective by Joachim Ntetmen.

5.2. The Caribbean

<table>
<thead>
<tr>
<th>Country</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antigua and Barbuda</td>
<td>397</td>
</tr>
<tr>
<td>Barbados</td>
<td>400</td>
</tr>
<tr>
<td>Saint Kitts and Nevis</td>
<td>402</td>
</tr>
<tr>
<td>Dominica</td>
<td>404</td>
</tr>
<tr>
<td>Saint Lucia</td>
<td>420</td>
</tr>
<tr>
<td>Grenada</td>
<td>407</td>
</tr>
<tr>
<td>Saint Vincent and the Grenadines</td>
<td>423</td>
</tr>
</tbody>
</table>

Local Perspective by Ro-Ann Mohammed.
5.3. **Asia**

<table>
<thead>
<tr>
<th>Country</th>
<th>Page 1</th>
<th>Page 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afghanistan</td>
<td>429</td>
<td>Pakistan 461</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>432</td>
<td>Qatar 465</td>
</tr>
<tr>
<td>Bhutan</td>
<td>435</td>
<td>Saudi Arabia 467</td>
</tr>
<tr>
<td>Brunei</td>
<td>437</td>
<td>Singapore 469</td>
</tr>
<tr>
<td>Iran</td>
<td>439</td>
<td>Sri Lanka 472</td>
</tr>
<tr>
<td>Kuwait</td>
<td>444</td>
<td>Syria 475</td>
</tr>
<tr>
<td>Lebanon</td>
<td>447</td>
<td>Turkmenistan 477</td>
</tr>
<tr>
<td>Malaysia</td>
<td>450</td>
<td>United Arab Emirates 479</td>
</tr>
<tr>
<td>Maldives</td>
<td>454</td>
<td>Uzbekistan 482</td>
</tr>
<tr>
<td>Myanmar</td>
<td>457</td>
<td>Local Perspective by anonymous activist 484</td>
</tr>
<tr>
<td>Oman</td>
<td>459</td>
<td>Yemen 485</td>
</tr>
</tbody>
</table>

5.3.1. **Asia: Non-UN Member States and Subnational Entities**

<table>
<thead>
<tr>
<th>Country</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certain provinces in Indonesia</td>
<td>489</td>
</tr>
<tr>
<td>Palestine (Gaza)</td>
<td>493</td>
</tr>
</tbody>
</table>

5.4. **Oceania**

<table>
<thead>
<tr>
<th>Country</th>
<th>Page 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kiribati</td>
<td>497</td>
</tr>
<tr>
<td>Solomon Islands</td>
<td>504</td>
</tr>
</tbody>
</table>

5.4.1. **Oceania: Non-UN Member States**

<table>
<thead>
<tr>
<th>Country</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cook Islands (New Zealand)</td>
<td>513</td>
</tr>
</tbody>
</table>

5.5. **De facto criminalisation**

<table>
<thead>
<tr>
<th>Country</th>
<th>Page 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Egypt</td>
<td>517</td>
</tr>
<tr>
<td>Iraq</td>
<td>523</td>
</tr>
</tbody>
</table>

6. **THE WORLD AT A GLANCE** (overview chart) 527
## Provisions in force

- **Offences Against the Person Act (1864).**

  **Buggery**

  **Article 76. Unnatural Crime.**

  Whosoever shall be convicted of the abominable crime of buggery committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.

  **Attempted Buggery**

  **Article 77. Attempt.**

  Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.

  **Proof of carnal knowledge**

  **Article 78. Proof of Carnal Knowledge**

  Whenever upon the trial of any offence punishable under this Act, it may be necessary to prove carnal knowledge, it shall not be necessary to prove the actual emission of seed in order to constitute a carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.

  **Gross indecency**

  **Article 79. Outrages on Decency.**

  Any male person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding 2 years, with or without hard labour.

In 2009, Jamaica introduced a new **Sexual Offences Act** which establishes the rules for the 'Sex Offender Register and Sex Offender Registry' at Sections 29 - 35, operative as of October 2011). Under this law, anyone convicted of a “specified offence” must be registered as a “sex offender” and comply with specific obligations. Articles 76, 77 and 79 of the Offences Against the Person Act (cited above) fall under the category of “specified offences” as per Article 2 of the law’s First Schedule.

## Human rights situation

In August 2017, Jamaican fashion designer, reality TV star and gay LGBTI activist Dexter Pottinger was found stabbed to death in his Kingston home.  

A neighbour reported hearing “Help!” and “Murder!” screams from the victim’s house, but did not immediately notify the police.  

1 "Dexter Pottinger dead: Gay activist and face of Jamaica Pride found murdered in his home", Independent, 2 September 2017.  

2 "To Jamaica’s murdered gay icon Dexter Pottinger #RestInPower", Dazed, 6 September 2017.
crime. A suspect was allegedly arrested and charged a few days after the episode.

The repeal or retention of buggery laws in the country has been a divisive topic within the Christian Church. The Council of Churches reportedly held a special sitting in July 2017 to arrive at a uniformed position after the Head of the Anglican Church in Jamaica and the Cayman Islands and the President of the Jamaica Theological Seminary supported the decriminalisation of same-sex consensual acts among adults and the prohibition of marital rape.

In October, "Intimate Conviction", a two day conference examining the Christian Church and anti-sodomy legislation across the Commonwealth was held in Kingston. The Jamaica Evangelical Alliance and the Seventh-day Adventist Church in Jamaica allegedly distanced themselves from the conference. A conservative Christian group has reportedly accused Jamaican judges of importing alien principles when deciding the cases challenging buggery laws and faith-based groups have allegedly been lobbying for anti-LGBTI legislation.

In January 2018, an American pastor known for opposing women’s rights and for having repeatedly called for LGBT people to be executed (and who had previously been deported from, and denied entrance to, numerous countries) was banned from entering Jamaica (as requested by civil society through an online petition signed by almost 39,000 people and a letter to the government). The decision was based on the Chief Immigration Officer's assertion that his statements were not conducive to the country’s climate at that moment. The pastor was reported reacting to the news by wishing the death of the activist that launched the petition.

A Human Rights First report denounced the link between the criminalisation of consensual same-sex activity among adults and dancehall music, and the role that it plays in perpetuating hate and violence towards LGBTI people in the country. The media seems to have also contributed to the anti-LGBTI sentiment by constantly reporting alleged "gangs" of violent homosexual criminals. However, during the last couple of years, writing, films, and music aimed at visibilising LGBT lives have proliferated and some local news portals, like The Gleaner, have shown support of the rights of LGBTI people.

After successful Pride celebrations in 2017, Montego Bay Pride march was held again in October 2018 and its organiser, Maurice Tomlinson, claimed that even though the event was incident-free, there was fear among participants.

---

3 "Update: Suspect in Dexter Pottinger murder to be charged", Jamaica Observer, 2 September 2017.
10 "Buggery Backlash - Church Groups Distance Themselves From Conference", The Gleaner, 11 October 2017.
13 "Petition urges Jamaica to ban anti-LGBT U.S. pastor", Washington Blade, 2 January 2018; "Jamaicans have 48 hours to stop ‘stone the gays’ preacher", Gay Star News, 26 January 2018.
15 "LGBTIs get hate preacher banned from Jamaica", Gay Star News, 30 January 2018.
18 "Gay, straight gang war leads to murders - May Pen mayor wants to reduce crime", The Star, 20 January 2017; "Irate homosexuals object to gully search", Jamaica Observer, 2 February 2018.
22 "We Are All Jamaicans! - Transgender Women Plead For Tolerance", The Gleaner, 18 March 2018.
25 "LGBT March With Pride In Spite Of Fear", The Gleaner, 18 October 2018.
In December 2018, The Guardian announced that Jamaica was “no longer the most homophobic place on Earth” on account of the work human rights advocates have been carrying out to promote respect, acceptance and inclusion of sexual and gender minorities. Nevertheless, J-FLAG called to broaden the conversation about the rights of sexual and gender minorities, and Jamaican LGBTI activist Jaevion Nelson recommended establishing a pro-poor advocacy agenda to address the intersections of poverty and SOGI.

That same month, a House committee in charge of reviewing sexual offences legislation suggested putting buggery, among other controversial topics, to a referendum, thus reigniting interest in Prime Minister Andrew Holness’s pre-election prior proposal. Activists strongly condemned the recommendations made by the committee.

**Statements by public officials**

**Former Minister of Education Ronald Thwaites:** “[T]here is no place in our schools for violence or bullying based on differences in gender, ethnicity, religion, group identity, place of residence and/or sexual orientation. We will not allow persons to be discriminated [against].”

**Minister of Justice, Delroy Chuck:** “The Government’s position is clear and I will repeat it, the law will not be changed, save and except by a referendum. The buggery law will never be changed unless a referendum so decides.”

**Prime Minister Andrew Holness, 2018:** “It’s not my business [whether a prospective Cabinet member was gay]; neither is it my interest. Whatever is in my discretion to distribute politically, a person’s sexuality or sexual orientation is not a criteria for the use of my discretion.”

**National Human Rights Institution**

Jamaica’s National Human Rights Institution in accordance with the Paris Principles, is the Office of the Public Defender. There is no evidence that any work on SOGI issues has been carried out by the institution. However, Arlene Harrison Henry, who was designated Public Defender in 2015, publicly stated that LGBT people are entitled to equality, representation, and equal protection of laws.

**Existing legal challenges**

**Consensual same-sex sexual acts**

Despite striking reports showing that up to 91% of Jamaicans believe lawmakers should make no attempt to repeal buggery laws, decriminalisation efforts are also being channelled through strategic litigation before local courts. The first hearing in this case, concerning Maurice Tomlinson, a gay LGBTI activist who escaped the country after authorities failed to investigate the reported threats against his life, was held in January 2016. This was followed by a two-year delay in the proceedings caused by discussions about the Public Defender, whose statutory job it is to support the human rights of Jamaican citizens, joining the matter as an interested party. In November 2018, the Court of Appeal ruled against the Public Defender, while granting standing to ten religious groups in favour of the defendant’s position. Before this case, AIDS-free World had lodged a complaint with the Jamaica Supreme Court on behalf of a man whose landlord reportedly evicted him from of his home because of his sexual orientation, a person’s sexuality or sexual orientation is not a criteria for the use of my discretion.”

**Decriminalizing homosexuality: the national challenge to Jamaica’s anti-homosexuality law**

The first hearing in this case, concerning Maurice Tomlinson, a gay LGBTI activist who escaped the country after authorities failed to investigate the reported threats against his life, was held in January 2016. This was followed by a two-year delay in the proceedings caused by discussions about the Public Defender, whose statutory job it is to support the human rights of Jamaican citizens, joining the matter as an interested party. In November 2018, the Court of Appeal ruled against the Public Defender, while granting standing to ten religious groups in favour of the defendant’s position. Before this case, AIDS-free World had lodged a complaint with the Jamaica Supreme Court on behalf of a man whose landlord reportedly evicted him from of his home because of his sexual orientation, a person’s sexuality or sexual orientation is not a criteria for the use of my discretion.”

**National Human Rights Institution**

Jamaica’s National Human Rights Institution in accordance with the Paris Principles, is the Office of the Public Defender. There is no evidence that any work on SOGI issues has been carried out by the institution. However, Arlene Harrison Henry, who was designated Public Defender in 2015, publicly stated that LGBT people are entitled to equality, representation, and equal protection of laws.

**Existing legal challenges**

**Consensual same-sex sexual acts**

Despite striking reports showing that up to 91% of Jamaicans believe lawmakers should make no attempt to repeal buggery laws, decriminalisation efforts are also being channelled through strategic litigation before local courts. The first hearing in this case, concerning Maurice Tomlinson, a gay LGBTI activist who escaped the country after authorities failed to investigate the reported threats against his life, was held in January 2016. This was followed by a two-year delay in the proceedings caused by discussions about the Public Defender, whose statutory job it is to support the human rights of Jamaican citizens, joining the matter as an interested party. In November 2018, the Court of Appeal ruled against the Public Defender, while granting standing to ten religious groups in favour of the defendant’s position. Before this case, AIDS-free World had lodged a complaint with the Jamaica Supreme Court on behalf of a man whose landlord reportedly evicted him from of his home because of his sexual orientation, a person’s sexuality or sexual orientation is not a criteria for the use of my discretion.”

**Decriminalizing homosexuality: the national challenge to Jamaica’s anti-homosexuality law**

The first hearing in this case, concerning Maurice Tomlinson, a gay LGBTI activist who escaped the country after authorities failed to investigate the reported threats against his life, was held in January 2016. This was followed by a two-year delay in the proceedings caused by discussions about the Public Defender, whose statutory job it is to support the human rights of Jamaican citizens, joining the matter as an interested party. In November 2018, the Court of Appeal ruled against the Public Defender, while granting standing to ten religious groups in favour of the defendant’s position. Before this case, AIDS-free World had lodged a complaint with the Jamaica Supreme Court on behalf of a man whose landlord reportedly evicted him from of his home because of his sexual orientation, a person’s sexuality or sexual orientation is not a criteria for the use of my discretion.”
orientation. The lawsuit, listed as the first domestic challenge to the country’s anti-sodomy legislation, was later withdrawn due to concerns for the alleged victim’s personal safety and that of his family.

Freedom of speech

In 2012, Maurice Tomlinson filed a complaint against Jamaican television stations that refused to air “Love and Respect”, a 30-second video paid advertisement calling for respect for the basic human rights of Jamaican LGBTI people, produced by human rights activists and AIDS-Free World. He is currently pursuing an appeal with the support of the Canadian HIV/AIDS Legal Network.

UN voting record

Jamaica was not a member of the Human Rights Council between 2011 and 2016, and therefore did not participate in the vote for the three SOGI resolutions. At the session of Third Committee of the UN General Assembly held in November 2016, Jamaica voted against the LAC amendment to remove Operative Paragraph 2, and in favour of the African oral amendment to block the IE SOGI at the UNGA Plenary Session on 19 December 2016.

Additionally, Jamaica abstained during the vote to adopt the amendment which tried to block financial resources allocated to the IE SOGI.

International advocacy and supervision

Universal Periodic Review

To provide law enforcement agencies with appropriate LGBT sensitisation training was the only recommendation accepted by Jamaica in its 1st cycle UPR in October 2010. All other 11 recommendations were rejected – calls for decriminalisation, non-discrimination and protection of LGBT human rights defenders. In its Final Report, the Working Group recorded the State’s response: “Jamaica stressed that the issue of male homosexuality was one of great sensitivity in Jamaican society, in which cultural norms, values, religious and moral standards underlay a rejection of male homosexual behaviour by a large majority of Jamaicans; and that the Government was committed to ensuring that all citizens were protected from violence.”

At its 2nd cycle UPR in May 2015, Jamaica received 18 recommendations from States, of which it accepted only three: all of which were to do with the investigation and prosecution of violence acts against LGBT people and those defending their rights. The rejected, or ‘noted’, recommendations were primarily to do with criminalisation, but also many to do with codifying non-discrimination provisions relevant to LGBT people. The State mentioned that “several initiatives had been put in place” in order to create better understanding of SOGI-related issues in Jamaica, giving the example of police sensitisation in regard to in-force education on human rights, diversity training and support to LGBT people in the reporting of crime. Jamaica’s next UPR commences in May 2020.

Treaty Bodies

The Human Rights Committee (CCPR) (November 2011) and the Committee on Economic, Social and Cultural Rights (CESCR) (June 2013) urged Jamaica to repeal its buggery laws, to send a strong message that harassment, discrimination or violence against LGBT persons would not be tolerated, and to swiftly and effectively investigate, prosecute and sanction individuals for such acts. Both bodies also voiced their concern over the stigmatisation of people living with HIV/AIDS, fuelled by legislation
criminalising same-sex consensual relations among adults due to the association of homosexuality with the medical condition, and the negative impact on the enjoyment of their social and cultural rights.51

In July 2015, the Committee on the Rights of the Child (CRC) expressed concern about gaps in the overall data collection in Jamaica, in particular with respect to LGBTI children.52

In November 2016, the Human Rights Committee reiterated its 2011 suggestions made to Jamaica regarding discrimination against LGBTI people and people living with HIV/AIDS and the criminalization of consensual same-sex activity among adults.53

In May 2017, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) noted with concern that emigration is mostly driven by poverty, unemployment and violence targeting sexual and gender minorities, among others.54

Special Procedures

In October 2010, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment touched upon the harsh living conditions of gay men deprived of their liberty.55

Organisation of American States (OAS)

As a member of the Organisation of American States (OAS), Jamaica is under the jurisdiction of the Inter-American Commission on Human Rights (IACHR). The IACHR visited Jamaica in 2011 and reported on SOGI issues56 and in 2014 it held two ex officio public hearings, one in March and another one in October, to follow up on the Report. In both hearings, civil society organisations and the State submitted updated information with regard to the issues discussed in that 2012 Report.57

At the General Assembly of the OAS, Jamaica joined the resolutions on Human Rights, Sexual Orientation, and Gender Identity and Expression adopted by that body since 2008. However, since 2013, Jamaica has introduced footnotes to every resolution on the matter approved since then, in an attempt to limit or reject the content of these international instruments. The footnote inserted in 2013 (fn. 3) reads: “The Government of Jamaica is unable to join the consensus on the approval of this resolution, given that the terminology of gender expression, as proposed, is ambiguous and has the potential to impose one value system over another.”58 Furthermore, this term and other new terminologies used in the text, have not gained international acceptance nor are they defined in Jamaica’s domestic law.” The exact same footnote was repeated in 2014 (fn. 6).59

However, since 2016 (there was no resolution in 2015), Jamaica slightly shifted the tone of its footnote and declared: “The Government of Jamaica is fully committed to protecting the human rights of all its citizens including from any form of violence in accordance with the rule of law and the Jamaican Constitution. Jamaica, however, expresses its reservation regarding terminologies such as gender identity and gender expression which are not defined in Jamaican law and have not gained international acceptance” (fn. 1).60

In July 2018, the Inter-American Commission on Human Rights issued a report declaring the admissibility of a petition against the buggery law.61 The previous month, another petition was submitted to the Commission by a transgender woman, a lesbian woman and a gay man contesting Sections 9 and 12 of the Sexual Offences Act.62

---

51 Consideration of reports submitted by States parties under article 40 of the Covenant - Concluding observations of the Human Rights Committee - Jamaica, CCPR/C/JAM/CO/3, 17 November 2011, para. 9; Concluding observations on the combined third and fourth periodic reports of Jamaica, adopted by the Committee at its fiftyieth session (29 April – 17 May 2013), E/C.12/JAM/CO/3-4, 10 June 2013, para. 28.
52 Concluding observations on the combined third and fourth periodic reports of Jamaica, CRC/C/JAM/CO/3-4, 10 March 2015, para. 16.
54 Concluding observations on Jamaica in the absence of a report, CMW/C/JAM/CO/1, 23 May 2017, para. 62.
55 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his Mission to Jamaica, A/HRC/16/52/Add.3, 11 October 2010.
58 Human rights, sexual orientation, and gender identity and expression, AG/RES. 2807 (XLIII-O/13), 6 June 2013, fn. 3.
59 Human rights, sexual orientation, and gender identity and expression, AG/RES. 2863 (XLIV-O/14), 5 June 2014, para. 6.
60 Promotion and protection of human rights, AG/RES. 2887 (XLVI-O/16), 14 June 2016, fn. 1.
TAB 14
“I Have to Leave to Be Me”
Discriminatory Laws against LGBT People in the Eastern Caribbean
“I Have to Leave to Be Me”
Discriminatory Laws against LGBT People in the Eastern Caribbean
Human Rights Watch defends the rights of people worldwide. We scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all.


For more information, please visit our website: http://www.hrw.org
# "I Have to Leave to Be Me"
Discriminatory Laws against LGBT People in the Eastern Caribbean

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Glossary</td>
<td>i</td>
</tr>
<tr>
<td>Map</td>
<td>iv</td>
</tr>
<tr>
<td>Summary</td>
<td>1</td>
</tr>
<tr>
<td>Key Recommendations</td>
<td>5</td>
</tr>
<tr>
<td>To the Governments of Antigua and Barbuda, Barbados, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines</td>
<td>5</td>
</tr>
<tr>
<td>To the Offices of the Ombudsman</td>
<td>6</td>
</tr>
<tr>
<td>To the Organization of Eastern Caribbean States</td>
<td>6</td>
</tr>
<tr>
<td>To the Commonwealth Secretariat</td>
<td>6</td>
</tr>
<tr>
<td>Methodology</td>
<td>8</td>
</tr>
<tr>
<td>I. Background</td>
<td>9</td>
</tr>
<tr>
<td>International Law</td>
<td>13</td>
</tr>
<tr>
<td>LGBT Activism and Recent Developments in the Region</td>
<td>18</td>
</tr>
<tr>
<td>II. Findings</td>
<td>28</td>
</tr>
<tr>
<td>Social Context: A Climate of Homophobia</td>
<td>28</td>
</tr>
<tr>
<td>Exclusion from Family</td>
<td>28</td>
</tr>
<tr>
<td>Exclusion from Church</td>
<td>34</td>
</tr>
<tr>
<td>Bullying and Exclusion from School</td>
<td>37</td>
</tr>
<tr>
<td>III. Harassment and Discrimination</td>
<td>39</td>
</tr>
<tr>
<td>Physical Violence, Assaults, and Intimidation</td>
<td>39</td>
</tr>
<tr>
<td>Verbal Abuse and Harassment</td>
<td>45</td>
</tr>
<tr>
<td>Inappropriate Police Response</td>
<td>47</td>
</tr>
<tr>
<td>Emotional and Psychological Abuse: Lack of Mental Health Support</td>
<td>50</td>
</tr>
</tbody>
</table>
### Glossary

**Biological sex**

The biological classification of bodies as female or male based on such factors as external sex organs, internal sexual and reproductive organs, hormones, and chromosomes.

**Bisexual**

The sexual orientation of a person who is sexually and romantically attracted to both women and men.

**Closed being in the closet**

A person who does not acknowledge their sexual orientation to others. People may be completely in the closet (not admitting their sexual orientation to anyone), completely out, or somewhere in between.

**Gay**

A synonym for homosexual in many parts of the world; in this report, used specifically to refer to the sexual orientation of a man whose primary sexual and romantic attraction is towards other men.

**Gender**

The social and cultural codes (as opposed to biological sex) used to distinguish between what a society considers "masculine" or "feminine" conduct.

**Gender-based violence**

Violence directed against a person on the basis of gender or sex. Gender-based violence can include sexual violence, domestic violence, psychological abuse, sexual exploitation, sexual harassment, harmful traditional practices, and discriminatory practices based on gender. The term originally described violence against women but is now widely understood to include violence targeting women, transgender persons, and men because of how they experience and express their genders and sexualities.
<table>
<thead>
<tr>
<th><strong>Gender identity</strong></th>
<th>A person’s internal, deeply felt sense of being female or male, both, or something other than female and male.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gender expression</strong></td>
<td>The external characteristics and behaviors (including such attributes as dress, appearance, mannerisms, speech patterns, and social behavior) that are regarded as typically “masculine” or “feminine” in a particular social context.</td>
</tr>
<tr>
<td><strong>Heterosexual</strong></td>
<td>The sexual orientation of a person whose primary sexual and romantic attractions are toward people of the other sex.</td>
</tr>
<tr>
<td><strong>Homophobia</strong></td>
<td>Fear and contempt of homosexuals, usually based on negative stereotypes of homosexuality.</td>
</tr>
<tr>
<td><strong>Homosexual</strong></td>
<td>The sexual orientation of a person whose primary sexual and romantic attractions are toward people of the same sex.</td>
</tr>
<tr>
<td><strong>Intersex</strong></td>
<td>A person born with reproductive or sexual anatomy that does not seem to fit the typical definitions of “female” or “male.”</td>
</tr>
<tr>
<td><strong>Lesbian</strong></td>
<td>The sexual orientation of a woman whose primary sexual and romantic attraction is toward other women.</td>
</tr>
<tr>
<td><strong>LGBT</strong></td>
<td>An acronym for lesbian, gay, bisexual, and transgender; sometimes referred to as “sexual and gender minorities.” In this report, the term LGBT is generally used to refer to individuals who self-identify as either lesbian, gay, bisexual, or transgender.</td>
</tr>
<tr>
<td><strong>LGBTI</strong></td>
<td>Lesbian, gay, bisexual, transgender, and intersex.</td>
</tr>
<tr>
<td><strong>Men who have sex with men (MSM)</strong></td>
<td>Men who have sex with men but who do not necessarily identify as “gay,” “homosexual,” or “bisexual.”</td>
</tr>
</tbody>
</table>
### Out
A person who is open about their sexual orientation or gender identity.

### To be outed
When a person’s sexual orientation is revealed either deliberately or inadvertently, with or without consent.

### Sexual and gender minorities
An all-inclusive term that includes people who identify as lesbian, gay, bisexual or transgender, men who have sex with men, and women who have sex with women.

### Sexual orientation
The way a person’s sexual and romantic desires are directed. The term describes whether a person is attracted primarily to people of the same sex, a different sex, or both.

### Transgender (also trans)
The gender identity of people whose sex assigned at birth does not conform to their identified or lived gender.

### Transphobia
Fear of, contempt of, or discrimination against transgender persons, usually based on negative stereotypes.

A note on Caribbean slang: The following common pejorative terms that refer to men who have sex with men appear in the report: antiman, battyman, batty bwoy, buggerer, buller, bullerman, chichiman, fish, shemale.
Map

Prison Sentences for Adults Convicted under Buggery and Gross Indecency Laws

St. Kitts and Nevis
Buggery: up to 10 years
Indecency: 4 years

Antigua and Barbuda
Buggery: 15 years
Indecency: 5 years

Dominica
Buggery: 10 years
Indecency: 5 years

St. Lucia
Buggery: 10 years to life
Indecency: 5 – 10 years

St. Vincent and the Grenadines
Buggery: 10 years
Indecency: 10 years

Barbados
Buggery: life
Indecency: 10 years

Grenada
Buggery: 10 years
Summary

Every day I fear for my safety living in this country because of my sexual orientation. I am alive but if anyone ever find out and wanted to find out, they can kill me ...I am an easy target for anything.
—Peter, Dominica, February 21, 2017

The majority believes: “absolutely, kill them before they reproduce.” The average man would think to kill, they probably won’t do it because it is murder.
—Michaela, Grenada, February 21, 2017

The main fear is the fear of disclosure. The fear of being found out. They would lose the favor of their family. They may be displaced in church. People would lose respect for them in their work spaces. They have a whole lot to lose.
—Stella, retired nurse from Antigua, February 9, 2017

This report focuses on the experiences of lesbian, gay, bisexual, and transgender (LGBT) people in small island states of the Eastern Caribbean. It demonstrates, through individual testimony, how existing discriminatory legislation negatively impacts LGBT populations, making them ready victims of discrimination, violence, and abuse. The report includes seven Eastern Caribbean countries: Antigua and Barbuda, Barbados, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines. Populations in these countries range from 54,000 in St. Kitts and Nevis to 285,000 in Barbados.

All seven countries have versions of buggery and gross indecency laws, relics of British colonialism, that prohibit same-sex conduct between consenting persons. The laws have broad latitude, are vaguely worded, and serve to legitimize discrimination and hostility towards LGBT people in the Eastern Caribbean. They are rarely enforced by way of criminal prosecutions but all share one common trait: by singling out, in a discriminatory manner, a vulnerable social group they give social and legal sanction for discrimination, violence, stigma, and prejudice against LGBT individuals.
The English-speaking Caribbean is an outlier in the region. The fact that buggery and gross indecency laws are still on the books there is in stark contrast with recent developments in Latin America where states including Bolivia, Chile, Ecuador, Mexico, and Uruguay have been progressive in enacting non-discrimination policies and anti-bias legislation. Latin American countries, including Argentina, Brazil, and Chile have taken an international lead advocating for the rights of LGBT people at the United Nations. Several, including Costa Rica, Mexico, and Uruguay, are members of the Core Group of LGBT friendly states at the United Nations and of the Equal Rights Coalition, a group currently composed of 33 states committed to the rights of LGBT people.

All countries featured in this report are members of the Organization of American States and the Caribbean Community (CARICOM). Except for Barbados, all also belong to the Organization of Eastern Caribbean States (OECS). CARICOM and the OECS seek regional integration through economic cooperation and shared administrative functions.

Activists and civil society organizations have been at the forefront of efforts to advance the rights of LGBT people in the region, including by challenging discriminatory laws and exposing human rights violations. In some countries, activists have participated in LGBT awareness training for law enforcement agents. In others, civil society groups have challenged discriminatory legislation including by petitioning the Inter-American Commission on Human Rights (IACHR). Regionally groups have participated in strategic litigation initiatives.

In the Eastern Caribbean, family and church are cornerstones of social life. The fear of harassment, rejection, stigmatization, and even physical violence begins in the home and translates to key social spaces, including church and school. Interviewees said that they were afraid to come out in their typically close-knit communities, where social networks are tight and information travels fast. They also face the risk of being ostracized by their own families.

All interviewees described having been harassed by family at some point in their lives because they are LGBT or merely suspected to be. Fear of isolation has led many LGBT people to live in the closet, and prompted some to enter heterosexual marriages. Some report being thrown out of their home or cut off from financial support. Many have
experienced homelessness and life at the margins of society, rendering them vulnerable to violence and ill health.

The church plays an especially important role in social welfare, communal life, socialization, and in shaping social attitudes and moral ethics. The appendices to this report include comparative information about religious affiliations on each island. Many interviewees said that family rejection was often couched in moralistic terms, echoed in local church rhetoric.

Discrimination and stigma against LGBT people seeps into everyday activities, whether it be availing oneself of services such as health care, school, or riding a bus, or social activities such as going to the movies or shopping. Ordinary social encounters can be menacing. Some LGBT individuals described changing their lifestyle and behaviors to avoid contact with hostile members of their family, church, or community, while others described having to endure physical attacks. Some people opted to socialize only with a few trusted friends in the safety of their homes.

Verbal abuse and harassment can quickly escalate into physical assault. Testimonies show that LGBT people are vulnerable to abuse and attacks by neighbors and acquaintances. Interviewees described being stabbed, struck, pelted with bottles and bricks, beaten, slapped, choked and, in one instance, chased with a harpoon. Transwomen are particularly vulnerable to attacks by their partners, as well as strangers.

Discriminatory laws, including buggery and gross indecency laws, inhibit LGBT people from reporting abuse, and strengthen the hand of abusers. Many of those interviewed by Human Rights Watch explained that they did not trust the police enough to report incidents of abuse against them. Those that did described negative experiences, including inefficiency, inaction, and antipathy. The normalization of violence against LGBT people results in the continued marginalization and exclusion of LGBT people from the most basic protections of the law.

Verbal and physical abuse can also have serious long-term consequences by instilling in LGBT people feelings of fear, shame, and isolation, and lowering their self-esteem. Interviewees said they often experienced depression, suicidal thoughts, and self-inflicted harm. Support systems that exist in an increasing number of countries where same sex
relations are not or are no longer criminalized do not exist in these seven countries. As a result, LGBT people tend to fall through the cracks, as neither government agencies nor civil society organizations have developed services that can fully address their health or psychosocial needs.

The difficult and extreme nature of the experiences endured by LGBT individuals has led many to consider fleeing their countries. As one interviewee put it “when push came to shove” relocating became a desirable and sometimes the only alternative. One interviewee conveyed the general sentiment by stating: “I have to leave to be me.”

International law protects LGBT persons by prohibiting discrimination on the basis of sexual orientation. International human rights law establishes that matters of sexual orientation and gender identity, including consensual sexual relations, are protected under the rubric of the right to privacy and the right to be protected against arbitrary and unlawful interference with, or attacks on, one’s private and family life and one’s reputation or dignity. Criminalizing same-sex intimacy violates these international obligations.

Countries featured in this report have ratified international and regional treaties that require them to protect human rights without discrimination based on sexual orientation and gender identity. The details of exactly which treaty each country has signed onto vary, and are included in the appendices.

Eliminating laws that discriminate based on sexual orientation is a human rights obligation. Living up to this obligation could go a long way toward freeing part of the Eastern Caribbean population from violence and fear, while affirming human rights and dignity.
Key Recommendations

To the Governments of Antigua and Barbuda, Barbados, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines

- Repeal all laws that criminalize consensual sexual activity among persons of the same sex.
- Ensure that criminal laws and other legal provisions are not used to punish consensual sexual activity among persons of the same sex.
- Pass laws defining the crime of rape in a gender-neutral way so that non-consensual sex between men or between women is included in the definition and subject to equal punishment.
- Consistent with the principle of non-discrimination, ensure that an equal age of consent applies to both same-sex and different-sex sexual activity.
- Pass comprehensive anti-discrimination legislation that prohibits discrimination, including on grounds of gender identity and sexual orientation, and includes effective measures to identify, prevent, and respond to such discrimination.
- Introduce and implement a gender recognition procedure in accordance with international standards and good practices to allow people to change their legal gender on all documents through a process of self-declaration that is free of medical procedures or coercion. Such gender recognition procedure should ensure that changes to documents are made in a way that protects privacy and dignity.
- Enable LGBT people to undergo needs assessments for their health (including mental health) and develop programming to address those needs. Such assessments should be strictly voluntary, provide options for anonymity and other protections for participants’ identities, and be conducted in ways that respect the privacy and dignity of LGBT individuals.
- Conduct awareness-raising campaigns for the general public, journalists, and public officials, including law enforcement officials and medical professionals, that promote tolerance and respect for diversity, including gender expression, gender identity, and sexual orientation.
To the Offices of the Ombudsman

- Establish confidential means whereby LGBT individuals can report abuse, publicize how individuals can report abuse without fear of reprisal, and investigate all such reports.
- Develop plans and allocate adequate resources to ensure systematic documentation and monitoring of human rights violations of LGBT people, including through collection of accurate data on acts of violence and discrimination due to real or perceived sexual orientation or gender identity.
- Act as a source of human rights information for the government and the public to raise awareness of the human rights impact of buggery and gross indecency laws.

To the Organization of Eastern Caribbean States

- Acknowledge the impact that current laws have on the lives of LGBT people in member states by denouncing and condemning the provisions criminalizing consensual sexual activity among adult people of the same sex, such as buggery laws and serious or gross indecency laws.
- Begin to address LGBT issues head on, in an open and constructive way, by encouraging member states to decriminalize same-sex sexual relationships, and in the meantime, to issue a de facto moratorium to prevent the application of existing laws that criminalize same-sex sexual relationships.
- Offer support to politicians and religious leaders in member states to engage with civil society organizations in the region to work on reviewing, updating, amending, and creating laws on social protection for LGBT vulnerable youth.
- Recognize the role of LGBT organizations as platforms for advancement of human rights in Member States by engaging in dialogue and consultation with them in areas of health, education, and employment protections for LGBT people.

To the Commonwealth Secretariat

- Consistent with the 1971 Singapore Declaration of Commonwealth Principles, which affirms “the liberty of the individual,” “equal rights for all citizens,” and “guarantees for personal freedom,” condemn and call for the removal of all
remaining British colonial laws that criminalize consensual sexual activity among people of the same sex.

- Promote the decriminalization of consensual, homosexual conduct.
- Develop models for gender-neutral legislation on rape and sexual abuse and for the protection of children.
- Integrate issues of sexual orientation and gender identity into all human rights educational and training activities, including the Commonwealth Human Rights Training Programme for police.
Methodology

This report is based on field research conducted by Human Rights Watch over a four-week period in the countries of Antigua and Barbuda, Barbados, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines in February 2017, as well as prior and subsequent desk-based research. Interviews took place in the capital cities of the islands: St. John’s, Bridgetown, Roseau, St. George’s, Castries, Kingstown, and Basseterre.

Human Rights Watch researchers interviewed 41 self-identifying LGBT people between the ages of 17 and 53. The interviewees were identified primarily through the Eastern Caribbean Alliance (ECADE) and local LGBT organization networks. Most interviews were conducted individually and in English. Human Rights Watch conducted only one group interview with seven gay men in Kingstown, St. Vincent and the Grenadines. We spoke to people in a variety of settings, including their homes, bus stations, the LGBT group’s office in the capital city of each country, and the homes of their friends.

All persons interviewed provided verbal informed consent to participate and were assured that they could end the interview at any time or decline to answer any questions. Interviewees have been given pseudonyms and in some cases other identifying information has been withheld to protect their privacy and safety. No one was compensated for their participation. In some cases, funds were provided to cover travel expenses. The interviewees were mostly economically disadvantaged young adults.
I. Background


All seven states covered by this report criminalize same-sex intimacy between consenting persons. Most of the laws use the terms “buggery” or “gross indecency,” though some outlaw “unnatural connexion” or sodomy. For simplicity’s sake, this report uses “buggery laws” and “gross indecency laws” as shorthands for the laws in all seven jurisdictions.

The reasons for selecting the targeted countries are twofold. First, they are neighboring countries that influence one another and that, as part of regional systems such as CARICOM and OECS, share an overarching judicial review system. Second, as small island states, they are often overlooked.

Buggery and gross indecency laws are seldom enforced against consenting persons. And the specific legal provisions vary from country to country. But they share one common trait: they all give social and legal sanction for discrimination, violence, stigma, and prejudice against lesbian, gay, bisexual, and transgender (LGBT) individuals.

Buggery and gross indecency laws are a residue of British colonialism. They are vaguely worded and enacted with broad latitude. They help create a context in which hostility and violence directed against LGBT people is legitimized, operating as an effective tool to ostracize and single out a vulnerable sector of the population.

In the seven countries covered in this report there is no consistent definition of “buggery” or the penalties imposed. Antigua and Barbuda and Dominica define buggery as “anal intercourse by a male person with a male person or by a male person with a female person.” Most countries, including Barbados, St. Lucia and St. Vincent and the Grenadines, leave it undefined, specifying only the prison terms to be imposed. St. Kitts and Nevis criminalizes “sodomy and bestiality” and defines the term by referencing “the

---

abominable crime of buggery, committed either with mankind or with any animal.”

Grenada has the most open-ended provision, criminalizing “unnatural connexion,” which is undefined and has been interpreted in past case law to include consensual anal intercourse between same-sex persons. Barbados has the most severe punishment: life imprisonment. Dominica grants courts the power to order that “the convicted person be admitted to a psychiatric hospital for treatment” and St. Kitts and Nevis allows courts to add “hard labor” in the final judicial decision.

Buggery laws do not distinguish between consensual and non-consensual sex. And rape laws in four of the seven island nations featured in this report define rape narrowly as non-consensual penile-vaginal sex. This means that existing rape laws fail to protect people against non-consensual anal or oral sex. There is a gap in the law to protect people both male and female from forced sex, both anal and oral. This is sometimes used as flawed rationale to retain the “buggery laws.” For example, in 2016 Prime Minister Stuart of Barbados claimed that buggery laws are exclusively aimed at non-consensual sex. He said: “The law of buggery has to do with abuse, where A abuses B without his consent... I want you to just equate in your own mind, buggery with rape. Rape is the offence committed against in a heterosexual relationship and buggery is the offence committed in a same-sex relationship. At the kernel of both is the absence of consent and therefore a protesting

---

3 Offences Against the Person Act 1986, ch. 4, 21, sec. 56, “Sodomy and Bestiality” (“Any person who is convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned for a term not exceeding ten years, with or without hard labour”). See Appendix V for further detail concerning relevant legislation.

4 In the 156th Period of Sessions of the IACHR, civil society organizations from Grenada informed the commission that in the last five years there were three cases in which persons were charged with ‘unnatural connexion’ involving individuals engaging in consensual intercourse with same-sex partners. See “Informe sobre el 156 Periodo de Sesiones de la CIDH”, Comisión Interamericana de Derechos Humanos (CIDH), Prensa, Comunicados, 2015, 120A, December 24, 2015, http://www.oas.org/es/cidh/prensa/comunicados/2015/120a.asp (Spanish) (accessed September 26, 2017). Video of the hearing is available at: https://www.youtube.com/watch?v=OlUouJF8x9k. In May 2011 a 41-year-old man was arrested under the country’s anti-gay laws. See ‘Man Arrested for Gay Sex in Grenada’, The Advocate, May 26, 2011, https://www.advocate.com/news/daily-news/2011/05/26/man-arrested-gay-sex-grenada (accessed September 26, 2017).

5 Sexual Offences Act 1992, Chapter 154, sec. 9 (“Any person who commits buggery is guilty of an offence and is liable on conviction on indictment to imprisonment for life”).

6 Dominica, Sexual Offences Act 1998, sec. 16 (“(1) A person who commits buggery is guilty of an offence and liable on conviction to imprisonment for – (a) twenty-five years, if committed by an adult on a minor; (b) ten years, if committed by an adult on another adult; (c) or five years, if committed by a minor; and, if the Court thinks it fit, the Court may order that the convicted person be admitted to a psychiatric hospital for treatment.”). St. Kitts and Nevis, Offences Against the Person Act 1986, ch. 4, 21, sec. 57, “Sodomy and Bestiality” (“Any person who attempts to commit the said abominable crime, or is guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, commits a misdemeanor, and, on conviction, shall be liable to be imprisoned for a term not exceeding four years, with or without hard labor”).

“*I HAVE TO LEAVE TO BE ME*”
party who wants to ensure that he or she gets justice through the courts.”7 This is not the case. Buggery laws draw no distinction between consensual and non-consensual sex, and do not require lack of consent, as noted by Elwood Watts, principal Crown counsel in a buggery case in Barbados.8

Indeed, the buggery laws of all seven countries analyzed in this report are silent on consent, thus encroaching on the rights to non-discrimination and the right to privacy of individuals engaging in consensual same sex activity. Indeed, the broad wording of the laws and the way they are interpreted by police, courts, and the public means that consensual sex between members of the same sex is, according to the law, akin to rape.9 What is needed is a gender-neutral rape law, and a repeal of the buggery laws.

The “gross indecency” provision was introduced in British Law in 1885 to cover all acts of sexual intimacy between men short of anal intercourse.10 Gross indecency was not defined, but left to court interpretation. Similarly, in the states included in this report, the act of “gross indecency” or in some instances “serious indecency,” is defined in broad terms, if at all. For example, Antigua and Barbuda, Dominica, and St. Lucia define gross or serious indecency as: “any act other than sexual intercourse by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.” The vague wording of the law means that LGBT persons are susceptible to arrest and prosecution for a wide range of sexual acts.

---

8 Ibid.
9 “Battleground Barbados: LGBT activists face off against North American homophobes in the Caribbean,” Daily Extra, Apr 13, 2017, https://www.dailyxtra.com/battleground-barbados-lgbt-activists-face-off-against-north-american-homophobes-in-the-caribbean-73349 (accessed September 26, 2017). (“Speaking on the phone from Barbados, Shari Inniss-Grant and Stefan Newton, both directors at Equals Barbados, an LGBT-rights group, say they’re disappointed, though not surprised, by the prime minister’s stance on buggery. ‘It’s clearly understood around the world, in the Commonwealth and particularly in Barbados, as something that’s criminalizing homosexuality,’ Inniss-Grant says. ‘And it has the effect of stigmatizing individuals who are queer and really promoting discrimination against them.’”).
Buggery Laws and Gross Indecency Laws in the “Commonwealth Caribbean”
by Westmin R. A. James

The Origin
The “Commonwealth Caribbean” refers to those states in the Caribbean Sea and in Central and South America that were British colonies. The independent states in the Commonwealth Caribbean include Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago. It also refers to “British Overseas Territories” (territories that have chosen to remain subordinate to Great Britain rather than becoming formally independent) in the Caribbean and North Atlantic: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat and Turks and Caicos Islands.

Anti-sodomy laws were a colonial import imposed on the colonies by the British rulers as there was no pre-existing culture or tradition in the Caribbean that required the punishment of consensual same-sex sexual conduct. The first recorded mentions of “sodomy” in English law date back to two medieval treatises called Fleta and Britton. The texts prescribed that sodomites, together with sorcerers, Jews and renegades, should be burnt alive. In the 16th century, a statute of 1533 provided for the crime of sodomy punishable by death. Although this statute was repealed during the reign of Mary I, it was re-enacted by Parliament in the reign of Elizabeth I in 1563, and the statutory offence, so expressed, survived in England in substance until 1861. The Offences Against the Person Act 1861 included the offence of “buggery,” dropping the death penalty for a prison term of (10) years to life.

The movement for codification of the criminal law, particularly in the British colonies, gathered pace in the early 19th century when Thomas Macaulay was given the mandate to devise law for the Indian colony. The Indian Penal Code was the first comprehensive codified criminal law produced anywhere in the British Empire. In 1870, R.S. Wright, an English barrister, was asked by the Colonial Office to draft a criminal code for Jamaica, which could serve as a model for all of the colonies. Wright’s Code was not adopted by Jamaica but it was brought into force in

11 Westmin R.A. James is a lecturer in Constitutional and Commonwealth Caribbean Human Rights Law at the University of the West Indies, Cave Hill Campus, and litigation specialist with the University of the West Indies Rights Advocacy Project (U-Rap). “Buggery Laws and Gross Indecency Laws in the ‘Commonwealth Caribbean’” is an original piece by Wesmin R.A. James, written for this report.

Belize (at the time, British Honduras) and later Tobago. Thereafter the buggery law was instituted by the British colonial administration in Jamaica and other Caribbean states in the British Commonwealth in a manner similar to the 1861 British Offences Against the Persons Act.

“Homosexuality” is not a crime in the Caribbean but laws criminalize same-sex conduct. Even though colonies in the Caribbean adopted British laws outlawing same-sex intimacy, they vary in language, the types of acts prohibited, and the punishments imposed. Whatever the various incarnations they are often referred to as “sodomy” or “buggery” laws. Many times buggery and sodomy are used interchangeably.

Laws criminalizing consensual adult same-sex sexual conduct currently exist in 10 independent countries in the English-speaking Caribbean. Antigua and Barbuda, Barbados, Dominica, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines have the crime of ‘buggery.’ In 2000, the UK issued an order repealing sodomy laws in its Overseas Territories of Anguilla, the British Virgin Islands, the Cayman Islands, Montserrat, and the Turks and Caicos islands in order to comply with its obligations as a Council of Europe member. After a 2016 successful constitutional challenge the High Court of Belize Supreme Court modified the law in Belize so it no longer applies to consensual sexual acts between persons in private.

Savings Law Clauses
Barbados presents an added complication to any challenge to these laws. There is a provision in the Constitution of Barbados that prevents the courts from declaring these pieces of legislation criminalizing same-sex intimacy from being in breach of the human rights provisions in the Constitution. This prohibition applies to all laws passed before the Constitution of which the buggery law is one (Belize also had a savings law clause but with a limited life span of five years, which has since expired).

International Law
The English-speaking Caribbean is an outlier in the region. The continued existence of buggery and gross indecency laws there is in stark contrast with recent developments in Latin America where states including Argentina, Brazil, Chile, Mexico, and Uruguay have made rapid advances in family law, as well as in non-discrimination and anti-bias legislation.

---

14 Caleb Orozco v AG of Belize, Claim No. 668 of 2010, Supreme Court of Belize, August 10, 2016.
In recent years, states including Argentina, Brazil, Colombia, and Uruguay have opted for same-sex marriage; Argentina and Bolivia have passed legal gender recognition legislation; Chile, Bolivia, and Uruguay have enacted anti-discrimination laws; and El Salvador and Peru have enacted hate-crime laws. Examples of legal measures that have been taken to address violence and discrimination include: in 2012 Argentina became the first state to pass a gender recognition law based entirely on self-identification; in 2010 Brazil enacted the National Human Rights Action Plan (NHRAP), which stipulates specific measures and objectives to address violence and discrimination based on sexual orientation and gender identity; similarly, in 2014 Mexico established specific teams and units to ensure that homophobic and transphobic hate crimes are investigated and prosecuted to the full extent of the law, and law enforcement officials have been trained accordingly; and in 2016 Uruguay took several measures to address employment discrimination and create job opportunities for marginalized trans people, including a specific call for trans candidates for vacancies at the Ministry of Social Development and within the “Uruguay Trabaja” programme.

Internationally, Latin American states have played a proactive role in protecting people from discrimination and violence based on sexual orientation or gender identity. Several Latin American states, including Argentina, Brazil and Chile are members of the Core Group of LGBT friendly states. The Equal Rights Coalition, a network of states aiming to advance the human rights of LGBT people, was founded in Uruguay in 2016, and includes Argentina, Chile, Costa Rica, Ecuador, Honduras, Mexico and Uruguay as members.

---

16 Ibid.
17 Ibid.
18 Ibid.
20 The United Nations LGBTI Core Group (the Core Group) is a cross regional group of UN member states that includes Argentina, Australia, Brazil, Chile, Colombia, Costa Rica, Croatia, El Salvador, France, Germany, Israel, Japan, Montenegro, The Netherlands, Mexico, New Zealand, Norway, Spain, the United Kingdom, the United States, Uruguay, the European Union, and Albania (as an observer), as well as the Office of the UN High Commissioner for Human Rights, and the nongovernmental organizations Human Rights Watch and Outright Action International.
21 Members of the coalition at the time of writing were: Uruguay (founder), The Netherlands (founder), Argentina, Austria, Belgium, Canada, Chile, Costa Rica, Czech Republic, Ecuador, Estonia, Finland, France, Germany, Greece, Honduras, Italy, Mexico, Montenegro, New Zealand, Norway, Portugal, Serbia, Slovenia, Spain, Sweden, Switzerland, Ukraine, the United Kingdom, and the United States. Created in July of 2016 conclusion of the Global LGBTI Human Rights Conference in
In recent years, Latin American states have been at the forefront of enhancing protection for LGBT people at the United Nations. The Human Rights Council has adopted three resolutions that reflect the commitment and consistent support of Latin American countries on issues relating to sexual orientation and gender identity. In 2011, a South African led resolution passed by the Human Rights Council, commissioned a global study on discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity. A follow up resolution in 2014 calling for a report on best practices for countering discrimination was introduced by Brazil, Chile, Colombia, and Uruguay. A resolution in 2016 led to the appointment of an Independent Expert on Sexual Orientation and Gender Identity. Seven Latin American states—Argentina, Brazil, Chile, Colombia, Costa Rica, Mexico, Uruguay—and 41 additional countries jointly presented the text.

The Organization of American States (OAS) and the Inter-American Commission on Human Rights (IACHR) have also taken steps to address human rights violations perpetrated against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons in the Americas. All countries covered in this report are members of the OAS. Between 2008 and 2013 the OAS General Assembly approved six resolutions acknowledging and condemning discrimination and acts of violence against members of the LGBTI community, calling on member states, as well as the IACHR and other bodies to take appropriate measures to address the problem. In its 2015 report "Violence against LGBTI people in America," the IACHR highlighted that laws criminalizing consensual sex between same-sex persons are incompatible with the principles of equality and non-discrimination. It also underscored the relationship

Montevideo, Uruguay, the coalition seeks to strengthen cooperation in advancing LGBTI rights including by sharing best practices. Civil society advocates are not direct members of the group but are involved as part of the group’s founding mandate.


between these discriminatory laws and high rates of violence and discrimination against LGBT people. The IACHR has noted that several states including Barbados, Dominica, and St. Kitts and Nevis, featured in this report, have rejected UN Universal Periodic Review recommendations to decriminalize same-sex acts,\(^\text{27}\) citing religious opposition (particularly from evangelical churches\(^\text{28}\)) as well as cultural and societal opposition.\(^\text{29}\)

Caribbean states have taken steps to increase economic cooperation and regional integration through the Caribbean Community (CARICOM) and the Organization of Eastern Caribbean States (OECS). In 1973, the Treaty of Chaguaramas established the Caribbean Community including CARICOM. And in 1981 the Treaty of Baseterre establishing the OECS economic union. In addition to economic integration, the OECS aims to increase human rights protections. All states covered in this report, with the exception of Barbados, are members of the OECS.\(^\text{30}\)


\(^{28}\) Inter-American Commission on Human Rights. “Violence against lesbian, gay, bisexual, trans and intersex persons in the Americas”. 2015, p. 55: A number of countries have made reference to religious considerations. For example, Barbados indicated that it is “a heavily religious society and has a tremendous lobby in terms of the church, including activist evangelists, who have their own views on this issue.” See report of the Working Group on the Universal Periodic Review: Barbados, A/HRC/10/73, January 9, 2009, para. 74.


### Table 1 – States covered in this report and their membership of CARICOM and OECS systems

<table>
<thead>
<tr>
<th>CARICOM - CSME (Common Single Market and Economy)</th>
<th>OECS (Organization of Eastern Caribbean States)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antigua and Barbuda</td>
<td>Antigua and Barbuda</td>
</tr>
<tr>
<td>Barbados</td>
<td>Dominica</td>
</tr>
<tr>
<td>Dominica</td>
<td>Grenada</td>
</tr>
<tr>
<td>Grenada</td>
<td>St. Kitts and Nevis</td>
</tr>
<tr>
<td>St. Kitts and Nevis</td>
<td>St. Lucia</td>
</tr>
<tr>
<td>St. Lucia</td>
<td>St. Vincent and the Grenadines</td>
</tr>
<tr>
<td>St. Vincent and the Grenadines</td>
<td></td>
</tr>
</tbody>
</table>

CARICOM & Organization of Eastern Caribbean States

<table>
<thead>
<tr>
<th>CARICOM</th>
<th>OECS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Created</td>
<td>Treaty of Chaguaramas 4 July 1973</td>
</tr>
<tr>
<td></td>
<td>• Revised Treaty of Chaguaramas 2001</td>
</tr>
<tr>
<td></td>
<td>Treaty of Baseterre (6/18/1981)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Member States</th>
<th>CARICOM</th>
<th>OECS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname</td>
<td>Anguilla, Antigua and Barbuda, British Virgin Islands, Dominica, Grenada, Montserrat, Martinique, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines</td>
<td></td>
</tr>
</tbody>
</table>

| Total Population Encompassed | 17,775,192 | 1,049,374 |
Judicial review by supra-national entities, including the Caribbean Court of Justice (CCJ) and the Eastern Caribbean Court, are integral to the sustainability of both regional systems. The Judicial Committee of the Privy Council (JCPC) retains jurisdiction for certain countries of the commonwealth.\(^{31}\) The Caribbean Court of Justice (CCJ) has original jurisdiction in all matters related to the interpretation of the Treaty of Chaguaramas. It also exercises appellate jurisdiction for commonwealth countries in civil and criminal matters who no longer accept the Judicial Committee of the Privy Council (JCPC) as their appellate court. Barbados, Belize, Dominica, and Guyana have replaced the JCPC’s appellate jurisdiction with that of the CCJ.\(^{32}\) Cases from the Eastern Caribbean Supreme Court (ECSC) can be appealed to the Judicial Committee of the Privy Council. The ECSC can only accept cases that have already been considered by the high court of a member state, and thus effectively serves as a supreme court for the OECS.

Appendices I-VII to this report include an overview of country specific legal provisions, treaty ratifications, membership of international organizations, and states’ response to recommendations on sexual orientation and gender identity during the Universal Periodic Review (UPR).

**LGBT Activism and Recent Developments in the Region**

Activists and civil society organizations have been working intensely on the ground to transform the difficult daily reality faced by LGBT individuals.

The Caribbean Forum for Liberation and Acceptance of Genders and Sexualities (CariFLAGS) has worked for over 18 years to provide LGBTI people in the Caribbean with safe spaces, support services, and stronger communities. Currently based in Trinidad and Tobago, CariFLAGS is composed of several LGBTI NGOs across the Caribbean, including in St. Lucia, Jamaica, Trinidad and Tobago, the Dominican Republic, Belize, Grenada, Guyana, and Suriname.

---

\(^{31}\) These include: Antigua and Barbuda, The Bahamas, British Indian Ocean Territory, Cook Islands and Niue (Associated States of New Zealand), Grenada, Jamaica, St Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Tuvalu. See “Role The Judicial Committee of the Privy Council”, Judicial Committee of the Privy Council, https://www.jcpc.uk/about/role-of-the-jcpc.html#Commonwealth (accessed June 13, 2017)

CariFLAGS has also worked towards policy and cultural change on sexual and gender diversity in the Caribbean. CariFLAGS has as its main stated purpose to: “build a regional LGBTI movement in the Caribbean by strengthening local leadership and organizations, developing shared strategies for social change, coordinating challenges on LGBT rights issues in the courts, addressing underserved needs and groups, and supporting safe environments at the community level.”

Another civil society group active in the region is the Eastern Caribbean Alliance for Diversity and Equality (ECADE), an umbrella body for human rights groups within the small countries of the Eastern Caribbean, such as Antigua and Barbuda, Barbados, Dominica, Grenada, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, and Saint Martin. It serves as a regional hub for the coordination of trainings, strategy meetings, and thematic conferences.

Local and international LGBT organizations have partnered to facilitate LGBTI sensitivity training in the past few years for national police forces in Antigua and Barbuda, Barbados, Grenada, St. Lucia, and St. Kitts and Nevis, allowing for a more collaborative relationship with police enforcement officials. For example, the Royal Barbados Police Force embarked on sensitivity training regarding the LGBTI community with the intention of bringing Barbados closer to its international human rights commitments. Police officers from Antigua and Barbuda have worked with civil society groups to reinforce the principles of community policing, human rights, professionalism, ethics, and their practical application to the LGBTI community. Diversity trainings in St. Lucia, sponsored by Aids Free World and United & Strong, have focused on managerial skills and senior officer training, providing them with guiding principles to employ in police interactions. Facilitators have

gone to some lengths to avoid disputes about morality and religion by focusing instead on HIV prevention and public health.\(^{37}\)

Civil society organizations have also used the complaints procedure of the IACHR to tackle the criminalization of same-sex relationships in their home countries. Four years ago, Gareth Henry and Ms Simone Edwards filed a petition with the IACHR challenging Jamaican laws that discriminate against LGBT people. The petitioners allege a number of violations by Jamaica of its legal obligations under the American Convention on Human Rights (ACHR) and the American Declaration on the Rights of Man (Declaration). At the time of writing, the petition was filed and submissions on admissibility by both Parties were finalized, but an admissibility decision by the IACHR was still pending.\(^{38}\) The civil society organizations GrenChap and Groundation Grenada filed a petition with the IACHR challenging Grenada’s “unnatural connexion” law. Grenada failed to appear at the hearing. The IACHR urged Grenada to decriminalize same-sex sexual relationships, and in the meantime to issue a de facto moratorium on application of this legislation.\(^{39}\)

Local and international civil society organizations and individuals have filed lawsuits as well in their efforts to have discriminatory laws in the Caribbean repealed. In 2015, Jamaican activist Maurice Tomlinson filed a challenge against the governments of Belize and Trinidad and Tobago to overturn laws that on their face seek to prevent gay people from entering their countries. The current immigration laws in Trinidad & Tobago and Belize bar “undesirable” persons from entering—a list that includes homosexuals, prostitutes, and members of other marginalized groups.\(^{40}\) The Caribbean Court of Justice ultimately dismissed the ‘gay travel ban’ case, declaring that the laws, while discriminatory in nature, have not been used in practice.\(^{41}\) Tomlinson has also brought a fresh challenge to


\(^{38}\) Gareth Henry v. Jamaica, see http://www.humandignitytrust.org/pages/OUR%20WORK/Cases/Jamaica

\(^{39}\) Report on the 156th Period of Sessions of the IACHR (available only in Spanish), December 24, 2015, http://www.oas.org/es/cidh/prensa/comunicados/2015/120a.asp. A video of the hearing is available at: https://www.youtube.com/watch?v=OlUoujF8x9k


In 2016 the Belize Supreme Court in the case of Caleb Orozco et al v AG of Belize\footnote{Caleb Orozco v AG of Belize Claim No. 668 of 2010 (Supreme Court of Belize, 10th August, 2016)} became the first Commonwealth Caribbean Court to hold that laws that criminalized, inter alia, same-sex intimacy were unconstitutional. The court struck down section 53 of the Criminal Code, which outlawed “carnal intercourse against the order of nature” with punishment of up to 10 years in prison, on the grounds that the law went against the claimant’s rights to human dignity, privacy, and freedom of expression. The court declared that the definition of ‘sex’ in the constitution included ‘sexual orientation,’ protected by the principles of equality and non-discrimination. The court reduced the scope of section 53 of the Criminal Code by excluding sexual activity taking place in private between consenting adults.


On January 9, 2018, the Inter-American Court of Human Rights issued Advisory Opinion No. 24\footnote{See: http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf}[1], in response to a request by the state of Costa Rica, made in May of that same year. In its opinion, the Court advised that state parties to the American Convention should recognize all civil rights for same-sex couples, including the right to civil marriage. The court
also advised that states should establish fast, inexpensive and straightforward procedures to ensure legal gender recognition, based solely on the self-perceived identity of a person.

Out of the seven countries considered in this report, only Dominica (1993), Grenada (1978) and Barbados (1982) have ratified the American Convention but neither Grenada nor Dominica recognize the jurisdiction of the Inter-American Court of Human Rights. This means Barbados is the only country which has a treaty obligation to consider the Court’s opinion, although the opinion should have resonance for all governments that seek to respect and protect universal human rights and equal norms.

**Impact on LGBT Individuals**

Buggery and gross or serious indecency laws discriminate against LGBT people and have a negative impact on their lives. A 2008 Human Rights Watch report, “This Alien Legacy: The Origins of ‘Sodomy’ Laws in British Colonialism,” traces the history of sodomy laws in former British colonies. The report outlines the effects of these laws on the lives of people most affected by them:

> These laws invade privacy and create inequality. They relegate people to inferior status because of how they look or who they love. They degrade people’s dignity by declaring their most intimate feelings "unnatural" or illegal. They can be used to discredit enemies and destroy careers and lives. They promote violence and give it impunity. They hand police and others the power to arrest, blackmail, and abuse. They drive people underground to live in invisibility and fear.48

The report also refutes the claim that these laws originate in values traditional in former colonies, or reflect deep seated national interests, showing instead that these “Made in Britain” laws were imposed by colonial authorities informed by racist stereotypes and colonialist fears of native sexuality. Whether the laws are enforced or not, their very existence places LGBT people in a perilous situation of vulnerability, inequality, and second-class status in every aspect of life.49

---

48 Ibid., p.5.
49 In two cases in which the European Court of Human Rights struck down national sodomy laws—Dudgeon v UK (Judgment of October 22, 1981, Series A no. 45, para. 41,) and Norris v Ireland (Judgment of October 26, 1988, available at
Human Rights Watch has published two reports on Jamaica: “Hated to Death” (2004) and “Not Safe at Home” (2014). Both document the negative impact of Jamaica’s anti-LGBT laws, including their role in facilitating discrimination, violence, and barriers to health care.

Recent surveys conducted in Barbados and Trinidad and Tobago have indicated a high level of acceptance for the principle of non-discrimination, including on grounds of sexual orientation, coupled with widespread support for the buggery laws. A survey commissioned by the Joint United Nations Programme on HIV and AIDS (UNAIDS) Caribbean Regional Support Team in Trinidad and Tobago revealed that most respondents were opposed to discrimination based on sexual orientation. Of the 1,176 interviews conducted during October 2013, 78 percent of the respondents said it was not acceptable for people to be treated differently based on sexual orientation. Additionally, 56 percent of respondents said they were either accepting or tolerant of homosexuals.50

Similarly, a survey in Barbados prepared by the Caribbean Development Research Services Inc. (CADRES), showed that 67 percent of respondents were either tolerant or accepting of homosexuals. Most people surveyed, however, thought the buggery laws should be maintained despite “the absence of a clear appreciation of the reasons for the existence of buggery laws.”51

As detailed below and in the following chapter of this report, the continued existence of laws criminalizing LGBT conduct, even if infrequently enforced, creates conditions that facilitate abuses in all seven countries covered here. LGBT residents in the Eastern Caribbean interviewed by Human Rights Watch, described how stigma and discrimination permeate all aspects of life, including health care, education, and even everyday activities like going to movies, shopping, and riding the bus. LGBT individuals said that they were reluctant to report abuses for fear of the laws that prohibit same-sex intimacy.

In the countries included in this report, populations are small and social networks insular. Interviewees said that their close-knit communities made it difficult to come out and find

---

http://hudoc.echr.coe.int/eng?i=001-57547, para. 38)—the court was clear that although the legislation was not being enforced in either jurisdiction when the cases were brought, the existence of the laws rendered the men potentially liable to prosecution and that “the very existence of this legislation continuously and directly affects [their] private lives…”


acceptance. They were afraid of the negative consequences of being identified or perceived as LGBT. According to CARICOM’s total population estimates for the 2000-2015 period, the populations of the countries included in this report are: 46,398 in St. Kitts and Nevis, 69,393 Dominica, 90,801 Antigua and Barbuda, 110,566 Grenada, 110,255 St. Vincent and the Grenadines, 172,818 St. Lucia and 274,633 in Barbados.

Many interviewees stressed the importance of discretion. Charles, a 24-year-old gay man from Antigua and Barbuda, told Human Rights Watch he would never be openly affectionate in public with another male. He said: “I would never hold hands [with another man]. You couldn’t do that here, because society is just not accepting.” Peter, a 20-year-old gay man from Dominica, said “It saddens me that I have to sneak out and meet someone and can’t bring anyone home.” He said that it was impossible for him to introduce partners to his family, something his heterosexual friends and siblings do at his age. Other interviewees told Human Rights Watch that for discretion and safety they pursued their intimate relationships “off-island,” that is with visitors from other islands in the region, or from further afield. Nicholas, 20, expressed his feeling of constant fear and uncertainty: “you are not safe... you have to hide who you are. Otherwise they will get physical, shouting things. If two men were holding hands people would attack them.”

A number of popular dancehall songs, many of which originate in Jamaica, contain strong homophobic language and inflammatory lyrics. This music circulates through the islands and is emblematic of the daily stigmatization and denigration of LGBT people. An extreme example is the decades old, but still popular “Bumbo Red,” a 1990 hit song by dancehall artist Capleton: “Lick a shot inna a battyman head! Lick a shot inna a lesbian head! All sodomite dem fi dead, all lesbian dem fi dead.” It calls for gay and lesbian people to be shot in the head.

A decade later, many popular dancehall songs reiterated the message to kill and maim lesbians and gay men. For example, in 2000, Elephant Man’s “A Nuh Fi Wi Fault,” urged

---

52 Human Rights Watch interview with Charles, Antigua and Barbuda, February 12.
54 Human Rights Watch interview with Nicholas, St. Kitts, February 3, 2017.
listeners to “When yuh hear a Sodomite get raped/but a fi wi fault/it's wrong/two women
gonna hock up inna bed/that's two Sodomites dat fi dead” (“When you hear a lesbian
getting raped/it’s not our fault/it's wrong/two women in bed/that’s two sodomites who
should be dead”), Beenie Man57 sings, “I’m dreaming of a new Jamaica, come to execute
all the gays,” and Babycham and Bounty Killer’s58 encourages “Bun a fire pon a kuh pon
mister fagoty, ears ah ben up and a wince under agony, poop man fi drown a yawd man
philosophy” (“burn gay men ‘til they wince in agony, gay men should drown, that’s the
yard man’s philosophy”).59

Manage, 35, from St. Vincent and the Grenadines, told Human Rights Watch: “On a daily
basis, people see me coming and are very loud calling me ‘Battyman, Faggot, Battyman fi
dead’ and using aggressive negative slurs towards me in public. Like in Jamaica, the type
of music you listen to, when they talk about gays, the music says ‘kill them.’ Music in St.
Vincent is anti-gay.”60

58 “Another Level,” Babycham and Bounty Killer, 1999, lyrics available at
https://www.slyrics.com/songs/b/babycham30743/anotherlevelfeatbountykiller2197992.html
59 Lyric: “Lick a shot inna a battyman head! Lick a
shot inna a lesbian head! All sodomite dem fi dead, all lesbian dem fi
dead,” “More Songs,” post to “Murder Inna Dancehall” (blog), n.d.,
60 Human Rights Watch interview with Sean from St. Vincent and the Grenadines, interviewed in Antigua and Barbuda,
Individuals told Human Rights Watch that discriminatory laws had a negative impact on their daily lives. Peter, a 20-year-old gay man from Dominica, said: “the buggery and gross indecency laws say that we can’t be ourselves... These laws allow the negativity towards gay people to exist, the bigotry, [the] law allows people to insult and do anything [to us].”

Florence, a 24-year-old transwoman from Barbados, told Human Rights Watch that the buggery and serious indecency laws “allow people to treat [LGBT] people badly. It steals them into thinking they can get away with it because since the law is ‘on their side’ they think they are being a ‘good’ citizen.”

Jason, a 40-year-old gay man from Barbados, said:

---

People don’t understand how much pressure it is not to be your true authentic self and how that is such a mental strain. To the point where that is so detrimental to you as a person. If you are living where you are constantly scolded and told that you’re not good for just being you. And it hinders our education opportunities, and work opportunities and taking part in your community, that to me is a human rights violation. It doesn’t have to be physical violence for it to be a human rights violation.63

As noted above, one interviewee, a 20-year-old gay man from St. Kitts and Nevis, conveyed the general sentiment about life for LGBT people on the islands when he said: “I have to leave to be me.”64

64 Human Rights Watch interview with Nicholas, St. Kitts and Nevis, February 3, 2017.
TAB 15
AMNESTY INTERNATIONAL

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.
settled in a former market area in Naples and remained at risk of being forcibly evicted.

In August, the authorities forcibly evicted hundreds of people, including many children, from a building in the centre of Rome. Many of them were recognized refugees who had been living and working in the area for several years. The authorities failed to provide adequate housing alternatives, leaving scores of people to sleep in the open for days, before they were violently removed by police in riot gear. Several people were hurt by police using water cannons and batons. Some families were eventually rehoused temporarily outside Rome.

**TORTURE AND OTHER ILL-TREATMENT**

In July, Italy finally introduced legislation criminalizing torture, having ratified the Convention against Torture in 1989. However, in December, the Committee against Torture noted that the definition of torture in the new law was not in line with the Convention. The new law also failed to provide for the implementation of other key provisions, including the reviewing of interrogation policies and provision of redress to victims.

In September, the Council of Europe Committee for the Prevention of Torture (CPT) published the report of its visit to Italy in April 2016. The CPT received allegations of ill-treatment, including unnecessary and excessive use of force by law enforcement officials and prison officers in virtually all detention facilities it visited. The CPT noted that overcrowding persisted, despite recent reforms.

In October, the European Court of Human Rights found that the treatment of 59 people by police and medical staff during their detention, following the protests against the 2001 Genoa G8 summit, amounted to torture.

Also in October, 37 police officers, serving in the Lunigiana area in northern Tuscany, were charged in relation to numerous cases of personal injury and other abuses. Many of these abuses were against foreign nationals, on two occasions involving the use of electric batons. The trial was pending at the end of the year.

**DEATHS IN CUSTODY**

In July, following a second police investigation which started in 2016, five police officers were charged in relation to the death in custody of Stefano Cucchi in 2009. Three officers were charged with manslaughter and two with slander and making false statements. The trial was pending at the end of the year.

**JAMAICA**

**Jamaica**

*Head of state:* Queen Elizabeth II, represented by Patrick Linton Allen  
*Head of government:* Andrew Michael Holness

Unlawful killings – some of which may amount to extrajudicial executions – continued to be carried out by the police with impunity. A review of national legislation related to sexual offences, domestic violence, child care and child protection was underway. NGOs raised concerns over the right to privacy after proposals to introduce national identity cards. Lesbian, gay, bisexual and transgender people continued to face discrimination in law and in practice. Gay and bisexual prisoners continued to be at heightened risk for HIV.

**BACKGROUND**

Despite committing to the establishment of a national human rights institution, Jamaica had not established the mechanism by the end of the year.

Jamaica continued to have one of the highest homicide rates in the Americas. Between January and June, homicides increased by 19% compared with the same period in 2016, according to police data.

**POLICE AND SECURITY FORCES**

Between January and March, the police oversight mechanism, the Independent
Commission of Investigations (INDECOM) received 73 new complaints of assault and documented 42 killings by law enforcement officials. During the year, 168 people were killed by law enforcement officials, compared with 111 people in 2016.

Female relatives of those allegedly killed by the police continued to battle an underfunded, sluggish court system in their fight for justice, truth and reparation.¹

More than a year after a Commission of Enquiry published its findings into the events that took place in Western Kingston during the 2010 state of emergency that left at least 69 people dead, the government had still not officially responded on how it planned to implement the recommendations, or made a public apology. In June, the Jamaica Constabulary Force completed an internal administrative review into the conduct of officers named in the Commissioners’ report. However, it found no misconduct or responsibility for human rights violations during the state of emergency.

In June, legislation was passed to create “zones of special operations” as part of a crime prevention plan.

INDECOM hosted a Caribbean Use of Force Conference to develop a region-wide Use of Force Policy consistent with best practice in human rights. Law enforcement officials from across the region participated in the forum, along with experts in policing and human rights.

**VIOLENCE AGAINST WOMEN AND GIRLS**

In March, women’s movements and survivors of gender-based and sexual violence took to the streets in the capital, Kingston, to protest against impunity for sexual violence.

Jamaican NGOs made a series of recommendations to the Joint Select Committee of Parliament tasked with reviewing national legislation related to sexual offences, domestic violence, child care and child protection. These included, among other things, repealing marital rape exceptions under the Sexual Offences Act to protect women against rape, irrespective of their marital status.

**RIGHT TO PRIVACY**

The NGO Jamaicans for Justice (JFJ) raised concerns that the National Identification and Registration Authority Act could undermine the right to privacy and that Article 41 specifically could limit access to public goods and services.

**CHILDREN’S RIGHTS**

JFJ made a series of recommendations to the Parliamentary Joint Select Committee to strengthen the Child Care and Protection Act. Among other things, JFJ recommended expanding the list of authorities to which members of the public can make a legally mandated report of child abuse, to make reporting easier.

**RIGHTS OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE**

There remained no legal protection against discrimination based on real or perceived sexual orientation or gender identity. As a result, LGBT people continued to face harassment and violence.

Consensual sex between men remained criminalized, and there was limited protection against intimate-partner violence for people in same-sex relationships. NGOs recommended that laws be amended to ensure that rape is treated as a gender-neutral offence.

As transgender people continued to be unable to change their legal name and gender, LGBTI organizations were concerned that the proposed national identification system could undermine the privacy of transgender people and expose them to stigma and discrimination, including from potential employers.

Jamaica’s third annual Pride event took place in August and continued to increase visibility for the LGBTI community and create opportunities for engagement with wider society.

**RIGHT TO HEALTH**

In June, the NGO Stand up for Jamaica released *Barriers Behind Bars*, a report which analysed the high risk of sexual
violence, human rights violations, and consequently HIV, faced by gay and bisexual men in Kingston’s General Penitentiary, in which gay and bisexual men are segregated from the general prison population. The report aimed to generate discussion about best practices for reducing HIV in prisons.

INTERNATIONAL JUSTICE
Jamaica again failed to ratify the Rome Statute of the ICC, which it signed in September 2000, nor had it adhered to the UN Convention against Torture or the International Convention for the Protection of All Persons from Enforced Disappearance.

JAPAN

Japan
Head of government: Shinzo Abe

Despite harsh criticism from civil society and academics expressing fears that human rights would be weakened, parliament passed a controversial law targeting conspiracies to commit “terrorism” and other serious crimes. Authorities in Osaka city approved a same-sex couple as foster parents, and two municipalities moved towards recognizing same-sex partnerships. Detention of a prominent peace activist raised fair trial concerns. A District Court supported tuition waivers for a Korean school that was excluded due to their alleged ties to the Democratic People’s Republic of Korea (North Korea). Executions continued to be carried out.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

While pervasive discrimination based on real or perceived sexual orientation and gender identity continued, some progress was made in local municipalities.1 Under the foster care scheme providing support to children without guardians or children who are neglected or abused, authorities in the city of Osaka approved a gay couple as foster parents. The couple had been looking after a teenage boy since February. This was the first case of a same-sex couple becoming foster parents and being considered as a single household by the city. Sapporo City and Minato Ward advanced towards recognizing same-sex partnerships, following the practices of five other municipalities in 2015 and 2016.

FRANCE

FREEDOM OF EXPRESSION
In June, the Diet (parliament) adopted an overly broad law targeting alleged conspiracies to commit “terrorism” and other serious crimes. The law gave authorities broad surveillance powers that could be misused to curtail the rights to freedom of expression, association and privacy, without sufficient safeguards.

The law also presented a threat to the legitimate work of independent NGOs, as the definition of “organized crime group” was vague and overly broad and not clearly limited to activities that would constitute organized crime or pose a genuine threat to national security. Protests were held in multiple locations against the law’s potentially adverse effect on civil society.

FREEDOM OF ASSEMBLY
Prominent peace activist Hiroji Yamashiro was arrested and detained for five months from late 2016 until March 2017, under restrictive conditions and without access to his family, for his role in protests against new US military construction projects on Okinawa.2 The protracted detention of one of the most vocal opponents of the US military construction on Okinawa, without respecting the presumption of release pending trial, had a chilling effect on others exercising their right to peaceful assembly. Some activists hesitated to join protests for fear of reprisals.

DISCRIMINATION – ETHNIC MINORITIES
In July the Osaka District Court ruled as illegal the government’s exclusion of Osaka Korean High School from its high school education tuition waiver programme. The
TAB 16
AMNESTY INTERNATIONAL
REPORT 2016/17
THE STATE OF THE WORLD’S HUMAN RIGHTS
Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.
CONTENTS
ANNUAL REPORT 2016/17

Abbreviations 7
Preface 9
Foreword 12
Africa Regional Overview 16
Americas Regional Overview 24
Asia-Pacific Regional Overview 32
Europe and Central Asia Regional Overview 40
Middle East and North Africa Regional Overview 48
Afghanistan 58
Albania 62
Algeria 63
Angola 65
Argentina 68
Armenia 70
Australia 72
Austria 73
Azerbaijan 74
Bahamas 76
Bahrain 77
Bangladesh 80
Belarus 82
Belgium 84
Benin 85
Bolivia 86
Bosnia and Herzegovina 87
Botswana 89
Brazil 91
Brunei Darussalam 95
Bulgaria 96
Burkina Faso 98
Burundi 100
Cambodia 104
Cameroon 106
Canada 109
Central African Republic 111
Chad 114
Chile 116
China 118
Colombia 123
Congo (Republic of the) 128
Côte d’Ivoire 129
Croatia 131
Cuba 133
Cyprus 134
Czech Republic 136
Democratic Republic of the Congo 137
Denmark 141
Dominican Republic 142
Ecuador 144
Egypt 145
El Salvador 150
Equatorial Guinea 152
Eritrea 153
Estonia 155
Ethiopia 156
Fiji 157
Finland 158
France 160
Gambia 162
Georgia 164
Germany 166
Ghana 168
Greece 170
Guatemala 173
Guinea 174
Guinea-Bissau 176
Haiti 177
Honduras 179
Hungary 181
India 183
Indonesia 187
Iran 191
Iraq 196
Ireland 200
Israel and the Occupied Palestinian Territories 201
Italy 206
Jamaica 208
Japan 209
Jordan 211
Kazakhstan 213
Kenya 216
Korea (Democratic People’s Republic of) 219
Korea (Republic of) 221
ABBREVIATIONS

ASEAN
Association of Southeast Asian Nations

AU
African Union

CEDAW
UN Convention on the Elimination of All Forms of Discrimination against Women

CEDAW Committee
UN Committee on the Elimination of Discrimination against Women

CERD
International Convention on the Elimination of All Forms of Racial Discrimination

CERD Committee
UN Committee on the Elimination of Racial Discrimination

CIA
US Central Intelligence Agency

ECOWAS
Economic Community of West African States

EU
European Union

European Committee for the Prevention of Torture
European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

European Convention on Human Rights
(European) Convention for the Protection of Human Rights and Fundamental Freedoms

ICC
International Criminal Court

ICCPPR
International Covenant on Civil and Political Rights

ICESCR
International Covenant on Economic, Social and Cultural Rights

ICRC
International Committee of the Red Cross

ILO
International Labour Organization

International Convention against Enforced Disappearance
International Convention for the Protection of All Persons from Enforced Disappearance

LGBTI
Lesbian, gay, bisexual, transgender and intersex

NATO
North Atlantic Treaty Organization

NGO
Non-governmental organization

OAS
Organization of American States

OSCE
Organization for Security and Co-operation in Europe

UK
United Kingdom

UN
United Nations

UN Convention against Torture
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN Refugee Convention
Convention relating to the Status of Refugees

UN Special Rapporteur on freedom of expression
UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

UN Special Rapporteur on racism
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance

UN Special Rapporteur on torture
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

UN Special Rapporteur on violence against women
Special rapporteur on violence against women, its causes and consequences

UNHCR, the UN refugee agency
Office of the United Nations High Commissioner for Refugees

UNICEF
United Nations Children’s Fund

UPR
UN Universal Periodic Review

USA
United States of America

WHO
World Health Organization
house Roma families who had already suffered forced evictions. In June, following a court order that the families be removed from Masseria del Pozzo, local authorities forcibly evicted the approximately 300 people living there including dozens of small children. No alternative was given except the transfer to an isolated site, in a former fireworks factory with no working toilets, no electricity and extremely limited access to water. As of December the community was still living at the site in inadequate conditions.

In December, the CERD Committee expressed concern that Roma continued to face forced evictions and segregation in camps and that they were still discriminated against when trying to access social housing and other housing benefits.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

In May, Parliament passed Law no.76/2016, establishing civil unions for same-sex couples and rules governing the cohabiting of different-sex couples, extending to them most of the rights of married couples. However, second-parent adoption was not addressed in the law.

TORTURE AND OTHER ILL-TREATMENT

In March, the national ombudsperson started his role, with a mandate to monitor conditions of detention and prevent torture and other ill-treatment. His remit included monitoring repatriation flights of irregular migrants.

Parliament’s failure to introduce the crime of torture into the criminal code, as required by the UN Convention against Torture, and overdue since Italy’s ratification in 1989, continued.

Parliament and government also failed to agree on measures for the identification of law enforcement officers, such as tags on uniforms, which would facilitate accountability for abuses.

DEATHS IN CUSTODY

In July, five doctors charged with the manslaughter of Stefano Cucchi, who died a week after his arrest in the prison wing of a Rome hospital in 2009, were acquitted in a second appeal trial ordered by the Supreme Court. A second investigation against the police officers involved in his arrest was looking at allegations that he may have died as a result of beatings while in custody.
of officers named in the Commissioners’ report. However, the police continued to refuse to accept any responsibility for human rights violations or extrajudicial executions during the state of emergency. By the end of the year, the government had still not officially indicated how it would implement the recommendations of the Commissioners.

While the number of killings by police have significantly reduced in recent years, 111 people were killed by law enforcement officials in 2016, compared with 101 in 2015. Women whose relatives were killed by police, and their families, experienced pervasive police harassment and intimidation, and faced multiple barriers to accessing justice, truth and reparation.

VIOLENCE AGAINST WOMEN AND GIRLS
According to local NGOs, national legislation to address violence against women remained inadequate. For example, the Sexual Offences Act continued to narrowly define rape as non-consensual penile penetration of a woman’s vagina by a man, and to protect against marital rape in certain circumstances only. By December, over 470 women and girls had reported rape during the year, according to the police.

Criminalization of women engaged in sex work continued to place them at risk of discrimination, arbitrary arrest and violence by the police.

CHILDREN’S RIGHTS
The NGO Jamaicans for Justice reported that children were still being detained in police lockups for being “uncontrollable”, often for illegal periods and in inhumane conditions.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE
There remained no legal protection against discrimination based on real or perceived sexual orientation or gender identity. Young LGBTI people continued to face bullying and harassment in the absence of legal protection. Consensual sex between men remained criminalized.

Between January and June, 23 people reported to the LGBTI rights NGO J-FLAG that they had been physically assaulted or attacked because of their real or perceived sexual orientation or gender identity.

A survey published by J-FLAG found deeply homophobic attitudes. For example, only 36% of Jamaicans surveyed said they would allow their gay child to continue to live at home. Almost 60% of respondents said they would harm an LGBTI person who approached them.

In June, the Attorney General used social media to criticize the US Embassy for flying a Pride flag after the killings of LGBTI people in a nightclub in Orlando, USA.

In August, for the second year in a row, J-FLAG held activities to celebrate Pride Week.

INTERNATIONAL JUSTICE
Jamaica again failed to ratify the Rome Statute of the International Criminal Court, signed in September 2000, nor had it adhered to the UN Convention against Torture or the International Convention for the Protection of All Persons from Enforced Disappearance.

1. Jamaica: State of Emergency 2010 – ten things the government must learn, and ten things it must do (AMR 38/4337/2016)
2. “I feel scared all the time”: A Jamaican sex worker tells her story (News story 27 May 2016)

JAPAN

Japan
Head of government: Shinzo Abe

Progress towards a revision of the Constitution by the governing Liberal Democratic Party gained momentum after the party and its coalition members secured a two thirds majority in both houses of the parliament following upper house elections. There were fears that the revision could curtail human rights guarantees. Several municipalities and large corporations took measures to acknowledge same-sex unions.
in a context of pervasive discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) people. Executions of prisoners on death row continued.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

More municipalities adopted written instruments to recognize same-sex unions. A growing number of mostly multinational corporations amended their internal rules to extend benefits to employees in same-sex unions. The major political parties pledged to campaign for LGBTI rights ahead of upper house elections in July.

Discrimination against LGBTI people continued, particularly in rural areas. A transgender woman filed a lawsuit against the state after she was refused hormone injections while imprisoned. Parents of a gay student at Hitotsubashi University in the capital, Tokyo, filed a lawsuit against the university and another student for accountability and compensation; their son had committed suicide after being “outed” and bullied.

DISCRIMINATION – ETHNIC MINORITIES

In May the parliament passed the first national law to condemn the advocacy of hatred (“hate speech”) towards residents of overseas origin and their descendants. The legislation followed an increase in demonstrations promoting discrimination. Its effectiveness was questioned by civil society organizations and lawyers due to its narrow focus and the fact that it failed to legally ban “hate speech” or to set penalties. Later that month in Kanagawa prefecture, a court issued the first-ever provisional injunction preventing an anti-Korean activist from organizing a rally within a radius of 500m of the premises of an organization supporting ethnic Koreans.

Also in May, the Supreme Court dismissed a case brought against the police practice of blanket surveillance of Japan’s Muslim community, including people perceived as Muslim. In 2010, 114 internal Tokyo Metropolitan Police Department documents had been leaked online which included personal and financial information about Muslims labelled as suspected “terrorists” in Japan. The Court confirmed that there was a breach of the right to privacy, but left this type of intelligence gathering unchallenged.

VIOLENCE AGAINST WOMEN AND GIRLS

Following the bilateral agreement with the Republic of Korea (South Korea) in late 2015 on the military sexual slavery system before and during World War II, in July the South Korean government launched the Japanese-government-funded “Reconciliation and Healing Foundation”. The Japanese government emphasized that the funds were not for reparations, in line with its stance that all such claims were settled during post-war negotiations. Civil society in South Korea continued to call for the 2015 agreement to be revoked, deeming it unconstitutional and invalid because survivors were not represented during the negotiations. While the Imperial Army had forced women from throughout the Asia-Pacific region into sexual slavery, by the end of the year Japan had not started negotiations with any other countries.

REFUGEES AND ASYLUM-SEEKERS

Authorities continued to reject a majority of asylum applications. The government reported that in 2015, of the 7,586 asylum applications filed (a 52% increase over the previous year), only 27 were granted. An asylum-seeker from Sri Lanka prepared to sue the state claiming deprivation of his right to seek asylum because he was deported the day after his claim was denied by the Ministry of Justice.

JUSTICE SYSTEM

The parliament amended a series of laws relating to criminal justice. For the first time the electronic recording of both police and prosecutor interrogations was required, although in a limited number of cases. The existing wiretap law was expanded and a plea bargaining system was introduced. The expansion of the use of wiretapping risked violating the right to freedom of expression.
In June, the Kumamoto District Court granted Koki Miyata a retrial due to doubts concerning the credibility of his “confessions”. Koki Miyata had served a 13-year prison term for murder after being convicted in 1985.

FREEDOM OF ASSEMBLY
There were renewed protests in Okinawa after construction resumed at the US military base in Takae, marked by scuffles between riot police and protesters. Some protesters were injured during the dispersal.

JORDAN

Hashemite Kingdom of Jordan
Head of state: King Abdullah II bin al-Hussein
Head of government: Hani Mulki (replaced Abdullah Ensour in May)

The authorities continued to restrict the rights to freedom of expression, association and assembly, and detained and prosecuted critics and opponents under criminal defamation, blasphemy and anti-terrorism laws. Torture and other ill-treatment continued in detention centres. Trials before the State Security Court were unfair. Women faced discrimination in law and in practice and were inadequately protected against sexual and other violence. Migrant domestic workers were exploited and abused. Jordan hosted more than 655,000 refugees from Syria but sealed its borders to new arrivals in June. Courts continued to pass death sentences; there were no executions.

BACKGROUND
Jordan remained part of the Saudi Arabia-led international coalition engaged in armed conflict in Yemen (see Yemen entry).

In March, the government submitted a national human rights plan to the King, intended to phase in human rights improvements over a 10-year period.

In May, Parliament approved constitutional amendments empowering the King to directly appoint senior judicial, army, gendarmerie and General Intelligence Department (GID) officials. Parliamentary elections held in September used a proportional representation system for the first time.

There was continued insecurity along the border with Syria. In June, a bomb attack killed several Jordanian soldiers near an inter-border area in which some 70,000 Syrian refugees remained stranded in extreme hardship. Following the attack, the government sealed border crossing points, denying entry to refugees fleeing the conflict in Syria. In December, an attack by armed men near Karak killed 10 people, including three civilians; the armed group Islamic State (IS) claimed responsibility.

TORTURE AND OTHER ILL-TREATMENT
The government’s 10-year national human rights plan listed objectives that included strengthening legal protections against torture and increasing prosecutions of and “sanctions” against perpetrators of torture, but it was not clear that any such reforms were made in 2016. Cases of police officers accused of torturing detainees continued to be handled by special police courts whose proceedings were neither independent nor transparent.

DEATHS IN CUSTODY
In January the Adaleh Centre for Human Rights Studies, an NGO based in the capital, Amman, reported that at least eight deaths in detention resulting from torture had occurred in the previous two months. In April the government’s human rights co-ordinator said journalists and human rights activists would be permitted to attend some police court trials, including the trial of three officers accused of beating to death Omar al-Naser while he was in Criminal Investigation Department custody in September 2015. The trial was subject to lengthy adjournments without explanation and was not resolved by the end of 2016. Meanwhile, no information was made public about plans to prosecute police officers charged in connection with the
beating to death in police custody of Abdullah Zu’bi in Irbid in 2015.

**UNFAIR TRIALS**
The authorities continued to prosecute alleged supporters of IS and other armed groups, as well as journalists and opposition political activists, under anti-terrorism and other laws before the State Security Court (SSC), a quasi-military court whose procedures failed to meet international fair trial standards.

Those tried included Adam al-Natour, a Polish Jordanian who received a four-year prison sentence after the SSC convicted him of “joining an armed group and terrorist organization” on the basis of a “confession” that he said he was forced to make under torture by GID interrogators who beat and electrocuted him during three weeks of incommunicado detention. Following this detention, he was brought before the SSC Prosecutor and made to sign a statement in Arabic, a language he could not read or understand.

**ADMINISTRATIVE DETENTION**
The authorities held tens of thousands of individuals under the 1954 Crime Prevention Law, which allows detentions for up to one year without charge or trial or any means of legal remedy.

**FREEDOMS OF EXPRESSION, ASSOCIATION AND ASSEMBLY**
The authorities restricted freedoms of expression, association and peaceful assembly and detained or prosecuted tens of journalists and critics under criminal defamation provisions of the Penal Code and anti-terrorism law provisions that criminalize criticism of foreign leaders or states. In July, the official National Centre for Human Rights reported an increase in arrests and SSC referrals of peaceful critics and protesters under these laws.

In May, the authorities released Dr Eyad Qunaibi, a university professor who had been sentenced to two years’ imprisonment in December 2015 after the SSC convicted him of “undermining the political regime... or inciting opposition to it” for criticizing Jordan’s relations with Israel in a Facebook post.

On 25 September, a gunman shot dead journalist Nahed Hattar outside the court in Amman where he was being tried for posting a satirical cartoon on Facebook that the authorities deemed offensive to Islam. He had been held for almost a month in pre-trial detention before a court allowed his release on bail. Jordan’s official news agency said the alleged perpetrator was arrested at the scene of the killing; the case was later referred to the SSC on charges including murder.

Draft amendments to the Societies Law proposed in March, if implemented, would increase government powers to prevent the legal registration of NGOs or their operations on national security or public order grounds, and would deny them access to international funding without any justification. The amendments had not been enacted by the end of the year.

**WOMEN’S RIGHTS**
Women continued to face discrimination in law and practice, and were inadequately protected against so-called honour crimes and other forms of gender-based violence.

In April, a parliamentary legal committee endorsed proposed amendments to Article 308 of the Penal Code that would end the provision allowing rapists to avoid prosecution if they marry their victims. However, it would keep the provision when the victim is aged between 15 and 18. At the end of the year, the amendments had still to be enacted.

In July the CEDAW Committee requested information from the government ahead of its scheduled 2017 review of Jordan. Among other things, they requested details of any government plans to amend the Citizenship Law to allow Jordanian women married to foreign spouses to pass their nationality to their children and husbands on the same basis as Jordanian men, and to allow their families increased access to medical care, education and other services. The Committee also requested information on government
plans to amend Article 308 and other Penal Code provisions that allow rapists to escape prosecution and mitigate penalties for perpetrators of so-called honour crimes.

MIGRANT WORKERS’ RIGHTS
Migrant domestic workers continued to face exploitation and abuse. In February the Amman-based NGO Tamkeen reported that 80,000 women migrant domestic workers were excluded from the protection of labour laws and exposed to violence and other abuse by employers. The UN Special Rapporteur on trafficking in persons reported during a visit to Jordan that migrant women employed as domestic workers who fled abusive employers were at risk of trafficking for sexual exploitation. The Special Rapporteur also reported that refugee women and girls from Syria were trafficked for sexual exploitation.

REFUGEES AND ASYLUM-SEEKERS
Jordan hosted more than 655,000 refugees from Syria, including 16,000 Palestinians, as well as almost 60,000 refugees from other countries including Iraq, Yemen and Somalia, and 2.1 million long-term Palestinian refugees.

By the end of the year, there were 75,000 Syrian refugees stranded in harsh conditions in the “berm” desert area between the Rukban and Hadalat border crossings with Syria. The government denied most of them entry into Jordan on security grounds but allowed around 12,000 to enter Jordan in May, confining them to Village 5, a fenced-off area of Azraq refugee camp. On 21 June the authorities sealed Jordan’s border with Syria after a suicide bomb attack, thereby cutting off regular humanitarian access to refugees in the berm. Jordan has tightened border controls since 2012. The authorities also deported several refugees on alleged security grounds.

By July, Jordan had received only 45% of the funding it required from the international community, according to the UN, to meet the needs of refugees from Syria. Around 86% of Syrians in urban areas of Jordan were reported to be living below the poverty line with limited access to services.

DEATH PENALTY
Courts imposed death sentences; there were no executions. In February, a government spokesperson denied media reports that the authorities planned to execute 13 prisoners.

KAZAKHSTAN
Republic of Kazakhstan
Head of state: Nursultan Nazarbayev
Head of government: Bakytzhan Sagintayev (replaced Karim Massimov in September)

The rights to freedom of expression, of peaceful assembly and of association remained restricted. The authorities used administrative detention to stop people from participating in unauthorized protests and criminal prosecution to target social media users and independent journalists. Harsher penalties for NGO leaders – who were a separate category of offenders in the Administrative Offences and Criminal Codes – were used for the first time. New cases of torture and other ill-treatment against suspects and prisoners were reported. The large number of migrant workers in the country faced exploitation and restricted access to health care and education. One person was sentenced to death.

FREEDOM OF ASSEMBLY
Organizing or participating in a peaceful public assembly without prior authorization from the authorities was a violation under both the Administrative Offences Code and the Criminal Code, punishable by heavy fines or up to 75 days’ detention. Providing “assistance” to “illegal” assemblies, including by “means of communication”, including social media, constituted a criminal offence.

In April and May, “unsanctioned” demonstrations took place across Kazakhstan as people protested peacefully against proposed changes to the Land Code to allow unused agricultural land to be leased to
foreign citizens for up to 25 years. Authorities responded by blocking access to main squares and thoroughfares, and by using administrative detention to stop would-be protesters from participating.

Further Land Code protests were planned for 21 May in the capital Astana, Almaty, the largest city, and in other towns. Between 17 and 20 May, at least 34 people were arrested and charged as “organizers” of the protests after they had announced on social media their intention to participate or provided information about the demonstrations. Most were sentenced to 10-15 days’ detention under the Administrative Code.

On 21 May, in Almaty, Astana and other towns, police blocked access to the areas where the demonstrations were supposed to take place. Police detained up to 500 people in Almaty, and smaller numbers elsewhere. At police stations, the detainees had to sign statements that they had participated in an unsanctioned public meeting and give their fingerprints. They were released after a few hours. On 21 May, at least 48 journalists were detained while attempting to cover the protests, according to freedom of expression NGO Adil Soz. All were released within a few hours.

**FREEDOM OF EXPRESSION**

**Social media**

Prosecutors used the Criminal Code to target activists for posts on social media.

In January, Yermek Narymbaev and Serikzhan Mambetalin were sentenced to prison terms for posting on Facebook extracts of an unpublished book which was considered offensive to ethnic Kazakhs. Their sentences were suspended on appeal. Also in January, blogger Igor Sychev’s five-year prison sentence for posting a survey on another social media site on whether his town should become part of Russia was upheld on appeal.

On 28 November, prisoners of conscience Maks Bokaev and Talgat Ayan were convicted on criminal charges of “inciting social, national, clan, racial, class, or religious discord”, “dissemination of information known to be false” and organizing unsanctioned meetings and demonstrations. Maks Bokaev and Talgat Ayan were both sentenced to five years’ imprisonment. Their posts on Facebook and other social media platforms in April and May about the proposed changes to the Land Code and the ongoing protests formed part of the charges against them. In July, folk singer Zhanat Esentaev was convicted under the Criminal Code for posts on Facebook in relation to the Land Code protests and sentenced to two and a half years’ probation.

**Criminal prosecution of journalists**

In May, Guzyl Baidalinova, journalist and owner of the Nakanune.kz independent news portal, was convicted of “dissemination of information known to be false” and sentenced to one and a half years’ imprisonment which was converted to a suspended sentence in July. The outlet had published articles on the activities of a leading commercial bank. Nakanune.kz had been critical of the authorities.

In October, Seitkazy Mataev and his son Aset Mataev were sentenced to six and five years’ imprisonment respectively on charges of embezzlement and tax evasion. Seitkazy Mataev was the chair of the Union of Journalists of Kazakhstan and the chair of the National Press Club; Aset Mataev was the General Director of KazTAG news agency. The Union of Journalists had provided support to independent journalism.

**Internet**

In January, changes to the Law on Communications came into force. They required internet users to download and install a “national security certificate”. The certificate allowed authorities to scan communications sent over the HTTPS protocol and to block access to individual webpages with content which the authorities judged to be illegal.
**FREEDOM OF ASSOCIATION**

**NGOs**
Leading or participating in an unregistered organization was an offence under articles in the Criminal and Administrative Offences Codes. “Leaders” of associations were treated as a separate category of offenders, providing for harsher penalties. The definition of “leader” was broad, potentially including any active member of an NGO or other civic association. These clauses were used for the first time in 2016, including in the criminal cases against Maks Bokaev and Talgat Ayan.

Legislative changes introduced at the end of 2015 mandated the creation of a central state database of NGOs. Failure to regularly supply accurate information for the database could lead to fines or a temporary ban on activities. In February, the NGO International Legal Initiative in Almaty challenged the provision in a civil court, but lost the case. Soon afterwards, the NGO faced a lengthy tax inspection. Civil society activists were concerned that this new law placed overly broad requirements on NGOs and constrained their activities.

**Religious groups**
By law, religious groups were required to register with the Ministry of Justice. Membership of an unregistered religious group was an offence under the Administrative Offences Code. There were restrictions on where religious groups could hold services, with steep fines for meeting or distributing religious literature in unsanctioned premises. According to the NGO Forum 18, which promotes religious freedom, groups were fined for meeting to worship in each other’s homes. Seven Baptists in East Kazakhstan Region were fined in August.

**TORTURE AND OTHER ILL-TREATMENT**
The practice of torture and other ill-treatment continued. The Coalition of NGOs of Kazakhstan against Torture registered 163 new cases of torture and other ill-treatment between January and November 2016.

Article 419 of the Criminal Code (“false reporting of a crime”) was invoked by prosecutors against those whose allegations of torture or other ill-treatment were investigated and deemed to be unfounded.

In September, a former prison officer was convicted of the rape and torture of a woman prisoner in Almaty Region and sentenced to nine years’ imprisonment. The woman had reported being gang-raped and beaten by four prison officers; she gave birth as a result of the rape. The prosecution of the other three prison officers was dropped due to lack of evidence. The one conviction secured was based on a paternity test that showed that the former prison officer had fathered the child. The case drew attention to the wider issue of sexual violence against women prisoners in places of detention.

**MIGRANT WORKERS’ RIGHTS**
Labour migration to Kazakhstan, mainly from neighbouring Kyrgyzstan, Tajikistan and Uzbekistan, was predominantly irregular. Officials estimated that there were between 300,000 and 1.5 million migrant workers in the country, and that the number of people arriving for work in 2016 was much higher than in 2015. Most migrant workers worked without written contracts and were vulnerable to exploitation, including having to work long hours with little or no rest time, low and irregularly paid wages, and dangerous working conditions, particularly in the agriculture and construction sectors. Many depended on their employers for housing, which was often overcrowded and of poor quality. Some employers also confiscated migrant workers’ passports, leaving them in circumstances that amounted to forced labour. Migrant workers without permanent residency were unable to access free health care and faced problems enrolling their children in schools.

Kazakhstan had not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
**DEATH PENALTY**

Kazakhstan was abolitionist for ordinary crimes, but retained the death penalty for 17 crimes that constituted terrorism-related offences or war crimes. In November, Ruslan Kulekbaev was convicted on terrorism-related charges of killing 10 people in Almaty in July and sentenced to death. He was the sixth person to be sentenced to death since President Nazarbayev signed a moratorium on executions in 2003. Since then all death sentences have been commuted to life imprisonment.

**KENYA**

Republic of Kenya
Head of state and government: Uhuru Muigai Kenyatta

Security forces carried out enforced disappearances, extrajudicial executions and torture with impunity, killing at least 122 people by October. Some abuses were committed by security agencies in the context of counter-terror operations, others by unaccountable police officers and other security agencies. Police used excessive and lethal force to disperse demonstrators calling for fair election practices. Political opposition, anti-corruption groups and other civil society activists, as well as journalists and bloggers, were harassed. Families in informal settlements and marginalized communities were forcibly evicted from their homes.

**BACKGROUND**

Corruption remained rife. President Kenyatta asked almost a quarter of his cabinet secretaries to resign after the state’s Ethics and Anti-Corruption Commission (EACC) accused them of corruption. Some faced trial for corruption, others appeared before oversight institutions to answer allegations of corruption. According to the EACC, at least 30% of GDP – equivalent to about US$6 billion – is being lost annually to corruption. Local governments were also accused of corruption, largely by inflating costs in procurement processes. The Ministries of Health and of Devolution and Planning were under investigation for alleged misappropriation of funds, among other things.

In May, civil society organizations launched Kura Yangu, Sauti Yangu, a movement to ensure legitimate, fair and well-organized elections due in August 2017. Soon after, the opposition Coalition for Reform and Democracy (CORD) organized weekly demonstrations over what it considered the bias of the Independent Electoral and Boundaries Commission (IEBC). On 3 August, IEBC commissioners resigned, ending months of protests over the election process. On 14 September, the Election Laws (Amendment) Bill came into force, inaugurating the process of recruiting new IEBC commissioners. However, the recruitment of new commissioners was delayed after the recruiting panel postponed indefinitely the recruitment of the Chairperson after five interviewed candidates failed to meet the requirements. The delay will negatively impact the electoral preparations timeline.

**ABUSES BY ARMED GROUPS**

Al-Shabaab, the Somali-based armed group, continued to carry out attacks in Kenya.

On 25 October, for example, in the northeastern town of Mandera, at least 12 people were killed in an attack by al-Shabaab on a guesthouse hosting members of a theatre group.

**COUNTER-TEOR AND SECURITY**

In the context of counter-terrorism operations targeting al-Shabaab, security agencies were implicated in human rights violations, including extrajudicial executions, enforced disappearances and torture. Despite an increase in reported cases of these violations, meaningful investigations were not carried out with a view to ensuring accountability.
EXTRAJUDICIAL EXECUTIONS

Police and other security agencies carried out extrajudicial executions as well as enforced disappearances, and torture.  

Willie Kimani, a lawyer with a legal aid charity, his client Josphat Mwendwa and their taxi driver Joseph Muiruri, were abducted on 23 June at an unknown location. On 1 July, their bodies were found dumped in a river in Machakos County, eastern Kenya; post mortems showed they had been tortured. Josphat Mwendwa, a motorcycle taxi driver, had accused a member of the Administration Police (AP) of attempted murder after the officer shot him in the arm during a routine traffic check. The officer then charged him with a traffic offence to intimidate him into dropping the complaint. The abduction happened after Willie Kimani and Josphat Mwendwa left Mavoko law courts in Machakos County after attending a hearing in the traffic offence case. On 21 September, four AP officers – Fredrick ole Leliman, Stephen Cheburet Morogo, Sylvia Wanjiku Wanjohi and Leonard Maina Mwangi – were found guilty of murdering the three men. The officers were remanded in custody awaiting sentencing at the end of the year.

The killings of the three men triggered protests and mobilized human rights organizations, the media and legal and other professional organizations across the country to demand action against enforced disappearances and extrajudicial executions.

Job Omariba, a nurse in the eastern town of Meru was reported to have gone missing in Nairobi on 21 August. His body was discovered at Machakos mortuary on 30 August. Later that day, the Special Crime Prevention Unit arrested three police officers on suspicion of his abduction and murder.

On 29 August, two policemen walked into Mwingi Level 4 Hospital and shot dead Ngandi Malia Musyemi, a hawker, after he reported to police that he had been carjacked. His sister witnessed the killing. Officers from Nairobi, Machakos and Embu were assigned to investigate the killing.

Kenya does not have an official database of police killings or enforced disappearances. According to Haki Africa, a human rights group, there were 78 extrajudicial executions and enforced disappearances in Mombasa County in the first eight months of 2016. The Daily Nation newspaper documented 21 cases of police killings during the same period.

FREEDOM OF ASSEMBLY

The police used excessive and lethal force to disperse protesters in Nairobi and other towns during demonstrations against the IEBC.

On 16 May, a male protester in Nairobi was shot and injured in a confrontation with police as residents from the informal settlement of Kibera tried to march to the electoral commission’s office. A video showed three policemen kicking and beating a protester after he fell down.  

The same day, at least two people were killed and 53 injured during a demonstration in the western city of Kisumu.

FREEDOM OF EXPRESSION

The authorities continued to curtail freedom of expression by intimidating and harassing journalists, bloggers and other members of civil society, particularly by using the ambiguity of the Kenya Information and Communication Act. At least 13 people were prosecuted under Section 29 of the law, which includes vague terms such as “grossly offensive” and “indecent”. On 19 April, the High Court found that Section 29 was in breach of the Constitution’s provisions on the right to freedom of expression.

Mbuvi Kasina, a journalist, continued to face six counts of misuse of a licensed telecommunication system for questioning the expenditure of Kitui South Constituency Development Funds.

On 27 September, police harassed, attacked and destroyed the camera of
Duncan Wanga, a K24 TV journalist and cameraman, while he was covering a demonstration in the western city of Eldoret. On 1 October, the Deputy President threatened to sue activist Boniface Mwangi after he posted a tweet linking the Deputy President to the murder in May of businessman Jacob Juma. The Deputy President's lawyers demanded that the activist offer an apology, retraction and clarification within seven days. Boniface Mwangi's lawyers welcomed the suit, citing ICC cases and allegations made by a Member of Parliament about Jacob Juma's killing to show that the Deputy President's reputation had not been injured by the tweet.

REFUGEES AND ASYLUM-SEEKERS

In May, shortly after it revoked the assumed refugee status of Somalis who had fled to Kenya, the government announced it would close Dadaab refugee camp on 30 November. To justify the move, it cited national security concerns and the need for the international community to share the responsibility of hosting the refugees. Dadaab is home to over 280,000 refugees, of whom 260,000 are from Somalia. The short timeframe, government statements about the repatriation process and the lack of security in Somalia raised concerns that the repatriation of Somalis would be forced, in violation of international law, and put at risk the lives of tens of thousands of people. According to UNHCR, the UN refugee agency, by mid-October, 27,000 Somali refugees had returned to Somalia from Dadaab in 2016, nominally voluntarily. On 16 November, the authorities stated they would extend the deadline for the closure of Dadaab by six months.

In May, the government disbanded the Department of Refugee Affairs (DPA), created in accordance with the 2006 Refugee Act, and established instead the Refugee Affairs Secretariat. The Secretariat is not established by law and functions at the behest of the Ministry of Interior and National Government Co-ordination.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

On 16 June, the High Court in Mombasa upheld the legality of anal examinations of men suspected of engaging in same-sex sexual activity. Two men had petitioned the Court to declare unconstitutional anal examinations as well as HIV and Hepatitis B tests they had been forced to undergo in February 2015. The Court ruled that there had been no violation of rights or breach of the law. Forced anal examinations and forced HIV testing violate the right to privacy and the prohibition of torture and other ill-treatment under international law. The High Court's ruling breached several human rights treaties ratified by Kenya.

HOUSING RIGHTS – FORCED EVICTIONS

Families living in informal settlements and marginalized communities continued to be forcibly evicted in the context of large infrastructure development projects.

In Deep Sea informal settlement in Nairobi, 349 families were forcibly evicted on 8 July to allow construction of the road linking Thika Super Highway to Westlands Ring Road. The eviction took place without notice and while consultation was taking place between the community and the Kenya Urban Roads Authority (KURA). Residents were attacked during the evictions by armed youth ferried in by government construction and private vehicles. Armed police officers were present and threatened to shoot residents if they resisted eviction. KURA and the EU, which is funding the road, had assured Deep Sea residents they would not be forcibly evicted.

KURA took responsibility for the violations of the rights of residents during a meeting with Deep Sea community leaders. In a letter to the community, it agreed to urgently put in place corrective measures, including to restore the sanitation facilities, facilitate reconstruction of people’s houses, and provide humanitarian assistance such as cooking facilities and blankets for those who had lost everything. KURA and Deep Sea
residents agreed that permanent residents would each receive 20,000 Kenya shillings (around US$200) and that this would not be recognized as covering losses incurred in the forced eviction.

Representatives of the Sengwer Indigenous People reported that Kenya Forest Service repeatedly burned houses in Embobut forest. Local courts heard cases concerning Sengwer people who had been arrested for being in the forest, despite a pending court case brought by Sengwer to challenge their eviction and a 2013 injunction issued by the High Court of Eldoret to stop arrests and evictions while the legal challenge was being considered.

KOREA (DEMOCRATIC PEOPLE’S REPUBLIC OF)

Democratic People’s Republic of Korea
Head of state: Kim Jong-un
Head of government: Pak Pong-ju

Citizens of the Democratic People’s Republic of Korea (North Korea) continued to suffer violations of most aspects of their human rights. North Koreans and foreign nationals were arbitrarily detained and sentenced after unfair trials for criminal “offences” that were not internationally recognized. Severe restrictions on the right to freedom of expression continued. Thousands of North Koreans were sent by the authorities to work abroad, often under harsh conditions. The number of North Koreans fleeing their country and arriving in the Republic of Korea (South Korea) increased.

BACKGROUND

The government tested nuclear weapons twice, once in January and again in September, increasing tension between North Korea and the international community. The UN increased its economic sanctions on North Korea as a result, leading to fears from inside the country and from foreign experts of heightened food shortages and a further deterioration in living standards. Experts considered the possible economic impact to be a motivation for more people leaving the country, but the risk of political purges in the form of imprisonment and reported executions among the ruling elite was seen as a key contributing factor.

The Korean Workers’ Party held its congress in May for the first time in 36 years. Journalists from international media were invited to the country for the occasion, but operated under strict restrictions and were not allowed to cover congress meetings.

Severe floods in August killed at least 138 people and displaced 69,000 others, according to the World Food Programme. The government asked for humanitarian assistance including food, shelter, water and sanitation but international response was minimal due to concerns expressed by potential donors about the country’s nuclear programme.

FREEDOM OF MOVEMENT

A total of 1,414 people left North Korea and arrived in South Korea. The figure increased by 11% from 2015, and rose for the first time since 2011 when Kim Jong-un came to power.

Along with reports of ordinary North Koreans leaving, media in South Korea and Japan reported several high profile government officials deserteing their posts and seeking asylum. The South Korean government confirmed in August the arrival of Thae Young-ho, North Korea’s deputy ambassador to the UK and his family.

1. Kenya: Set up judicial inquiry into hundreds of enforced disappearances and killings (News story, 30 August)
2. Kenya: Investigate police crackdown against protesters (News story, 17 May)
3. Kenya: Government officials coercing refugees back to war-torn Somalia (News story, 15 November)
Thirteen restaurant workers, sent by the government to work in Ningbo, China, flew directly from China to South Korea in April (see Korea (Republic of) entry). On their arrival in South Korea, the North Korean authorities claimed that the 12 women in the group were abducted from China and taken to South Korea. According to a media interview with their former colleagues arranged in Pyongyang by the North Korean government, the workers had their passports taken away from them while in China, which would have restricted their ability to travel freely.¹

Interviews with North Koreans who left the country as well as media reports said that the government had increased its surveillance efforts to prevent people from leaving via the Chinese-Korean border. Those who successfully left continued to be at risk of detention, imprisonment, forced labour, and torture and other ill-treatment if arrested and returned from China.

MIGRANT WORKERS’ RIGHTS
The government continued to dispatch through state-owned enterprises at least 50,000 people to work in some 40 countries including Angola, China, Kuwait, Qatar and Russia in various sectors including medicine, construction, forestry and catering. Workers did not receive wages directly from employers, but through the North Korean government after significant deductions. Most workers were deprived of information about international or domestic labour laws, and often lacked access in the host countries to any government agencies and other organizations monitoring compliance with or offering assistance in claiming labour rights. These workers were frequently subjected to excessive working hours and were vulnerable to occupational accidents and diseases. Poland announced in June that it was no longer allowing workers from North Korea to enter the country following media reports of a fatal shipyard accident involving a North Korean worker in 2014. Malta made a similar announcement in July, and denied visa extensions to existing North Korean workers.

ARBITRARY ARRESTS AND DETENTIONS
The authorities sentenced people, including foreign nationals, to long prison terms after unfair trials. Frederick Otto Warmbier, a US student, was convicted of “subversion”; he only admitted stealing a propaganda banner. He was sentenced to 15 years’ hard labour in March; he was not given consular access for at least six months. Kim Dong-chul, a 62-year-old US citizen born in South Korea, was sentenced to 10 years’ hard labour in April for “spying”; the authorities failed to provide details about the alleged spying activities. The sentences were imposed as new UN sanctions on North Korea were authorized earlier in the year, and before the Korean Workers’ Party Congress in May when there was increased international attention on North Korea.² Up to 120,000 people remained in detention in the four known political prison camps, where they were subjected to systematic, widespread and gross human rights violations such as forced labour, and torture and other ill-treatment – some amounting to crimes against humanity. Many of those held in these camps had not been convicted of any internationally recognized criminal offence but were detained for “guilt-by-association”, simply for being related to individuals deemed threatening to the state.

FREEDOM OF EXPRESSION
The authorities continued to impose severe restrictions on the right to freedom of expression, including the right to seek, receive and impart information regardless of national borders. The government persisted in restricting access to outside sources of information; there were no national independent newspapers, media or civil society organizations.

The professional activities of the very few international journalists allowed into the country remained severely restricted. BBC journalists visiting North Korea ahead of the Korean Workers’ Party Congress in May were
briefly detained incommunicado, interrogated and expelled from the country because the government found the stories they produced highlighting aspects of everyday life in Pyongyang to be ‘disrespectful’. Agence France-Presse became one of the very few foreign media companies to operate in North Korea when it opened a Pyongyang office in September.

Almost everyone was denied internet and international mobile phone services. North Koreans who lived close to the Chinese border took significant risks in using smuggled mobile phones connected to Chinese networks in order to make contact with individuals abroad. People who did not own such phones had to pay exorbitant fees to brokers in order to make international calls. The use of smuggled mobile phones to connect to Chinese mobile networks exposed everyone involved to increased surveillance, as well as the risk of arrest and detention on various charges, including espionage.3

The existing computer network remained available to a very limited number of people, providing access to domestic websites and email services only. In September, the misconfiguration of a server in North Korea revealed to the world that the network contained only 28 websites, all controlled by official bodies or state-owned enterprises.

ENFORCED DISAPPEARANCES
In February, the authorities stopped all investigations into abductions of Japanese citizens, reversing the 2014 bilateral agreement to investigate cases. Media reports said that the decision followed Japan’s reinstating previously eased sanctions after North Korea’s nuclear weapons tests in January. North Korea had previously admitted that its security agents abducted 12 Japanese nationals during the 1970s and 1980s.

KOREA (REPUBLIC OF)

Republic of Korea
Head of state and government: Park Geun-hye

Restrictions on the rights to freedom of peaceful assembly and expression persisted. Asylum-seekers were detained and conscientious objectors were imprisoned for exercising their human rights. The detention in a state facility of 13 restaurant workers originally from the Democratic People’s Republic of Korea (North Korea) called into question the legality of the existing settlement support process for North Koreans arriving in the country.

The government failed to prevent private companies from hindering lawful trade union activity, and only belatedly followed up on deaths and adverse health effects resulting from the use of harmful products. The decision of the government to proceed with the deployment of the US-built Terminal High Altitude Area Defence (THAAD) anti-missile system triggered strong opposition from domestic groups, as well as condemnation from China and North Korea.

Lawmakers voted to impeach President Park Geun-hye on 9 December, which must be confirmed through a decision by the Constitutional Court.

FREEDOM OF ASSEMBLY
Authorities continued to restrict people from exercising their right to freedom of peaceful assembly, often under the pretext of protecting public order. By the end of the year, the authorities had not completed an investigation into the excessive use of force by police against largely peaceful protesters during the anti-government “People’s Rally” in November 2015, nor held accountable any
officers or commanding authorities responsible. On 25 September, Baek Nam-gi, a veteran rural activist critically injured after he was hit by a water cannon during the demonstrations, died after spending 10 months in a coma.1

The delay in investigating Baek Nam-gi’s injuries was in sharp contrast to the conviction of Han Sang-gyun, president of the Korean Confederation of Trade Unions, and co-organizer of several demonstrations, including union participation in the People’s Rally. Han Sang-gyun was sentenced to five years in prison on 4 July on charges including inciting illegal acts among a small number of protesters during the largely peaceful demonstrations. The sentence was reduced to three years on 13 December on appeal.2

In another instance of what critics of the government saw as an attempt to limit freedom of assembly, the Korean Navy filed a civil lawsuit against 116 individuals and five groups protesting against the construction of a naval base on Jeju island. In March, the Navy sought 3.4 billion KRW (US$2.9 million) as compensation for losses incurred from construction delays allegedly caused by protests that had been ongoing for eight years.

FREEDOM OF EXPRESSION
The National Assembly passed an anti-terrorism law in March after the opposition staged a nine-day filibuster due to concerns over what they saw as its potential for abuse. The law greatly expanded the power of the state to conduct surveillance of communications and to collect personal information on people suspected of links with terrorism.

The authorities undercut press freedom through increasingly heavy interference with news reporting, especially by television broadcasters. In July, the National Union of Media Workers denounced an array of tactics used by the government to influence news coverage, including nominating individuals close to the government to the boards of influential, publicly owned media corporations and launching disciplinary actions against individual journalists as a warning to others. These tactics were evident during the reporting of the Sewol Ferry disaster in 2014 and the discussions on the THAAD system.

The authorities continued to use the vaguely worded National Security Law to intimidate and imprison people exercising their right to freedom of expression. Individuals arrested for alleged violations of the law included members of the Corean Alliance for an Independent Reunification and Democracy (CAIRD), which was forced to disband as a direct result of repeated repressions. Kim Hye-young, a CAIRD activist suffering from thyroid cancer, was sentenced to two years’ imprisonment in January after being arrested in July 2015 during a peaceful protest.3 Yang Ko-eun, another CAIRD representative, was prohibited from travelling overseas in June to speak about the conditions of her fellow members, and was arrested in September.

CORPORATE ACCOUNTABILITY
In May, the UK company Reckitt Benckiser accepted full responsibility for the deaths of at least 95 people, as well as for adverse health effects suffered by hundreds and potentially thousands more. These were linked to a humidifier sterilizer product sold by its Korean subsidiary over a period of many years. Following a country visit the previous year, the UN Special Rapporteur on human rights and hazardous substances concluded in an August report that this and other companies had failed to conduct a reasonable degree of human rights due diligence with respect to the safety of the chemicals they sold to consumers. He recommended that Reckitt Benckiser ensure that all victims be identified and receive compensation.

WORKERS’ RIGHTS
Businesses, particularly those in the construction sector, continued to hinder union activities among employees and workers employed by subcontractors without
being sanctioned by the government. According to a June report by the UN Working Group on the issue of human rights and transnational corporations and other business enterprises, some companies had set up so-called “yellow unions” that were not independent and did not meet standards for collective bargaining. Other companies hired legal consultants to design “union-busting” measures, or private security firms to harass union members.

REFUGEES AND ASYLUM-SEEKERS
The National Immigration Service detained more than 100 asylum-seekers for months at Incheon International Airport, including 28 men from Syria whom the Incheon District Court ruled in June should be released and allowed to apply for asylum. Dozens of asylum-seekers from other countries such as Egypt remained detained at the airport under inhumane conditions and without basic necessities and services, including beds, adequate showers and sanitation facilities, food acceptable for religious beliefs, or the opportunity to exercise outdoors.

ARBITRARY ARRESTS AND DETENTIONS
Thirteen North Korean restaurant workers who had been working in Ningbo, China, were detained for four months in a facility run by the National Intelligence Service after their arrival from China in April (see Korea (Democratic People’s Republic of) entry). Relatives said in media interviews facilitated by the North Korean government that the workers had been involuntarily taken to South Korea. The individuals were not allowed to contact their families or lawyers of their choosing, nor to talk to anybody outside the facility about their reasons for travelling to South Korea. This undermined a review of the lawfulness of their detention by an independent and impartial judicial power and raised questions about the government’s enforced settlement support process for arrivals from North Korea.4

CONSCIENTIOUS OBJECTORS
Approximately 400 conscientious objectors to military service remained in prison solely for exercising their right to freedom of thought, conscience and religion, which also constituted a case of arbitrary detention under international law. Those who had completed their jail terms for refusing to perform military service in the absence of any alternatives continued to face economic and social disadvantages due to these criminal records. Following legal amendments which came into force in 2015, on 20 December the government published the names and personal information of 237 conscientious objectors on the website of the Military Manpower Administration.

The Constitutional Court was still examining the legality of conscientious objections in cases brought between 2012 and 2015. District courts ruled in favour of four men refusing military duty, adding to the six men receiving acquittals in 2015. Appeals by the prosecution, however, resulted in the overturning of two of the acquittals. In October, an appeals court acquitted two other men who had appealed against the guilty verdicts handed down by the court of first instance.

1. Urgent action: Protester seriously injured by water cannon (ASA 25/4503/2016)
2. South Korea: Five year sentence against union leader a chilling blow to peaceful protest (News story, 4 July)
3. South Korea: Woman denied medical help on hunger strike (ASA 25/4150/2016)
4. South Korea: End secrecy surrounding North Korean restaurant workers (ASA 25/4413/2016)

KUWAIT
State of Kuwait
Head of state: Sheikh Sabah al-Ahmad al-Jaber al-Sabah
Head of government: Sheikh Jaber al-Mubarak al-Hamad al-Sabah
The authorities further curtailed freedom of expression and prosecuted and imprisoned government critics under criminal defamation laws; some were prisoners of conscience. Members of the Bidun minority continued to face discrimination and were denied citizenship rights. Migrant workers remained inadequately protected against exploitation and abuse. Courts handed down new death sentences; no executions were reported.

BACKGROUND
Parliament approved a new law lowering the age of minors from 18 to 16 years on 31 December 2015. When enacted in January 2017, anyone arrested at the age of 16 or 17 would be tried as an adult, and in some cases could face the death penalty.

The UN Committee against Torture considered Kuwait’s third periodic report in July. The Committee subsequently expressed concern about proposed amendments to the Code of Criminal Procedures that would double to four days the period for which police can hold detained suspects without bringing them before a judge and increase pre-trial detention on remand from 10 days to a maximum of 21 days.

In July, after reviewing Kuwait’s third report on its application of the ICCPR, the UN Human Rights Committee presented recommendations to the government, including on reform of criminal blasphemy and insult laws; criminalization of domestic violence, including marital rape; and action to address Bidun statelessness.

Kuwait remained part of the Saudi Arabia-led international coalition engaged in armed conflict in Yemen (see Yemen entry).

FREEDOMS OF EXPRESSION AND ASSEMBLY
The authorities tightened restrictions on freedom of expression. A new cybercrime law that took effect in January further restricted online expression, penalizing peaceful criticism of the government, the judiciary and others with up to 10 years’ imprisonment.

Also in January, Parliament approved an electronic media law regulating all online publications, including electronic news services, online newspapers, television, social media and blogs, placing them under a legal obligation to obtain a government licence to operate. The authorities began implementing the new law in July. In February, the Law on Print and Publications was amended to cover online publications. In June, a new law came into force prohibiting anyone with a confirmed conviction on charges of insulting God, the prophets or the Emir, from running for Parliament, in effect barring some government critics from being elected.

Abdulhamid Dashti, a Shi'a opposition MP, was stripped of his parliamentary immunity in March. He then went abroad but faced prosecution and separate trials on an array of charges – including some arising from his peaceful criticism of the governments of Bahrain and Saudi Arabia in social and other media – and possible prison sentences totalling over 40 years. In December, an appeal court overturned his acquittal in one case and imposed a 10-year sentence. He was unable to lodge an appeal while he remains outside Kuwait.

Musallam al-Barrak, a former MP and leading government critic, continued to serve a two-year prison term for criticizing the government in a speech and faced separate trials on other charges. In November the Appeal Court upheld the suspended prison sentences of 13 people for publicizing or reciting extracts from Musallam al-Barrak’s speech.

In February, the Appeal Court confirmed the one-year prison sentence followed by expulsion from Kuwait imposed on Bidun rights activist Abdulhakim al-Fadhli in 2015 for participating in a peaceful “illegal gathering”. He was arrested in April to serve his sentence, which was confirmed in May by the Cassation Court. In June, on appeal, the Misdemeanours Cassation Court ordered his release pending review, and in September it upheld the initial verdict. The authorities released Abdulhakim al-Fadhli in August after he completed a three-month prison
term in a separate case but he handed himself to the authorities in September following the Misdemeanours Cassation Court’s verdict.

COUNTER-TERROR AND SECURITY
The number of terrorism-related arrests and trials increased. Courts sentenced at least two defendants to death and others to prison terms. A 2015 law requiring all citizens and residents of Kuwait to provide the authorities with samples of their DNA came into force in July, despite local and international calls for its amendment due to it being disproportionate and a violation of the right to privacy. Under the law, anyone who does not comply or has no valid excuse for failing to provide a sample faces up to one year in prison and/or a fine of up to 10,000 Kuwaiti dinars (US$33,150).

In May, the Court of Cassation confirmed the death sentence of one man convicted of perpetrating the July 2015 bombing of the Imam Sadiq Mosque in Kuwait City, but reduced the sentence of his co-accused to 15 years’ imprisonment. The Court failed to exclude statements that were alleged to have been extracted under torture and other ill-treatment as evidence in the proceedings.

In January, the Criminal Court sentenced two men to death and 20 others to prison terms ranging from five years to life on charges that included “spying for Iran and Hizbullah”. Some of the 26 defendants in the case alleged that security officials tortured them in pre-trial detention to coerce “confessions”. The Court failed to investigate their allegations of torture. In July, an appeal court confirmed one death sentence in the case, while reducing other sentences and acquitting nine defendants. The authorities then referred 17 of the defendants for trial on new terrorism-related charges.

DEPRIVATION OF NATIONALITY
In April, the Administrative Cassation Court rejected a ruling of the Administrative Appeal Court that a case brought by former MP Abdullah Hashr al-Barghash against a government decision to strip him of his Kuwaiti nationality was outside its jurisdiction. In December the Cassation Court rejected his appeal.

DISCRIMINATION – BIDUN
The authorities continued to withhold citizenship from more than 100,000 Bidun residents of Kuwait, who remained stateless. In May, Parliament approved a draft law that would grant Kuwaiti citizenship to up to 4,000 Bidun and referred it to the government; it had not been enacted by the end of 2016. The government of the island state of Comoros said in May that it would consider granting “economic citizenship” to Bidun if it received an official request from the Kuwaiti authorities.

WOMEN’S RIGHTS
Women continued to face discrimination in law and in practice. In May, the Committee for Legislative and Legal Affairs approved a proposed amendment to the citizenship law that would allow Kuwaiti women to pass their nationality on to their children, regardless of the father’s nationality. The amendment had not been enacted by the end of the year.

MIGRANT WORKERS’ RIGHTS
Migrant workers, including those in the domestic, construction and other sectors, continued to face exploitation and abuse under the official kafala sponsorship system, which ties workers to their employers and prevents them from changing jobs or leaving the country without the employer’s permission. In July, the authorities issued a decree setting minimum wages for domestic workers, most of whom are women.

DEATH PENALTY
Courts handed down death sentences for offences including murder and drug-related charges. No executions were reported.

1. Kuwait: Amnesty International submission to the UN Committee against Torture (MDE 17/4395/2016)
2. Kuwait: Amnesty International submission to the UN Human Rights Committee (MDE 17/4145/2016)
Prisoner of conscience Azimjan Askarov remained in prison, despite a recommendation by the UN Human Rights Committee that he be immediately released. A “foreign agents” law that would have negatively affected NGOs was rejected, but a draft law on propaganda of “non-traditional sexual relations” remained under discussion. Constitutional amendments threatened human rights protection. Perpetrators of torture and of violence against women enjoyed impunity, and police carried out discriminatory raids against sex workers. The authorities continued to make no genuine effort to effectively investigate the June 2010 violence in Osh and Jalal-Abad.

**PRISONER OF CONSCIENCE**

On 31 March, the UN Human Rights Committee urged Kyrgyzstan to immediately release prisoner of conscience Azimjan Askarov, an ethnic Uzbek human rights defender, who was sentenced in 2010 to life in prison for purportedly participating in the 2010 ethnic violence and the murder of a police officer. The Committee considered that he had been arbitrarily detained, tortured and denied his right to a fair trial. In response, the Supreme Court reviewed the case on 11 and 12 July, but did not follow the Committee’s conclusions that Azimjan Askarov should be released, and ordered a retrial which opened at Chui Regional Court on 4 October. It continued through to 20 December with a verdict expected in January 2017. Azimjan Askarov participated in all 10 hearings, seated in a metal cage.

**FREEDOM OF ASSOCIATION**

The Parliament rejected the proposed “foreign agents” law, originally proposed in 2014, on its third reading in May. It would have forced NGOs receiving foreign aid and engaging in any form of vaguely defined “political activities” to adopt and publicly use the stigmatizing label of “foreign agent”.

**RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE**

In May, the Parliamentary Committee on Law, Order and Fighting Crime withdrew draft legislation to criminalize “fostering a positive attitude” towards “non-traditional sexual relations” for further review before the final parliamentary vote. LGBTI rights activists said that even though the law had not yet been passed, it was already “hanging over them” and limiting their activities.

**LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS**

In a referendum held on 11 December, voters accepted constitutional amendments that undermine human rights protection. These amendments introduce clauses on “supreme state values” and weaken the supremacy of international law over domestic law stipulated in the current Constitution. An amendment to the article on marriage and the family states that the family is formed on the basis of a union between a woman and a man; the current Constitution does not include this wording.

**DISCRIMINATION – SEX WORKERS**

In June and July, police in the capital, Bishkek, the surrounding Chui region, and in the southern city of Osh carried out coordinated and targeted operations in areas where sex workers were known to congregate, and detained and penalized women they found there. Sex work is not criminalized in Kyrgyzstan, but some of the women received administrative fines for “petty hooliganism” or for failing to produce identity documents. High-ranking police officials made discriminatory and stigmatizing statements about women engaged in sex work in June, referring to the need to “cleanse” the streets and encouraged “community patrols” to photograph people
they believed to be sex workers and pass the photographs to the police. This risked increased intimidation and violence towards sex workers from nationalist groups and other non-state actors that had targeted sex workers in the past.

NGOs working with sex workers found that women engaged in sex work faced barriers in accessing health care, including reproductive and sexual health services. Sex work is highly stigmatized in Kyrgyzstan. Health care providers discriminated against sex workers by denying them treatment or offering low quality treatment, and by not respecting confidentiality. Many sex workers did not have identity documents, which are difficult to replace without registration at a permanent address. Lack of identity documents also limited sex workers’ access to health care and other essential services.

**IMPUNITY**

Torture and other cruel, inhuman or degrading treatment, and lack of accountability for these human rights violations, remained commonplace. Court cases involving accusations of torture often dragged on for months or years.

The authorities failed to make a genuine effort to effectively investigate the June 2010 inter-ethnic violence in southern Kyrgyzstan. While violence was used by members of both ethnic Kyrgyz and Uzbek communities, and while the latter sustained most deaths, injuries and damage, prosecutions were disproportionately aimed at members of the ethnic Uzbek community.

No one was held responsible for the death of Usmanzhan Khalimzhaev, an ethnic Uzbek with Russian citizenship who died of his injuries in August 2011 after being detained and beaten by police. On 22 July, a judge at Chui Regional Court upheld the October 2015 acquittal of the four police officers suspected of being implicated in his death, on grounds of lack of evidence.

**VIOLENCE AGAINST WOMEN AND GIRLS**

Domestic violence, forced marriage, and other forms of violence against women and girls remained pervasive. In most cases, women who survived violence did not go to the police, due to social stigma and discriminatory attitudes, and because they had little faith in the police and justice system. Lack of economic opportunities made it difficult for women to leave abusive relationships and live independently, particularly if they wanted to take their children with them.

According to the National Statistics Committee, 4,960 cases of domestic violence were registered in the period between January and October of which 158 cases proceeded to criminal prosecution.

A law that will help protect adolescent girls from early and forced marriages passed its final parliamentary reading in October and was signed into law by the President on 18 November. The law introduces criminal sanctions of up to five years’ imprisonment for anyone involved in organizing or officiating at a religious marriage ceremony where one or both of the spouses is under the age of 18. This will include religious leaders, as well as parents of the would-be spouses.

**LAOS**

_Lao People’s Democratic Republic_

Head of state: Bounnhang Vorachith (replaced Choummaly Sayasone in April)

Head of government: Thongloun Sisoulith (replaced Thongsing Thammavong in April)

The rights to freedom of expression, association and peaceful assembly remained severely restricted. State control of media and civil society was tightened as Laos hosted international meetings. Repression of human rights defenders continued. Two prisoners of conscience were released in March after being held for almost 17 years.

There was no progress in the investigation into the enforced disappearance in 2012 of a civil society member. The death penalty remained mandatory for serious drug offences.
BACKGROUND
The ruling Lao People’s Revolutionary Party appointed a new General Secretary and Politburo in its internal leadership ballot in January. National Assembly elections in March were followed by the appointment of a President and Prime Minister. Laos remained a one-party state.

UN Special Procedures expressed serious concerns about the potential impact of the Don Sahong Dam on the livelihood of millions of people in Laos and downstream countries, including the threat to rights to adequate food, housing, information and participation and the rights of Indigenous People.

Laos also held the Chair of the Association of Southeast Asian Nations (ASEAN) in 2016.

ENFORCED DISAPPEARANCES
The fate of Sombath Somphone, a prominent civil society member, remained unclarified since his abduction in 2012 outside a police post in the capital, Vientiane. CCTV cameras captured his being stopped by police and driven away.

Authorities failed to provide information on the whereabouts of Kha Yang, a Lao ethnic Hmong, arrested after his second forced return from Thailand in 2011. He was also forcibly returned in 2009, although he had been granted refugee status by the UNHCR, the UN refugee agency, and fled back to Thailand in 2011.

FREEDOM OF EXPRESSION
Civil society organizations continued to be under stringent state control.

In January, a decree restricted the press activities of international media and other bodies. Provisions included a requirement to submit materials for state approval before publishing. In November the 2008 Media Law was amended to ensure that the media strictly adhered to and promoted government policies.

In line with Decree 327 which prohibits online criticism of the state, the authorities continued to monitor internet activity. In August a Public Security Ministry official stated that police were monitoring Facebook for anyone connected to three detained activists – Lodkham Thammavong, Somphone Phimmasone and Soukan Chaithad.

Laos cancelled its hosting of the ASEAN Civil Society Conference/ASEAN People’s Forum, citing insufficient funds and the risk of foreign civil society actors using the event to criticize ASEAN-member governments.

HUMAN RIGHTS DEFENDERS
Lodkham Thammavong, Somphone Phimmasone and Soukan Chaithad were arrested in March after returning from Thailand. Reports indicated they were detained incommunicado for at least six months and denied legal representation.¹ They were accused of threatening national security in relation to online criticism of the Lao government while in Thailand. They had also participated in a peaceful demonstration outside the Lao Embassy in Bangkok in 2015. In May, state television showed them apologizing for their actions and confessing to protesting against government policies. Somphone Phimmasone’s family visited him briefly in jail in September. All three individuals remained in detention at the end of the year.

LAND DISPUTES
Reports of land disputes between the state and individuals continued. Mechanisms for resolving land complaints were inadequate.

1. Laos: Three Lao activists held incommunicado (ASA 26/4603/2016)

LATVIA

Republic of Latvia
Head of state: Raimonds Vējonis
Head of government: Māris Kučinskis (replaced Laimdota Straujuma in February)

The Council of Europe and the UN raised serious concerns about the situation of children with disabilities. Over 247,000
people remained stateless. Individuals continued to be at risk of *refoulement*.

**DISCRIMINATION**

**Stateless persons**
The number of stateless persons continued to be high – over 247,000 as of July, the latest published government data. Stateless people, the vast majority ethnic Russians, were excluded from enjoying political rights.

**Rights of people with disabilities**
Following a five-day visit to Latvia in September, the Council of Europe Commissioner for Human Rights raised concerns about the situation of persons with disabilities in institutions, in particular that of children with intellectual and psychosocial disabilities. His comments echoed the concerns of the UN Committee on the Rights of the Child which, in March, called for the government to set up comprehensive measures to ensure that inclusive education is given priority over the placement of children with disabilities in specialized institutions.

**REFUGEES AND ASYLUM-SEEKERS**
The number of asylum applications remained low, with about 350 received during the year.

The European Commission criticized the government for rejecting relocation requests of asylum-seekers from other European countries without providing substantiated reasons or for rejecting requests on unjustified grounds. By the end of the year, Latvia had relocated 148 asylum-seekers under the EU relocation and resettlement scheme. Concerns remained about the non-suspensive effect of appeals against negative decisions under the accelerated asylum procedure. The procedure increases the risk of individuals being returned to countries where they could face serious human rights violations.

In March, the UN Committee on the Rights of the Child raised concerns about the detention of asylum-seeking children during the asylum-seeking procedure and called on the government to end the practice.

**LEBANON**

*Lebanese Republic*  
Head of state: **Michel Aoun** (assumed office in October)  
Head of government: **Saad Hariri** (replaced Tammam Salam in December)

The human rights situation continued to be affected by the armed conflict in Syria. Lebanon hosted more than 1 million refugees from Syria, but the authorities severely restricted their right to asylum and maintained restrictions that effectively closed Lebanon’s borders to those fleeing Syria. Most refugees faced severe economic hardship. Women were discriminated against in law and practice and were inadequately protected against sexual and other violence. Migrant workers faced exploitation and abuse. The authorities took no steps to investigate the fate of thousands of people who disappeared or went missing during the conflict of 1975 to 1990. Long-resident Palestinian refugees continued to face discrimination. Parliament approved a new law to establish a National Human Rights Institute. Courts continued to impose death sentences; there were no executions.

**BACKGROUND**
Tensions between the main political parties caused continued political impasse. However, in October, the Parliament elected a new president; the presidency had been vacant since May 2014. Public protests against the government’s continued failure to implement sustainable solutions to the country’s waste collection and disposal problems diminished compared with 2015.

Security conditions deteriorated; there were bomb attacks in the capital Beirut and in Beqaa governorate. Suicide bombers killed five people and wounded 28 others, mostly civilians, on 27 June in the predominantly Christian village of Qaa in the Beqaa Valley. The army detained dozens of refugees following the attacks in Qaa, accusing them of having irregular status in Lebanon.
Lebanese border areas continued to come under fire from Syria, where the armed group Islamic State (IS) continued to hold Lebanese soldiers and security officials that its forces abducted from Lebanon in 2014.

In September, judicial authorities indicted two Syrian government intelligence officers. They were accused of committing simultaneous bomb attacks in 2013 at two mosques in the northern city of Tripoli, in which 42 people were killed and some 600 injured, mostly civilians. Neither of those indicted had been apprehended by the end of 2016.

**TORTURE AND OTHER ILL-TREATMENT**

In October the Parliament approved a new law to establish a National Human Rights Institute, including a committee to investigate the use of torture and other ill-treatment in all places of detention, including prisons, police stations and immigrant detention sites.

**REFUGEES AND ASYLUM-SEEKERS**

Lebanon hosted more than 1 million refugees from Syria in addition to some 280,000 long-term Palestinian refugees and more than 20,000 refugees from Iraq, Sudan, Ethiopia and other countries.

Lebanon again failed to become party to the 1951 UN Refugee Convention and its 1967 Protocol. Refugees from Syria continued to face serious restrictions on their right to seek asylum, as the Lebanese authorities did not formally recognize them as refugees. The authorities also maintained strict criteria introduced in January 2015 and denied entry to all refugees from Syria who did not meet the criteria, effectively closing Lebanon’s borders to people fleeing the armed conflict and persecution in Syria. A government decision from May 2015 continued to bar UNHCR, the UN refugee agency, from registering newly arrived refugees. Within Lebanon, Syrian refugees faced financial and administrative difficulties in obtaining or renewing residency permits, exposing them to a constant risk of arbitrary arrest, detention and forcible return to Syria. They also faced severe economic hardship.

According to the UN, 70% of Syrian refugee households lived below the poverty line and more than half lived in substandard conditions in overcrowded buildings and densely populated neighbourhoods.

The UN humanitarian appeal for Syrian refugees in Lebanon was only 52% funded by the end of the year and resettlement places in other countries remained inadequate. Cuts in funding led the UN to reduce both the amount of its support to Syrian refugees in Lebanon and the number in receipt of UN support.

On 8 January, security officials at Beirut Airport forcibly returned more than 100 Syrians to Syria, in violation of the principle of *non-refoulement*. The returned refugees had been seeking to travel to Turkey via Lebanon.

Palestinian refugees, including many long-resident in Lebanon, remained subject to discriminatory laws that deny them the right to own or inherit property and access public education and health services, and that prevent them from working in at least 35 professions. At least 3,000 Palestinian refugees who did not hold official identity documents faced further restrictions denying them the right to register births, marriages and deaths.

**WOMEN’S RIGHTS**

Women remained subject to personal status laws that retained discriminatory provisions pertaining to marriage, divorce, child custody and inheritance. The nationality law continued to prevent Lebanese women married to foreign nationals from passing on their nationality to their children. The same law did not apply to Lebanese men.

Women remained unprotected from marital rape, which the 2013 Law on Protection of Women and Family Members from Domestic Violence failed to criminalize. This law was used in 2016 to charge the husbands of Roula Yaacoub and Manal Assi for beating their wives to death in 2013 and 2014 respectively; the latter was sentenced to death, which was reduced in July to five years in prison.
Syrian and Palestinian refugee women from Syria faced serious human rights abuses, including gender-based violence, exploitation and sexual harassment, particularly in public places. Refugee women heads of households were especially at risk of harassment by men if they had no adult male relatives residing with them. Many refugee women from Syria lacked valid residence permits and, as a result, feared reporting sexual harassment or other abuse to the Lebanese authorities.

MIGRANT WORKERS’ RIGHTS
Migrant workers were excluded from the protections provided to other workers under the Labour Law, exposing them to labour exploitation and physical, sexual and psychological abuse by their employers. Migrant domestic workers, mostly women, remained especially vulnerable under the kafala sponsorship system that ties workers to their employer.

INTERNATIONAL JUSTICE
Special Tribunal for Lebanon
The Netherlands-based Special Tribunal for Lebanon (STL) continued to try in their absence four men accused of complicity in the killing of former Lebanese Prime Minister Rafic Hariri and others in a 2005 car bombing in Beirut. The four continued to evade arrest. A fifth accused died in Syria.

On 8 March, the STL Appeals Panel acquitted Lebanese journalist Karma Khayat and her employer Al Jadeed TV of contempt of court. On 15 July, the STL charged al-Akhbar newspaper and its editor-in-chief, Ibrahim al-Amine, with contempt of court for failing to comply with a court order requiring them to remove information concerning confidential witnesses and obstruction of justice. On 29 August the court sentenced Ibrahim al-Amine to a fine of €20,000 and al-Akhbar newspaper to a fine of €6,000.

IMPUNITY
The government again failed to establish an independent national body to investigate the fate of thousands of people who were forcibly disappeared or went missing during the civil war of 1975 to 1990 and who may have been unlawfully killed. This failure perpetuated the suffering of the families of the disappeared, who continued to face administrative, legal, social and economic hurdles resulting from the enforced disappearance of their relatives.

DEATH PENALTY
Courts imposed at least 107 death sentences for terrorism-related crimes. No executions have been carried out since 2004.

LESOTHO
Kingdom of Lesotho
Head of state: King Letsie III
Head of government: Pakalitha Mosisili

Political instability persisted following an attempted coup in 2014 and the killing of a former army chief in 2015. Several opposition party members remained in exile. The right to freedom of expression remained severely limited. Journalists faced intimidation, physical attacks and politically motivated criminal charges in relation to their work, prompting several to flee the country. The rights to health and an adequate standard of living were undermined.

POLITICAL INSTABILITY
The report of the Southern Africa Development Community (SADC) Commission of Inquiry into instability in Lesotho was made public in February. Among other things, the inquiry looked into the killing by soldiers of Lieutenant-General Maaparankoe Mahao in June 2015 following his dismissal from the Lesotho Defence Force (LDF) and replacement by Lieutenant-General Tlali Kamoli. The soldiers said that Maaparankoe Mahao fired on them when they attempted to arrest him on suspicion of plotting a mutiny in the army. The SADC report found no evidence that Maaparankoe Mahao had planned a mutiny and concluded that he was deliberately killed. It
recommended criminal investigations into the killing and the dismissal of Tlali Kamoli. The government announced Tlali Kamoli’s retirement effective from 1 December.

Prime Minister Mosisili commissioned a joint task force, comprising members of the police and army, to investigate the circumstances of the killing. Maaparankoe Mahao’s family dismissed it as lacking impartiality.

The SADC summit in June urged opposition leaders who had fled Lesotho after receiving death threats in 2015 to return by August to participate in constitutional and security reforms recommended by the SADC. In November, the government introduced an Amnesty Bill which if passed would enable impunity for serious human rights violations.

**UNFAIR TRIALS**

Fifteen LDF members charged with sedition and mutiny in May 2015 remained held at Maseru Maximum Security Prison, even though the SADC inquiry found no conclusive evidence of a mutiny and recommended that the soldiers be released.¹ In October 2015 the High Court had ordered the release of all the soldiers on “open arrest” – a form of military bail – but only seven were released. Tlali Kamoli was charged with contempt of court after failing to comply with the court order. On 29 April, the Appeals Court rejected a request by the remaining soldiers to be placed under “open arrest”, thereby overruling the High Court order. The court martial of the detained soldiers was repeatedly postponed.

All five lawyers representing the soldiers faced death threats.² One of the lawyers was arrested and charged with perjury allegedly committed while representing the detained soldiers. Additional charges of fraud, contempt of court and obstruction of justice were added to his indictment.

**TORTURE AND OTHER ILL-TREATMENT**

The imprisoned LDF soldiers continued to face cruel, inhuman and degrading treatment.³ After a march organized by the detainees’ children on 16 June, some of the soldiers were held in solitary confinement and denied food. One was denied specialized medical treatment and some were shackled. Makoae Taona, a medical doctor who examined the soldiers after their arrest and torture, died in an unexplained accident in July. Police announced they were investigating the circumstances of his death.

**FREEDOM OF EXPRESSION**

Journalists working in broadcast, print and social media continued to face physical attacks and harassment. On 23 June, after publishing an article that alleged that Tlali Kamoli was to receive an exit package of R50 million (US$3.5 million), *Lesotho Times* reporter Keiso Mohloboli was interrogated at Maseru police headquarters and asked to disclose her sources. The following day she was arrested and interrogated along with the newspaper’s editor, Lloyd Mutungamiri. On 5 July, Lloyd Mutungamiri and *Lesotho Times* publisher Basildon Peta were interrogated. Basildon Peta was charged with criminal defamation and a related offence. The charges arose from a column that satirized Tlali Kamoli. On 9 July, unidentified gunmen attacked and injured Lloyd Mutungamiri in his driveway. There was no known investigation into the incident. Lloyd Mutungamiri had been charged with criminal defamation in September 2014 for reporting on police corruption; no further action was known to have been taken. Keiso Mohloboli fled Lesotho, fearing for her life.

**RIGHT TO HEALTH**

The public health care system faced a deepening crisis, largely due to debts owed to South Africa and the World Bank relating to the provision of health care. Patients unable to afford new hospital charges imposed because of debt repayments were told to access free health care in neighbouring South Africa, but without help for travel costs.

**RIGHT TO AN ADEQUATE STANDARD OF LIVING**

Villagers, livestock and ancestral graves were resettled in Mokhotlong town during the
ongoing construction of Polihali Dam, a major project in Lesotho designed to supply water to South Africa. The limited space offered in Mokhotlong meant that villagers lost their livelihoods, which were based on livestock and subsistence farming. People living near the dam continued to have no access to piped clean water and electricity.

1. Lesotho: Call for immediate release of detained soldiers following the report of SADC Commission of Inquiry on Lesotho (AFR 33/3444/2016)
2. Lesotho: Trial of 23 soldiers postponed again (AFR 33/3481/2016)
3. Lesotho: Continued ill-treatment of detained soldiers (AFR 33/4411/2016)

LIBYA

State of Libya
Head of state: Disputed
Head of government: Fayez Serraj

Rival government forces and other armed groups and militias committed serious violations of international law and abuses of human rights with impunity. All sides to the conflict carried out indiscriminate attacks and direct attacks on civilians, forcing thousands to become internally displaced and causing a humanitarian crisis. Thousands of people continued to be detained without trial in the absence of a functioning justice system, and torture and other ill-treatment were rife. Armed groups including Islamic State (IS) abducted, detained and killed civilians and severely curtailed the rights to freedom of expression and assembly. Women faced discrimination and were subjected to sexual and other violence, particularly by IS. Refugees, asylum-seekers and migrants faced serious abuses, including indefinite detention and torture and other ill-treatment by the authorities, armed groups and people smugglers. The death penalty remained in force; no executions were reported.

BACKGROUND

Libya remained deeply divided as rival governments continued to vie for political legitimacy and assert control against a background of economic collapse and widespread lawlessness in which armed groups and militias abducted people for ransom and committed unlawful killings with impunity.

The Presidency Council of a UN-backed Government of National Accord (GNA) entered the capital, Tripoli, in March and seized power from the National Salvation Government (NSG) with support from armed groups from western cities and towns who previously backed the NSG. The NSG continued to claim legitimacy and unsuccessfully sought to reclaim power by force in October. The GNA failed to consolidate power amid continued sporadic clashes between armed groups, including in areas it controlled, while its legitimacy remained contested by Libya’s recognized parliament, the House of Representatives (HOR) based in Tobruk.

The HOR-affiliated Libyan National Army (LNA), an armed group composed of former army units and tribal militias, commanded by retired army General Khalifa Haftar, consolidated its power and made significant territorial gains in the east. The LNA replaced some elected municipal council heads with military-appointed governors in areas they controlled, while their forces captured vital oil terminals from a GNA-allied armed group in September. The LNA continued to participate in fighting against the Shura Council of Benghazi Revolutionaries (SCBR) armed group in Benghazi, and conducted air strikes in Derna.

IS controlled parts of the coastal city of Sirte and contested other areas. In February, a US air strike on an alleged IS training camp in the western city of Sabratha reportedly killed up to 50 people, including two Serbian nationals held hostage by IS. In May, GNA forces composed mostly of armed groups from Misrata began an offensive against IS positions in Sirte, supported by US air strikes
in August, and gained control of the city in early December.

In April the Constitution Drafting Assembly issued a revised draft constitution to be approved by national referendum, but no date for the referendum had been set by the end of the year.


INTERNAL ARMED CONFLICT

Indiscriminate shelling and direct attacks on civilians

Armed groups on all sides of the conflict committed war crimes, including direct attacks on civilians and indiscriminate attacks using imprecise weapons such as mortars and artillery shells, killing and injuring scores of people. IS carried out indiscriminate attacks using improvised explosive devices and suicide bombings against pro-GNA forces.

In Benghazi, the LNA shelled and launched air strikes in the suburb of Ganfouda and other civilian areas under SCBR control and the SCBR shelled other densely populated civilian areas. A LNA air strike on 1 July killed two civilians in Ganfouda. On 4 October, indiscriminate shelling apparently by SCBR forces killed three civilians in Sidi Hussein, central Benghazi.

Some attacks by armed groups and militias in Benghazi targeted hospitals and other civilian buildings. They included a car bomb attack on 24 June at al-Jalaa hospital that killed five and wounded 13, mostly civilians.

LNA air strikes killed civilians in the eastern city of Derna while targeting al-Qaeda-linked armed groups in the city. In June, LNA air strikes killed six civilians, including children, according to UNSMIL.

Fighting between rival armed groups in Tripoli, al-Zawiya and other cities in western Libya, as well as tribal fighting in southern Libya, also caused deaths and injuries among civilians. On 16 October, indiscriminate shelling between GNA forces and pro-NSG armed groups hit a camp for internally displaced people in Tripoli, killing one civilian and injuring others.

Humanitarian impact

The conflict had a devastating impact on civilians, cutting or severely curtailing their access to food, health care, education, electricity, fuel and water supplies, and causing many to be displaced from their homes. Economic collapse left many struggling to support their families.

The World Health Organization reported in April that Libya’s health care system had virtually collapsed and in June estimated that almost 60% of public hospitals in areas of conflict had shut down or become inaccessible.

Hundreds of civilians remained trapped without access to clean water, food, power or medical care in Benghazi’s Ganfouda area due to fighting.

In October, the UN Office for the Coordination of Humanitarian Affairs estimated that 1.3 million people across Libya were in need of humanitarian assistance.

Abductions and hostage-taking

Armed groups, including some operating under Libya’s rival governments, abducted and detained civilians on account of their origin, opinions and perceived political or tribal affiliations. Rising criminality in the absence of a functioning justice system also saw armed groups and gangs abducting civilians for ransom in Tripoli and other cities.

Those abducted included political, human rights and other activists, journalists, and judicial and other public officials. Some foreign nationals were targeted based on their religion, race or nationality. Some were released after payment of ransoms or local mediation.

Some armed groups continued to hold civilians abducted in 2014 as hostages for use in prisoner exchanges. In September, a Zintan-based armed group released Suleiman al-Zubi, a former member of Libya’s
General National Congress abducted in 2014, reportedly in exchange for Zintani prisoners held in Misrata.

IS abducted and detained members of opposing armed groups and civilians, including foreign nationals employed in the oil industry, migrant workers and refugees.

Other armed groups also targeted foreign nationals for abduction for ransoms. Victims included two Italians and a Canadian abducted on 19 September while working in Ghat, southwest Libya. They were freed in early November.

**Unlawful killings**

Armed groups, including some affiliated to the rival governments, committed unlawful killings of captured opposition fighters and civilians they perceived as opponents.

In February, IS forces reportedly beheaded 11 members of a local security force whom they had captured in Sabratha.

In June, 12 men detained in connection with alleged offences during Mu'ammar al-Gaddafi's rule were reportedly shot dead shortly after their release from Tripoli's al-Baraka Prison, run by the Ministry of Justice. They appeared to be victims of extrajudicial execution.

In July the bodies of 14 men were found dumped in al-Laithi, an area of Benghazi that the LNA had recaptured from the SCBR. The men’s hands and legs had been tied and they had been shot dead by unidentified perpetrators.

Libya’s rival governments failed to conduct independent or effective investigations into such killings or hold those responsible to account.

**IMPUNITY**

Impunity continued to prevail, although in January Libya’s Public Prosecutor informed the International Criminal Court (ICC) that arrest warrants had been issued against three officials accused of torturing As-Saadi al-Gaddafi in detention. It remained unclear whether those accused were arrested and prosecuted. The head of al-Hadba Prison, who was suspended after the torture of As-Saadi al-Gaddafi, was reportedly restored to his position.

In November the ICC committed to prioritize its investigations in 2017 into ongoing crimes in Libya, including those committed by IS and other armed groups, and issue new arrest warrants. However, the ICC initiated no new investigations in 2016, citing security concerns and insufficient resources.

Saif al-Islam al-Gaddafi, against whom the ICC issued a Warrant of Arrest in relation to alleged crimes against humanity committed during the 2011 conflict, continued to be detained by a militia in Zintan.

None of the parties to the conflict implemented any human rights provisions of the UN-brokered Libya Political Agreement of December 2015, including those obliging them to release detainees held without legal basis.

**INTERNALLY DISPLACED PEOPLE**

By August the number of internally displaced people in Libya had risen to almost 350,000, according to the International Organization for Migration (IOM). This included an estimated 40,000 former residents of Tawargha who had been forced from their homes five years earlier. In August, a reconciliation agreement between Misrata and Tawargha representatives aimed to facilitate their return to the town.

Most of Sirte’s civilian inhabitants fled the city at the time of the GNA offensive against IS in May. The fighting caused extensive damage but some residents were able to return. Conflict in Benghazi and tribal fighting in southern Libya also caused population displacement.

**FREEDOMS OF EXPRESSION, ASSOCIATION AND ASSEMBLY**

Armed groups and militias continued to harass, abduct, torture and kill human rights defenders, political and other activists and journalists.

In March, unidentified assailants killed human rights activist Abdul Basit Abu-Dahab in a car bombing in Derna. The same month,
members of an armed group ransacked the offices of Tripoli’s al-Nabaa TV station and assaulted journalists, and in al-Marj, eastern Libya, armed men abducted blogger and journalist Ali al-Asbali, releasing him four months later.

In August, members of an armed group briefly abducted al-Ahrar TV station journalist Aboubaker Al-Bizanti in Tripoli after he criticized the presence of armed groups and militias in the capital.

People who attended public gatherings and demonstrations faced attack. In May, unidentified assailants fired mortars at protesters demonstrating in al-Kish Square, Benghazi, killing six civilians.

JUSTICE SYSTEM
The justice system remained in a state of collapse, with courts unable to process thousands of untried detainees’ cases, some dating from 2011. Thousands of detainees continued to be held without trial in official prisons and detention facilities and in unofficial prisons run by armed groups. Some detainees were freed in amnesties, including 17 men held in Misrata who were released in March.

The trial of As-Saadi al-Gaddafi continued to be postponed while he remained detained at al-Hadba Prison, Tripoli. In April, the UN Working Group on Arbitrary Detention declared that his detention and that of 11 other former al-Gaddafi-era officials was arbitrary and without legal basis.

At the end of the year, the Supreme Court had still to review the death sentences imposed on Saif al-Islam al-Gaddafi, Abdallah al-Senussi and seven other former officials in 2015.

TORTURE AND OTHER ILL-TREATMENT
Torture and other ill-treatment remained common and widespread and was committed with impunity, especially upon arrest or abduction and during detention in official and unofficial prisons.

Conditions deteriorated in official prisons including al-Hadba, al-Baraka and others, where those held included former high-level al-Gaddafi-era officials. Inadequate health care and food led to a decline in many inmates’ health, while torture was reportedly used to punish inmates.

REFUGEES’ AND MIGRANTS’ RIGHTS
Refugees and migrants were subjected to serious abuses by armed groups, people smugglers and traffickers, and guards in government-run detention centres.

The IOM said in October that it had identified 276,957 migrants in Libya but estimated the true number to be between 700,000 and 1 million. UNHCR, the UN refugee agency, had registered 38,241 refugees by the end of the year.

Libyan law continued to criminalize foreign nationals who irregularly enter, leave or remain in the country. Many actual and suspected irregular migrants and asylum-seekers were seized at checkpoints and in house raids or reported to the authorities by their employers. Thousands were held in indefinite detention pending deportation in facilities of the Department for Combating Irregular Migration (DCIM). Although they formally reported to the Ministry of the Interior, DCIM detention facilities were often run by armed groups outside the effective control of the GNA. Those detained were held in squalid conditions and were subject to torture and other ill-treatment by guards, including beatings, shootings, exploitation and sexual violence. UNHCR reported that there were 24 migrant detention centres across Libya.

On 1 April, guards shot dead at least four people seeking to escape from al-Nasr migrant detention centre in al-Zawiya.

Thousands of refugees, asylum-seekers and migrants sought to flee Libya and cross the Mediterranean Sea to Europe in unseaworthy craft provided by people smugglers. The UN estimated that 5,022 people had died while trying to cross the Mediterranean from North Africa by the end of the year, mostly departing from Libya.

The EU renewed its anti-smuggling naval mission “Operation Sophia” in June, extending its mandate to include training for
Libya’s coastguard service, which began in October. The Libyan coastguard intercepted thousands of those seeking to cross the Mediterranean, returning them to Libya and indefinite detention in the DCIM-run facilities. At times the coastguard committed abuses, including shooting at and abandoning boats at sea, and beating migrants and refugees aboard their vessels and on shore. By 18 December, the Libyan coastguard had intercepted and/or rescued more than 14,038 people, according to UNHCR.

Refugees, asylum-seekers and migrants were subjected to serious human rights abuses by criminal gangs, including abduction, extortion, sexual violence and killing. IS also abducted refugees and migrants, forcing some to convert to Islam, and sexually abused migrant and refugee women reportedly subjecting some to forced marriage. In October the IOM reported that 71% of migrants who took the central Mediterranean route from Africa to Europe said they had experienced practices amounting to human trafficking, with 49% having faced abduction and extortion in Libya.

WOMEN’S RIGHTS
Women continued to face discrimination in law and practice and were marginalized socially, politically and economically. The draft constitution published in April proposed to guarantee women 25% of HOR and local council seats for 12 years.

In Sirte and other areas that they controlled, IS and other armed groups imposed strict interpretations of Shari’a law that restricted women’s movement and dress, and reportedly sanctioned the practice of child marriage.

Armed groups also threatened and harassed women who engaged in public activism.

DEATH PENALTY
The death penalty remained in force for a wide range of crimes; no executions were reported.

LITHUANIA

Republic of Lithuania
Head of state: Dalia Grybauskaitė
Head of government: Saulius Skvernelis (replaced Algirdas Butkevičius in November)

The 2016 Baltic Pride March for Equality in Vilnius took place without serious incidents. A Saudi Arabian national who alleged he was tortured and held in secret CIA detention in Lithuania was denied victim status, putting an end to his domestic appeal process.

COUNTER-TEORR AND SECURITY
In June, the European Court of Human Rights (ECtHR) held a hearing in a case against Lithuania for complicity in the US-led rendition and secret detention programmes, which the CIA operated globally in the aftermath of the 11 September 2001 attacks in the USA. Abu Zubaydah, a stateless Palestinian born in Saudi Arabia and detained at the secret CIA detention site at Guantánamo Bay, Cuba, lodged an application against Lithuania in 2011. He alleged he had been forcibly disappeared and tortured at a secret CIA detention centre in Antaviliai between 2005 and 2006, and that Lithuania had failed to effectively investigate his secret detention. A judgment in the case remained pending at the end of 2016.

In June, the Vilnius Regional Court ruled that Mustafa al-Hawsawi, a Saudi Arabian national detained at Guantánamo Bay, would not be granted victim status in a domestic investigation into Lithuanian complicity in the same CIA programmes. Mustafa al-Hawsawi claimed he had been held at the secret CIA detention site at Antaviliai, subjected to enforced disappearance and tortured between 2004 and 2006. In December, he lodged an application at the ECtHR against Lithuania.
RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

On 18 June, 3,000 people joined the March for Equality in Vilnius to celebrate Baltic Pride 2016. The march took place without serious incidents and with adequate police protection.

On 28 June, the Lithuanian Parliament voted in favour of a proposal to amend the Constitution to restrict the definition of “family” under Article 38 to exclude same-sex couples. The process would require two votes in Parliament before the amendment could be officially adopted.

DISCRIMINATION – PEOPLE WITH DISABILITIES

In May, the Committee on the Rights of Persons with Disabilities issued several recommendations and raised a range of concerns, including around access to education and systemic barriers to access to health services.

1. CIA rendition victims challenge Romania and Lithuania at Europe’s Human Rights Court (News story, 29 June)

MACEDONIA

The former Yugoslav Republic of Macedonia
Head of state: Gjorge Ivanov
Head of government: Emil Dimitriev (replaced Nikola Gruevski in January)

Prosecutions following the 2015 revelations of high-level corruption were slowed down by political infighting while witness protection was limited. Roma faced discrimination in accessing basic rights and services. Refugees and migrants were routinely pushed back at the border with Greece or faced detention in poor facilities in Macedonia.

BACKGROUND

The political crisis prompted by the publication in 2015 of audio recordings revealing government corruption and widespread illegal surveillance continued. A transitional technical government composed of majority and opposition MPs was formed after a political agreement was brokered with EU and US assistance.

In April, the President announced a pardon for 56 high-level political figures under investigation for their involvement in the wire-tapping scandal. The pardons were revoked by the President in June following a wave of protests dubbed the “colourful revolution”.

Parliamentary elections eventually took place in December after being called and postponed several times. The previous ruling party (Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity) returned to power. The main opposition party, narrowly failing to acquire the majority of votes, disputed the end result.

JUSTICE SYSTEM

The Special Public Prosecutor appointed by Parliament in September 2015 to investigate officials involved in the wire-tapping scandal and crimes by political figures continued to face pressure in carrying out her work. In October, the transitional Parliament rejected a proposal to extend the Prosecutor’s June 2017 deadline for concluding all investigations and to improve access to witness protection services for witnesses involved in her office’s investigations.

DISCRIMINATION – ROMA

In September, the European Court of Human Rights (ECtHR) communicated to Macedonia a complaint in relation to 53 Roma individuals who challenged their forced eviction from the “Polygon” settlement in Skopje in August which left them in tents and makeshift shelters on the outskirts of the capital.

About 600 refugees, mainly Roma, who had fled Kosovo in 1999-2000, remained at risk of losing their access to livelihoods and other rights as the authorities continued to revoke their right to stay in the country on
dubious grounds related to national security. By the end of the year, over 80 of them (including 30 children) had their protection status withdrawn after failing routine security checks carried out as part of the annual renewal of their temporary protection status. The substance of the security assessments was not shared with applicants and could not be challenged in courts. A Roma woman whose protection status was not renewed subsequently lodged an appeal at the ECtHR.

**REFUGEES’ AND MIGRANTS’ RIGHTS**

In early March, the Ministry of Interior announced the closure of the country’s southern border with Greece, thereby preventing the arrival of refugees and migrants to the country (see Greece entry). Until their eviction in May, thousands were stranded in the Idomeni makeshift camp on the Greek side of the border. Throughout the year, the authorities continued to return refugees and migrants summarily to Greece, sometimes violently. UNHCR, the UN refugee agency, did not register official new arrivals following the March border closure, as refugees and migrants barred from entering the country were pushed back or continued their journeys into Macedonia clandestinely.

In September, eight complainants from Syria, Iraq and Afghanistan submitted an application to the ECtHR to challenge their summary expulsion in March from Macedonia to Greece.

Also in September, the UN High Commissioner for Human Rights criticized the authorities for leaving hundreds of refugees and migrants – who had arrived before the border closure – stranded in inadequate transit centres at the southern and northern land borders and in the Gazi Baba detention centre for foreigners in Skopje. The de facto detention of irregular migrants and asylum-seekers continued to be implemented without lawful grounds and without detainees being able to challenge the legality of their detention.

**MADAGASCAR**

**Republic of Madagascar**

Head of state: Hery Rajaonarimampianina

Head of government: Olivier Mahafaly Solonandrasana (replaced Jean Ravelonarivo in April)

Poverty was widespread, with extensive malnutrition and deteriorating primary health care. Children’s rights were routinely flouted. Human rights violations by police were committed with impunity and corrupt officials were involved in trafficking activities. Discrimination against women in law and practice continued. The right to freedom of expression was restricted. Prison conditions remained dire.

**BACKGROUND**

Madagascar struggled to overcome the instability resulting from its five-year political crisis. In April, following weeks of political conflict, Olivier Mahafaly Solonandrasana replaced Jean Ravelonarivo as Prime Minister. Extreme levels of poverty were widespread, with approximately 91% of the population living on less than US$2 per day. A drought in the south aggravated an already dire humanitarian situation. According to UN agencies, 1.2 million people (around 80% of the population) living in the south were food insecure, of whom 600,000 were severely food insecure.

**RIGHT TO HEALTH**

Neonatal and maternal mortality remained very high, and the deterioration of the primary health care system was a major barrier to accessing even basic health services. Limited access to clean water and poor sanitation and hygiene practices were of particular concern, particularly given the level of chronic malnutrition.

**CHILDREN’S RIGHTS**

In Madagascar, 47% of all children suffer from stunting, and nearly 10% from acute malnutrition.
As families sought to cope with the impact of the drought, there were reports of alarming increases in economic exploitation, with children working in mines and leading cattle, and instances of sexual exploitation and child marriage. Drop out rates in primary schools reached 40% in some communities, according to UNICEF.

Child sex trafficking continued, often with the involvement of family members, and was most prevalent in tourist destinations and near mining sites.

**IMPUNITY**
The government failed to ensure respect for the rule of law, allowing human rights violations to be committed with impunity. Deadly clashes involving police, villagers and armed cattle rustlers (*dahalos*) continued in the southern region, leading to civilian casualties.

Civil society organizations denounced the lack of free and fair access to justice, the corruption of government officials, and their involvement in trafficking activities.

Madagascar continued to be a source country for forced labour and sex trafficking. Despite recent efforts, the government failed to prevent trafficking, protect victims, and prosecute suspected traffickers, including complicit officials.

**WOMEN’S RIGHTS**
The Nationality Law denied women the right to transmit nationality to their children on an equal basis with men, resulting in a large number of stateless persons.

The predominance of customary laws favoured harmful traditional practices including arranged, forced and early marriages. Women and girls continued to suffer sexual or other physical violence, but reporting rates were low and prosecutions rare. Efforts to prevent gender-based violence and to provide care and treatment for victims remained inadequate.

**FREEDOM OF EXPRESSION**
After months of protest from journalists and international media organizations, in August the High Constitutional Court approved a draft law on a new Code of Media Communication. The contentious Code punished with heavy fines offences such as contempt, defamation or insult against a government official.

Environmental activists reported threats and harassment for publicizing issues such as trafficking in rosewood and endangered species. They denounced a lack of protection by the government.

**PRISON CONDITIONS**
Prison conditions continued to be dire, with severe overcrowding and inadequate infrastructure. Almost half of all prisoners suffered moderate to severe malnutrition.

About half of prison inmates had not yet been tried, with pre-trial detention often exceeding the maximum potential sentence.

**MALAWI**

*Republic of Malawi*

*Head of state and government: Arthur Peter Mutharika*

Attacks against people with albinism continued; at least seven people were killed and their bodies mutilated. People with albinism also continued to suffer social isolation. Student protests over fee increases were violently repressed. Political opponents of the government were arrested and charged with treason.

**DISCRIMINATION – PEOPLE WITH ALBINISM**

People with albinism continued to be subjected to violent attacks and mutilations. Although senior government officials, including the President, publicly condemned the attacks, victims and their relatives continued to be denied justice and reparations.

In March, a Special Legal Counsel was appointed to assist the prosecution of crimes related to people with albinism. In July, Parliament passed revisions to the Anatomy
Act and Penal Code that increased the penalties for the sale of body tissue and possession of a dead body or human tissue. They were signed into law in September.

At least seven people with albinism were killed during 2016 and many more suffered attacks. Among those killed by criminal gangs were 23-month-old baby Whitney Chilumpha and nine-year-old Harry Mokoshoni.

In May, unidentified men killed and mutilated Fletcher Masina, a man with albinism, while he was working in his garden.

In July, Lucia Kainga was attacked and had her right hand chopped off by unidentified men in Mweneipenza 5 village, bordering Tanzania. Her husband was tricked into opening the door by an attacker pretending to be in need of help.

On 19 August, a village headman was arrested after attempting to sell a seven-year-old boy with albinism in Phalombe district. He was remanded in custody pending trial.

Societal ignorance and stigmatization also contributed to people with albinism suffering widespread denial of their economic, social and cultural rights. This included: exclusion from government poverty alleviation programmes; lack of support in schools to address bullying and learning difficulties; failure to address their specific medical needs; and lack of economic opportunities.

### REPRESSION OF DISSENT

In February, three parliamentarians of the Malawi Congress Party were arrested: Congress spokesperson Jessie Kabwila. Ulemu Msungama and Peter Chankwantha. They were charged with treason in connection with social media messages and released on bail. Their arrest contravened procedures protecting parliamentarians from arrest.

In July, students from the University of Malawi protested against a threefold rise in tuition fees imposed by the government. At Chancellor College in Zomba, police stormed hostels and fired tear gas at students who sought refuge in their rooms. A video showed police slapping two women students. On 26

July, 14 students from Malawi Polytechnic near Blantyre were arrested and charged with conduct likely to breach the peace. They were later released on bail. Eleven students from Kamuzu College of Nursing were also arrested and charged with “proposing violence”. They were later released on bail.

1. Malawi: “We are not animals to be hunted or sold” – violence and discrimination against people with albinism in Malawi (AFR 36/4126/2016)

### MALAYSIA

**Malaysia**

**Head of state:** King Muhammad V (replaced King Abdul Halim Mu’adzam Shah in October)

**Head of government:** Najib Tun Razak

The crackdown on the rights to freedom of expression, of peaceful assembly and of association persisted. Police were not held accountable for human rights violations. Former opposition leader and prisoner of conscience Anwar Ibrahim, convicted on trumped-up charges of “sodomy”, remained in prison serving a five-year sentence. Refugees and asylum-seekers fleeing persecution faced prolonged detention in poor conditions.

### FREEDOM OF EXPRESSION

Restrictive laws such as the Sedition Act and the Communications and Multimedia Act continued to be used to silence government critics, who were harassed, intimidated and often detained.

In March, the independent news portal, The Malaysian Insider, was shut down for commercial reasons after being blocked by the government. This was following critical coverage of a corruption scandal linked to the Prime Minister and the misappropriation of hundreds of millions of US dollars from the state-owned investment company 1Malaysia Development Berhad (1MDB).

Prosecutions of political activists and government critics persisted. In May, political activist Hishamuddin Rais was found guilty...
by the Court of Appeal of sedition and fined MYR5,000 (US$1,140) for calling for electoral reform. Student activist Adam Adli received the same fine for the same charge. Youth activist Mohd Fakhrulrazi was sentenced to eight months’ imprisonment for sedition after calling for Anwar Ibrahim’s release from prison.

The Communications and Multimedia Act was increasingly used to target government critics and dissidents. In June, activist Fahmi Reza was charged twice under the Act for depicting the Prime Minister as a clown in a caricature. Muhammad Amirul Zakwan pleaded guilty to making insulting comments about the Prince of Johor on Facebook and was sentenced to two years in reform school. At least three others were either charged, detained or investigated for social media posts criticizing the Prince.

Arbitrary travel bans were imposed on three government critics, including cartoonist and political activist Zunar.

FREEDOMS OF ASSEMBLY AND ASSOCIATION

Human rights activists and opposition parliamentarians were tried for participating in peaceful protests. In October, protesters travelling the country in a convoy to advocate for electoral reform and raise awareness of the Bersih 5 demonstration were subjected to physical attacks and intimidation, as well as death threats against their leaders.

ARBITRARY ARRESTS AND DETentions

Preventive detention laws continued to be used to detain people alleged to have committed security crimes. Wording in the Prevention of Terrorism Act was overly broad and open to abuse; it failed to define what is meant by those “engaged in the commission or support of terrorist acts”. It allowed the authorities to arrest individuals without providing grounds for detention, for up to 60 days without charge or trial. The Security Offences Measures Act (SOSMA) allowed for detention for up to 28 days without charge or trial.

In January and February, the human rights NGO Suara Rakyat Malaysia (SUARAM) reported that at least 13 people were tortured or otherwise ill-treated while detained under SOSMA, including being beaten and stepped on, and being forced to strip and perform sexual acts in the presence of the authorities. Investigations were ongoing by the National Human Rights Commission at the end of the year.

The National Security Council Act, which came into force in August, provided the executive with extensive powers including arrest, search and seizure without warrant, curfews, and authority to circumvent accountability measures such as inquests into deaths in security areas.

In November, the chairperson of Bersih, Maria Chin Abdullah, was arrested in connection with the organization of the Bersih demonstration (see above). She was held under SOSMA for attempting to carry out activities detrimental to parliamentary democracy. She was placed in solitary confinement for 11 days and held without charge or access to a judge in deplorable conditions, in an unknown location.

POLICE AND SECURITY FORCES

Impunity for deaths in custody and excessive use of force persisted. In April, the Enforcement Agency Integrity Commission found that police officers in charge of interrogating N. Dharmendran, who died in police custody in 2013, were responsible for his death by physical force and that the police later fabricated evidence to cover up his treatment during interrogation. Despite this, in June, the Kuala Lumpur Criminal High Court acquitted the four policemen charged with his murder. His widow filed a civil suit against the police and government.

REFUGEES AND ASYLUM-SEEKERS

In May 2015, amid intense international pressure, Malaysia agreed to accept 1,100 people stranded off its coastline. The group, including over 400 Rohingya, faced prolonged detention for over a year in harsh conditions. In June, the majority of the
Rohingya were released and some were resettled.\textsuperscript{7} Immigration detention centres in Malaysia were overcrowded and conditions remained harsh.

A lack of transparency by the authorities regarding investigations into mass graves found on the Thai-Malaysian border in 2015, as well as identification of the remains, led to renewed calls on the authorities to take adequate action to investigate the deaths.

**DEATH PENALTY**

The death penalty continued to be retained as the mandatory punishment for offences including drug trafficking, murder and discharge of firearms with intent to kill or harm in certain circumstances. Reforms to the death penalty announced by the government in 2015 had not yet materialized. While executions and new death sentences continued to be recorded, no established procedure remained for notification to families of scheduled executions.\textsuperscript{8}

---

1. Malaysia: Drop investigations against members of the Malaysia Bar (ASA 28/3758/2016)
2. Malaysia: Prison sentence overturned, fine upheld (ASA 28/4051/2016)
3. Malaysia: End crackdown on Bersih Activists (News story, 18 November)
4. Malaysia: Death threats against Bersih organizers (ASA 28/5014/2016)
5. Malaysia: National Security Council Act gives authorities unchecked and abusive powers (News story, 1 August)
6. Malaysia: Police must be held accountable for death in custody (News story, 29 June)
7. Malaysia: One year on, no justice for the "boat crisis" survivors (News story, 28 May)
8. Malaysia: Stop execution of prisoners due to be hanged (News story, 23 March)

---

**MALDIVES**

Republic of Maldives

Head of state and government: Abdulla Yameen Abdul Gayoom

The government intensified its crackdown on the rights to freedom of expression and of peaceful assembly. Authorities used new laws and criminal cases to silence political opponents, as well as human rights defenders, journalists and civil society. Lack of independence of the judiciary remained a concern. The government took steps to reintroduce executions after more than 60 years.

**BACKGROUND**

The ruling coalition enacted new legislation to curtail peaceful protests and expression. An opposition coalition, the Maldives United Opposition, was set up. It was headed by former Vice-President Mohamed Jameel and advised by former President Mohamed Nasheed who was granted political asylum in the UK. There were growing signs of splits in the ruling coalition between factions loyal to the current President and those loyal to former President Maumoon Abdul Gayoom.

**UNFAIR TRIALS**

The authorities increasingly ignored constitutional safeguards on the right to a fair trial, as evidenced by a string of criminal cases against political opponents. On 10 June, former Vice-President Adeeb received a 15-year jail sentence; he was convicted in connection with a plot to assassinate the President, amid serious concerns about the fairness of his trial. In February, Sheikh Imran Abdulla leader of the Adhaalath Party, was sentenced to 12 years' imprisonment for terrorism after a trial which was widely criticized as unfair and politically motivated. The Supreme Court upheld lengthy jail sentences for former President Nasheed and former Defence Minister Mohamed Nazim; both had been sentenced in trials criticized as grossly unfair.

**JUSTICE SYSTEM**

The judicial system continued to be deeply politicized. In July, a civil court threatened to hold the Attorney General in contempt after his office said it would appeal against a judgment that barred former staff of Haveeru newspaper from working for any other media organization for two years. The government
failed to strengthen the Judicial Services Commission to ensure impartiality.

**FREEDOM OF EXPRESSION**

A new defamation law criminalizing “defamatory” speech, remarks and other actions was passed by Parliament and ratified by the President in August. The law is vaguely worded and broad in its application, giving the authorities wide discretion to target and silence peaceful critics.1

Free and independent media faced harassment in the form of lawsuits and bans. News outlets *Haveeru*, DhiTV, AdduLIVE and Channel News Maldives were on occasion blocked or forced to shut down. Four journalists from the pro-opposition Raajje TV were charged with obstructing law enforcement officers after covering a protest; their sentences were expected in early 2017.

Social media activist “Lucas” Jaleel was arrested for “inciting hatred” in July after he alleged excessive use of force by police in a series of tweets.

In April, police confirmed that reporter Ahmed Rilwan had been abducted outside his home in 2014, having previously denied there was evidence of an abduction. In May, the government denied involvement in his disappearance to the UN Working Group on Enforced and Involuntary Disappearances.

In September, police raided the premises of the newspaper *Maldives Independent*, on the basis that it was suspected of involvement in a coup plot. The raid took place hours after the premiere of an Al Jazeera documentary alleging large-scale corruption by the President and senior ministers, in which the newspaper’s editor was interviewed.

**FREEDOM OF ASSEMBLY**

Arbitrary restrictions on peaceful protesters and human rights defenders continued. In February, police banned an anti-corruption rally in the capital, Malé. In April, 16 journalists were arrested after staging a peaceful protest against the defamation law outside the President’s office,2 and in August journalists were stopped from protesting against the same law. In July, the Maldives United Opposition was refused permission by the government to hold a rally. A law was enacted in August requiring written permission from the police to hold a protest in Malé.

**CRUEL, INHUMAN OR DEGRADING PUNISHMENT**

Courts continued to sentence people, the vast majority of them women, to flogging. This was most commonly imposed for “fornication”. Despite flogging constituting torture or cruel, inhuman or degrading punishment, the government continued to insist that it would not remove the punishment from Maldivian law.

**DEATH PENALTY**

Senior officials repeatedly pledged to resume executions and end a moratorium on the use of the death penalty that has been in effect for more than 60 years. The government declared that it would carry out executions within 30 days of the Supreme Court upholding death sentences and changed the method of execution from lethal injection to death by hanging. Death sentences against three people were upheld by the Supreme Court in June and July, despite well-documented fair trial concerns in at least one case.3 No executions took place, as negotiations with the victims’ families over possible pardons under Islamic law were ongoing. Of the 17 prisoners on death row, at least five were sentenced to death for crimes committed when they were below 18 years of age.

---

1. Maldives: Proposed defamation law is an attack on freedom of expression (ASA 29/4573/2016)
3. Maldives: Halt plans to carry out first execution in more than six decades (ASA 29/4364/2016)
Mali

Republic of Mali
Head of state: Ibrahim Boubacar Keïta
Head of government: Modibo Keïta

Internal armed conflict and instability increased. Armed groups committed abuses, including killing peacekeepers. Security forces and UN peacekeepers used excessive and lethal force, including against protesters.

BACKGROUND
Instability spread from the north to the centre of the country, with a growing number of armed groups carrying out attacks. In July, for example, armed groups killed 17 soldiers and wounded 35 others during an attack on an army base in central Mali. Armed groups retained control of the northern town of Kidal. The proliferation of armed groups hampered implementation of the 2015 Algiers peace agreement. In July, following several attacks, including in the north and the capital, Bamako, the state of emergency was extended until March 2017.

In June, the UN Security Council extended the mandate of the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) to June 2017. More than 10,000 peacekeepers were stationed in the country.

More than 135,000 Malians remained as refugees in neighbouring countries because of the conflict.

ABUSES BY ARMED GROUPS
Attacks by armed groups against MINUSMA increased sharply. More than 62 attacks were committed during the year, killing 25 peacekeepers and six civilian contractors working for the UN. Landmines used by armed groups killed and maimed civilians, peacekeepers and members of the security forces.

In January, Beatrice Stockly, a Swiss missionary, was abducted in Timbuktu by al-Qa’ida in the Islamic Maghreb (AQIM). She had been captured and held by the same group for nine days in 2012. In December, Sophie Petronin, a French national working for a humanitarian organization, was kidnapped in Gao by AQIM.

In mid-May, the armed group Ansar Eddine killed five Chadian peacekeepers and wounded three in an ambush about 15km north of Aguelhok in the eastern Kidal region. Later that month, an attack on a MINUSMA camp in the northeastern city of Gao, claimed by AQIM, killed one Chinese peacekeeper and injured others.

EXCESSIVE USE OF FORCE
Security forces and UN peacekeepers used excessive force and were accused of extrajudicial executions. The UN reported a total of 24 instances of killings, summary executions and enforced disappearances in both March and May. In May, it reported that of 103 people arrested by Malian and international forces for terrorism-related charges so far in 2016, three had been summarily executed and 12 had been tortured by Malian forces.

In April, two demonstrators were shot dead and four others were wounded at Kidal Airport during a protest against arrests by international forces. MINUSMA established an inquiry.

In July, Malian forces fired live ammunition during a march in Gao organized by the Civil Resistance Movement, killing Mahamane Housseini, Seydou Douka Maiga and Abdoulaye Idrissa, and wounding more than 40 others.

IMPUNITY
Despite some progress, measures taken to ensure truth, justice and reparation for victims of the conflict were limited. The UN Independent Expert on Mali highlighted the lack of progress, particularly regarding meaningful access to justice for women who had experienced violence. Insecurity and lack of logistical support for magistrates were cited as among the major impediments.

In May, 12 people charged with terrorism-related offences were sentenced to prison.
terms. Some of them had been released under the peace agreement.

In November, the trial began of General Haya Amadou Sanogo on charges linked to the abduction and murder in 2012 of soldiers accused of supporting the ousted President, Amadou Toumani Touré.¹

The Truth, Justice and Reconciliation Commission, established in 2014 to investigate serious human rights violations between 1960 and 2013, was still not operational at the end of 2016.

INTERNATIONAL JUSTICE
In September, the International Criminal Court sentenced Ahmad Al Faqi Al Mahdi to nine years in prison for directing attacks against religious buildings and historic monuments. A member of Ansar Eddine, he was charged for his role in destroying nine mausoleums and a mosque in the northern town of Timbuktu in 2012. He pleaded guilty.

FREEDOM OF EXPRESSION
In August, Mohamed Youssouf Bathily (known as Rath Bath), a journalist working for Maliba FM radio, was arrested and charged with undermining decency and demotivating the army. He had called for the army’s Chief of Staff to resign and criticized the army. He was released after two days under judicial supervision; his radio programme was banned.

RIGHT TO EDUCATION
According to the UN, 296 out of 2,380 schools were closed in the regions of Gao, Kidal, Ségou and Timbuktu because of insecurity, with no alternatives provided. The CEDAW Committee noted the poor quality of education owing to the high pupil-teacher ratio and the lack of textbooks and qualified teachers. The Committee also noted rural-urban disparities in enrolment. Seven armed groups continued to occupy schools.

RIGHT TO AN ADEQUATE STANDARD OF LIVING
More than 33,000 Malians remained internally displaced because of the conflict, and some 3 million people faced food insecurity, including more than 423,000 at severe levels. Hijackings by armed groups in Gao and Ménaka regions hampered access to humanitarian assistance, including health care. In June, a warehouse in Kidal stocked with food for more than 10,000 people was looted.

WOMEN’S RIGHTS
In July, the CEDAW Committee voiced concern about the low level of representation of women on the Truth, Justice and Reconciliation Commission and at decision-making levels following the peace agreement. It also expressed concern at the extremely low completion rate for girls in secondary education owing to factors including early and child marriage, early pregnancy, indirect school costs, child labour and a preference for sending boys to school. The Committee urged Mali to reform legislation to eliminate discrimination against women, and to finalize the bill to prohibit female genital mutilation.

1. Mali: Trial of former junta leader must bring justice for abductions, torture and murder (News story, 28 November)

MALTA
Republic of Malta
Head of state: Marie-Louise Coleiro Preca
Head of government: Joseph Muscat

Implementation of a new reception regime for asylum-seekers and migrants started, which moved away from automatic and mandatory detention of people entering Malta irregularly. However, there were concerns that safeguards against arbitrary and unlawful detention remained insufficient. Abortion remained prohibited in all circumstances.

REFUGEES’ AND MIGRANTS’ RIGHTS
In January and February, UNHCR, the UN refugee agency, and national NGOs welcomed elements of the new legal and
Amnesty International Report 2016/17

policy framework relating to the reception of asylum-seekers and migrants in Malta. It had been approved at the end of 2015 and introduced through amendments to the Immigration and the Refugee Acts, regulations and a new policy document of the Ministry for Home Affairs and National Security.

The new framework ended the problematic regime of long-term automatic and mandatory detention of asylum-seekers and migrants irregularly entering Malta. However, a period of detention upon arrival was maintained at the newly created Initial Reception Centres of around 70 hours, where asylum-seekers and migrants are medically screened, identified and assessed for release or further detention. While such initial detention should ordinarily be for no more than seven days, it could be longer for health-related concerns. The new framework also introduced legal grounds for detention, free legal assistance, the possibility to challenge detention orders and an automatic review of detention orders.

Concerns remained as to the interpretation of the legal grounds for detention, a lack of clarity on when alternatives to detention might apply, and the lack of safeguards to ensure the proportionate use of detention. In particular, UNHCR noted that some of the new guidelines for immigration authorities were not fully consistent with international law and standards, and could lead to arbitrary detention.

There were no irregular boat arrivals of refugees and migrants directly from North Africa, as most people were rescued at sea and disembarked in Italy. However, 29 people in need of urgent medical assistance during their rescue on the high seas were taken to Malta. The Armed Forces of Malta continued to participate in the rescue of refugees and migrants crossing the central Mediterranean on overcrowded and unseaworthy vessels, as part of Frontex Operation Triton and of EUNAVFOR MED Operation Sophia. By the end of November over 1,600 people had reached Malta by plane or ferry to seek asylum. Over a third were Libyans.

Those accepted under the EU relocation programme (80 people by the end of November) were held for medical screening for around 70 hours in the newly created Initial Reception Centres, although this was criticized by UNHCR.

In January, the European Court of Human Rights (ECHR) found Malta in breach of Article 5, paragraph 4 of the European Convention on Human Rights, on the right to have lawfulness of detention assessed speedily by a court. The applicants were two Somali women who had been detained from August 2012 to August 2013, because of their irregular entry into Malta under the previous reception regime, and who had no adequate remedy to challenge the lawfulness of their detention.

In June, the UN Working Group on Arbitrary Detention released a report on Malta, following a visit to the country the previous year. The Working Group acknowledged the legislative reform to the automatic nature of detention. It also noted that programmes for the integration of migrants, asylum-seekers and refugees into Maltese society remained inadequate.

In November, the Ministry for Home Affairs and National Security announced a review of Temporary Humanitarian Protection – New (THPN) certificates, which are held by people whose asylum requests have failed. NGOs expressed concern that the decision could hamper the ability of those concerned to access basic services, including health and education. UNHCR recommended caution in implementing repatriations as a result of the review, as it was aware of cases of people who should have been granted international protection but were instead granted THPN.

SEXUAL AND REPRODUCTIVE RIGHTS

Abortion remained prohibited in all circumstances, with women being denied access to it even when their life was at risk.

LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS

In January, the ECHR found Malta in breach of Article 6 of the European Convention on
Human Rights, which among other things, guarantees access to a lawyer at the initial stages of police interrogation. A convicted offender had complained that he had been denied legal assistance during questioning in police custody at the pre-trial stage.

**MAURITANIA**

Islamic Republic of Mauritania
Head of state: Mohamed Ould Abdel Aziz
Head of government: Yahya Ould Hademine

Human rights defenders and opponents of the government faced politically motivated prosecutions, with anti-slavery organizations particularly persecuted. The rights to freedom of expression, association and peaceful assembly were restricted. Torture and other ill-treatment in custody were common. Groups making up two thirds of the population faced systematic discrimination, and extreme poverty was widespread. The practice of slavery continued.

**HUMAN RIGHTS DEFENDERS**

Laws – including those covering public disorder, resisting arrest and belonging to an unauthorized organization – were used in politically motivated prosecutions against human rights defenders and government opponents, particularly anti-slavery activists.

In May, the Supreme Court ordered the release of two anti-slavery activists, Biram Ould Dah Abeid and Brahim Bilal, after reducing their prison sentences. The two prisoners of conscience, members of Initiative for the Resurgence of the Abolitionist Movement (IRA), were arrested in November 2014 after taking part in a peaceful protest. They had been sentenced to two years’ imprisonment on charges of belonging to an unrecognized organization, taking part in an unauthorized assembly, failing to comply with police orders and resisting arrest. Another member of the IRA who received the same sentence, Djiby Sow, was released on medical grounds in June 2015.

In June and July, 13 other members of the IRA were arrested after a protest against forced evictions by communities in the slum area of Bouamatou, in the capital Nouakchott. Although none of the IRA members had attended the protest, in August they were convicted on charges including rebellion and use of violence. The court refused to examine allegations of torture made by the accused. In October a group of UN experts expressed serious concern that these activists had been targeted by the government for their anti-slavery advocacy, stating that the government was hostile to civil society groups that criticized its policies, especially groups such as the IRA, whose members are drawn from the Haratine minority and advocate for an end to slavery.

In November, the Appeals Court of Nouadhibou acquitted three of the 13 IRA members and reduced the sentences of seven others who were released the same month. Three remaining IRA members were sentenced to six months and three years in prison.

**FREEDOMS OF EXPRESSION, ASSOCIATION AND ASSEMBLY**

The space for the exercise of the rights to freedom of expression, association and peaceful assembly shrank as journalists, human rights defenders and government critics were arrested and prosecuted by a politicized judiciary.

In April, the Appeals Court in Nouakchott upheld the death sentence of Mohamed Mkhaïtir for apostasy in the first case of its kind in Mauritania. Mohamed Mkhaïtir was originally sentenced to death in December 2014 in Nouadhibou after a year in pre-trial detention for writing a blog critical of those who use Islam to foster discrimination against Moulamines (blacksmiths) and the descendants of slaves and griots. The Appeals Court referred the case to the Supreme Court.

In July, Cheikh Baye, manager of the Meyadine news website, was sentenced to
three years’ imprisonment for using violence against a public official. He had accused a government spokesperson of lying and threw his shoe at him during a press briefing. Five people who criticized the verdict were also convicted of the same charges in August. Three were sentenced to two years’ imprisonment and two received suspended sentences.

The authorities continued to bar the legal registration of several NGOs and human rights organizations. For example, the Association des Veuves de la Mauritanie, an organization calling for the truth about summary executions and disappearances in the 1990s, has been waiting for recognition since 1993; it renewed its request in 2010.

TORTURE AND OTHER ILL-TREATMENT
Following a visit in February, the UN Special Rapporteur on torture welcomed legislative developments, including the introduction of a new law against torture, and the establishment of a National Preventive Mechanism (NPM). He stressed that the judiciary should step up efforts to implement these safeguards and highlighted the lack of investigations into allegations of torture. He also drew attention to the use of unofficial detention facilities and the denial of access to a lawyer for up to 45 days in terrorism-related cases.

Prisoners, male and female, reported in mid-2016 that they had been tortured and otherwise ill-treated in police custody and by prison guards. One prisoner charged with a terrorism-related offence said that following his arrest in March, he was beaten to make him “confess” with his hands and feet tied together behind his back.

The IRA members arrested in June and July were held separately in undisclosed places of detention and denied access to their families and lawyers. They were interrogated at night, deprived of sleep and denied access to toilets. At least four had their feet and hands bound in painful positions for hours and were suspended by ropes from the ceiling. Others were stripped, insulted and threatened with death. Despite the new NPM programme to monitor places of detention, an NPM member was denied access to IRA members who were being held in incommunicado detention.

DISCRIMINATION – HARATINES AND AFRO-MAURITANIANS
The UN Special Rapporteur on extreme poverty and human rights, who visited Mauritania in April, highlighted a systematic absence of Haratines and Afro-Mauritanians from almost all positions of power and their exclusion from many aspects of economic and social life, including their inability to obtain a national identity card. The two groups make up two thirds of the population. He stressed that, although economic, social and cultural rights are mentioned in the preamble of the Constitution, there were no provisions dealing with them. He pointed out that in some rural areas only 10% of children attended secondary school and that the maternal mortality rate remained one of the highest in the world. In 2015, according to the World Bank, 602 mothers died for every 100,000 live births.

SLAVERY
Although slavery was abolished officially in 1981 and is recognized as a crime in domestic law, human rights organizations including SOS Esclaves and IRA regularly criticized the continuation of this practice.3

In May, the Special Tribunal against Slavery opened in Nema, and in the same month two former slave owners were handed a one-year prison sentence and a four-year suspended sentence and ordered to pay compensation to two women victims. Yet in the same month, in the same town, President Abdel Aziz denied that slavery existed and called on the Haratines, the former slave population, to have fewer children in order to address the legacy of slavery and poverty.

1. Mauritaia: Drop all charges and release anti-slavery activists (News story, 1 August)
2. Mauritania: New law compromises right to freedom of association (News story, 2 June)
MEXICO

United Mexican States
Head of state and government: Enrique Peña Nieto

Ten years since the start of the so-called “war on drugs and organized crime”, the use of military personnel in public security operations continued and violence throughout the country remained widespread. There continued to be reports of torture and other ill-treatment, enforced disappearances, extrajudicial executions and arbitrary detentions. Impunity persisted for human rights violations and crimes under international law. Mexico received its highest-ever number of asylum claims, mostly from people fleeing violence in El Salvador, Honduras and Guatemala. Human rights defenders and independent observers were subjected to intense smear campaigns; journalists continued to be killed and threatened for their work. Violence against women remained a major concern and “gender alerts” were issued in the states of Jalisco and Michoacán. Congress rejected one of the two bills presented to allow same-sex couples to marry and adopt children.

BACKGROUND
The ruling Institutional Revolutionary Party lost a number of governorships in various states in June elections. A prolonged social conflict between the government and teachers’ unions led to mass protests and blockaded highways throughout the country, with unions calling for the government to revoke its 2013 educational reform.

Mexico completed its transition from a written, inquisitorial criminal justice system to one based on oral trials, after an eight-year preparatory period came to a close. Many challenges of the prior system remained – including a failure to respect the presumption of innocence – despite the implementation of the reform.

A 10-point security plan announced by President Peña Nieto in November 2014 had yet to be fully implemented, with promises to pass laws against torture and enforced disappearances as well as disappearances by non-state actors yet to be fulfilled. A package of anti-corruption laws was passed by Congress. The new legislation was widely criticized as falling short of earlier drafts.

Official records noted that the number of soldiers and marines employed in security operations throughout the country increased. In October the Minister of Defence admitted that the war on drugs had taken its toll on the exhausted armed forces and called for further legal clarity regarding their role in public security tasks. Legislators vowed to discuss reforms regarding the armed forces in security operations.

POLICE AND SECURITY FORCES
There was a marked increase in violence, with 36,056 homicides registered by the authorities up until the end of November – the highest number since the start of President Peña Nieto’s term in 2012 – compared to 33,017 in 2015.

In response to widespread protests from teachers’ movements, the authorities carried out a number of police operations, some of which resulted in civilians being killed and injured. Several leaders of the movements were arrested and detained in federal prisons. Many of them were subsequently released pending further investigation.

EXTRAJUDICIAL EXECUTIONS
Perpetrators of extrajudicial executions continued to enjoy impunity; the crimes were not properly investigated. The armed forces continued to contribute to investigations in cases involving military personnel, contrary to the 2014 reform of the Code of Military Justice. For the third consecutive year, the authorities failed to publish the number of people killed or wounded in clashes with the police and military forces.
Dozens of mass graves were uncovered throughout the country, often on the initiative of family groups rather than authorities or official forensic experts. Local authorities illegally disposed of over 100 unidentified bodies in at least one grave in the municipality of Tetelcingo, Morelos state. The perpetrators of the killings remained unidentified.

On 19 June, at least eight people were killed and dozens injured in Nochixtlán town, Oaxaca state, during a police operation following a roadblock as part of a demonstration against the government’s education reform. Footage published by media outlets contradicted the authorities’ original assertion that the policemen were unarmed.

In August, the National Human Rights Commission found that federal police members had tortured at least two people in the municipality of Tanhuato, Michoacán state, in May 2015 as part of a security operation; that at least 22 of the 43 people killed during the operation were victims of arbitrary execution; and that the police had tampered with evidence including by planting firearms on the victims.

Investigations into the killings by soldiers of 22 people in 2014 in Tlatlaya, Mexico state, had yet to produce concrete results. The authorities failed to take responsibility for the order “to take down criminals” (meant as “to kill” in this context) that was the basis for military operations in the area in 2014, or to investigate any officers with command responsibility.

No one was known to have been prosecuted for the killings in 2015 of 16 people by federal police officers and other security forces in Apatzingán, Michoacán state; the authorities failed to adequately investigate the killings or to look into the responsibility of those in command.

**TORTURE AND OTHER ILL-TREATMENT**

Impunity for torture and other ill-treatment remained almost absolute, with numerous reports of beatings, near asphyxiation with plastic bags, electric shocks, rape and other sexual assault taking place during police and military operations. Sexual violence used as a form of torture was commonplace during arrests of women.¹ For the first time in two years, the Federal Attorney General’s Office announced charges of torture against five federal officials in April, in response to a leaked video showing police officers and soldiers torturing a woman. Also in April, in a rare case a federal judge sentenced an army general to 52 years’ imprisonment for having ordered an operation which involved torture and homicide as well as destruction of a body in Chihuahua state in 2008.

In April, the Senate approved a bill for a General Law on Torture which complied with international standards. The bill was amended and remained pending a general vote in the Chamber of Deputies at the end of the year.

The Special Unit on Torture of the Federal Attorney General’s Office reported 4,715 torture investigation files under revision at federal level.

As in previous years, the special medical examination procedure of the Federal Attorney General’s Office for cases of alleged torture was not applied in most cases, with a backlog of over 3,000 requests on file. In many cases, investigations into torture and other ill-treatment failed to advance without an official examination.

In September, the Inter-American Commission on Human Rights (IACHR) referred the case of 11 women who were subjected to sexual violence as a form of torture in San Salvador Atenco in 2006 to the Inter-American Court of Human Rights, given Mexico’s failure to fulfil the Commission’s recommendations on the case.

**REFUGEES’ AND MIGRANTS’ RIGHTS**

A record number of asylum claims were registered, with 6,898 lodged as of October – 93% of whom were nationals of El Salvador, Honduras and Guatemala. Refugee status was granted to 2,162 people, despite estimates that more than 400,000 irregular migrants crossed Mexico’s southern border each year, half of whom could qualify for
asylum status, according to international organizations and academics. In the majority of cases, the authorities failed to adequately inform migrants of their right to seek asylum in Mexico.

In August, a constitutional reform to recognize the right to asylum entered into force.

The implementation of the Southern Border Plan again led to a surge in security operations on the Mexican border with Guatemala and Belize, with frequent reports of extortions, mass deportations, kidnappings and other human rights abuses against migrants. As of November, 174,526 irregular migrants had been apprehended and detained, and 136,420 returned to their country. Of those deported, 97% were from Central America. Data from the US Congress in February showed that the US government plans to allocate US$75 million to “security and migration enforcement” on Mexico’s southern border, through the Mérida Initiative.

The Federal Attorney General’s Office established a new Unit for the Investigation of Crimes against Migrants. Civil society organizations participated in the design of a Mexican Mechanism for Foreign Support in Search and Investigation to co-ordinate Mexican and Central American authorities’ efforts to ensure justice for migrant victims of disappearances by non-state actors and other crimes in Mexico.

In September, President Peña Nieto announced a plan on refugees at a UN summit and officially acknowledged the refugee crisis in Mexico and Central America. The plan promised to increase funding of Mexico’s refugee agency by 80%, to ensure that no child migrant under 11 years of age be detained, and to strengthen the inclusion and integration of refugees in the country. In May, a special report by the National Human Rights Commission identified at least 35,433 victims of internal displacement in Mexico, despite the fact that credible estimates based on official data were at least four times higher. In October, the Commission published a report highlighting the poor living conditions in migration detention centres, especially for unaccompanied children.

**ENFORCED DISAPPEARANCES**

Enforced disappearances with the involvement of the state and disappearances committed by non-state actors continued to be widespread and those responsible continued to enjoy almost absolute impunity. The investigations into the cases of missing people continued to be flawed and unduly delayed. The authorities generally failed to immediately search for victims.

By the end of the year, 29,917 people (22,414 men and 7,503 women) were reported as missing by the government. The figures by the National Register of Missing and Disappeared Persons did not include federal cases that occurred prior to 2014 nor cases classified as other criminal offences such as hostage-taking or human trafficking.

Enforced disappearances and disappearances by non-state actors inflicted serious harm on victims’ relatives, which constituted a form of torture and other cruel, inhuman or degrading treatment or punishment. Available data suggested that a majority of victims were men; women made up the majority of relatives seeking truth, justice and reparations. Some relatives of disappeared people who were searching for their family members received death threats.

The Senate held public hearings with relatives of disappeared people on the General Law on Disappearances that had been presented to Congress by President Peña Nieto in December 2015. The bill remained before Congress.

In March, criminal charges were presented against five marines for the enforced disappearance of Armando Humberto del Bosque Villarreal, who had been found dead weeks after his arbitrary arrest in 2013 in Nuevo León state.

In April, the Interdisciplinary Group of Independent Experts (GIEI) appointed by the IACHR published its second report on the 43 students from a teacher training college in Ayotzinapa, Guerrero state, who were victims of enforced disappearance in September.
2014. The GIEI confirmed that the authorities’ assertion that the students had been killed and burned in a local rubbish dump was scientifically impossible. The GIEI also revealed that in October 2014, officials had irregularly visited a scene later linked to the crime and handled important evidence without proper permission or documentation. A man held in custody in relation to the case was forced by the authorities to participate in the visit without his lawyer present or any oversight from a judge. The visit took place a day before the government discovered a small piece of bone in the same place, later identified as belonging to student Alexander Mora Venancio. The leading official involved in these investigations resigned from his post within the Federal Attorney General’s Office, even though an investigation into his actions was ongoing. He was immediately appointed by President Peña Nieto to another senior federal position. In November, the IACHR presented its work plan for a follow-up mechanism on the Ayotzinapa case after the GIEI recommendations and the 2014 precautionary measure issued by the IAHCRR ordering Mexico to determine the status and whereabouts of the 43 missing students.

**HUMAN RIGHTS DEFENDERS AND JOURNALISTS**

Human rights defenders and journalists continued to be threatened, harassed, intimidated, attacked or killed. At least 11 journalists were killed during the year. The federal Mechanism for the Protection of Human Rights Defenders and Journalists left human rights defenders and journalists inadequately protected. In February, international human rights organizations denounced the smear campaign against the GIEI and local NGOs involved in the Ayotzinapa case – a campaign that appeared to be tolerated by the authorities. The number of requests for protection under the Mechanism remained steady in relation to the previous year.

In July, Humberto Moreira Valdés, former governor of the state of Coahuila and former president of the Institutional Revolutionary Party, sued prominent journalist Sergio Aguayo for US$ 550,000 in a civil lawsuit for alleged moral damage to his reputation due to an opinion piece published by Sergio Aguayo. The excessive amount demanded could constitute a form of punishment and intimidation, potentially affecting freedom of expression in public debate.

In August, prisoner of conscience and community environmental defender Ildefonso Zamora was released after nine months’ imprisonment on fabricated charges.

**FREEDOM OF ASSEMBLY**

The Supreme Court continued to analyze a legal challenge to Mexico City’s 2014 Law on Mobility. It ruled in August that the law should not be interpreted as imposing a prior authorization regime for demonstrations, but only as a rule allowing people to notify authorities in advance of any planned demonstration. The Court considered that the lack of provisions on spontaneous demonstrations did not mean that such acts were forbidden in any way. Finally, it voted in favour of a rule banning protests in the city’s main avenues.

**RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE**

In May, President Peña Nieto presented two draft bills to Congress to reform the Constitution and the Federal Civil Code. The proposed constitutional reform to expressly guarantee the right to marry without discrimination was rejected by Congress in November.

The second proposed reform to the Civil Code would prohibit discrimination on grounds of sexual orientation and gender identity in allowing couples to marry and people to adopt children; the reform also included the right of transgender people to have their gender identity recognized by Mexico. The bill had yet to be discussed in Congress.

In September, Supreme Court jurisprudence upholding same-sex couples’ rights to marry and adopt children without being discriminated against on the basis of
sexual orientation and gender identity became binding on all judges in the country.

### VIOLENCE AGAINST WOMEN AND GIRLS

Violence against women and girls remained endemic. In April, dozens of thousands of people demonstrated around the country, demanding an end to violence against women, including sexual harassment. The “Gender Alert” mechanism was activated in the states of Jalisco and Michoacán after it had already been activated in the states of Morelos and Mexico in the previous year. A lack of accurate, up-to-date and disaggregated data about gender-based violence constituted a major obstacle to tackling the problem.

### INDIGENOUS PEOPLES’ RIGHTS

Due to last-minute information from the Ministry of Economy regarding the cancellation of two mining concessions by companies in the community of San Miguel Progreso, Guerrero state, the Supreme Court declined to consider the effect that the Mining Law of 1991 had on Indigenous Peoples’ rights. A legal framework on Indigenous Peoples’ right to free, prior and informed consent remained largely absent from the legislative debate, despite the fact that a bill had been discussed in public forums and the National Human Rights Commission issued a recommendation in October to the Congress that it legislate on this matter. In September, the Indigenous municipality of Guevea de Humboldt, Oaxaca state, allowed women in the community to exercise their right to vote for the first time in local elections.

---

1. Surviving death: Police and military torture of women in Mexico (AMR 41/4237/2016)
generally restrained, occasionally involved unnecessary or excessive use of force, including tear gas and batons.

The trial continued of the seven “Petrenco group” protesters (for trying to force their way into the Prosecutor’s Office during a demonstration on 6 September 2015), with six of them spending over six months in detention and all charged with “attempting to organize mass disturbances”. Following much criticism in Moldova and internationally, the six detained defendants were placed under house arrest on 22 February and released one month later under travel restrictions.

UNFAIR TRIALS
The case against the “Petrenco group” and a number of other criminal prosecutions prompted concerns about political bias.

Following eight months of detention, on 27 June Vladimir Filat was found guilty of “passive corruption” and “benefiting from [his] influence” in relation to fraud in 2014 that cost the National Bank over a third of its reserves, and sentenced to nine years’ imprisonment. His closed trial left more questions than answers, including over the lack of investigation against any other politicians. His defence appealed against the verdict and claimed that there were procedural violations and lack of equality of arms between the parties. The latter was officially denied, but because of the closed proceedings, neither claim could be independently verified. During the hearing, Vladimir Filat reportedly went on hunger strike for 20 days and once lost consciousness in the courtroom.

FREEDOM OF EXPRESSION – MEDIA
While media freedom was generally respected, concerns over independence persisted in light of the concentration of ownership in the hands of a few individuals. At least two prominent critical journalists complained of anonymous threats. In August, a bullet was fired into the window of Constantin Cheianu’s daughter’s flat. The journalist had received text messages warning that he “will be stopped” if he carried on writing about the oligarchic system. TV presenter Natalia Morari reported receiving similar warnings from a source which she described as credible. Both journalists filed official complaints with the authorities.

TORTURE AND OTHER ILL-TREATMENT
No progress was made to address structural causes of impunity for torture and other ill-treatment, while the prosecution of alleged perpetrators remained extremely rare. Between January and June, 331 people complained to the Prosecutor’s Office about torture and other ill-treatment. Out of 19 torture-related cases in which courts gave decisions, 15 resulted in convictions but only two out of the 18 defendants convicted received custodial sentences.

Vladimir Filat’s family and lawyer repeatedly alleged that he was ill-treated, including by being placed in solitary confinement where they said conditions amounted to torture. This once again shone a light on Penitentiary Institution no. 13 in Chişinău, which had been criticized by independent monitors in previous years. All requests for an independent visit to Filat, including by Amnesty International, were refused, even after his conviction. However, Amnesty International visited the institution and confirmed that while conditions had visibly improved in some cells (improvements usually sponsored by inmates’ families), overcrowding and poor sanitary and hygiene conditions prevailed in others.

In June, the European Committee for the Prevention of Torture reported on its September 2015 visit to Moldova. It noted progress since 2011, but there were still concerns about excessive force by police during arrest, ill-treatment of detainees during “preliminary questioning”, and overcrowding of “disturbing proportions” in some prisons.
LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS
Changes to the Criminal Procedure Code came into force on 26 May, introducing stronger safeguards against arbitrary use of pre-trial detention and requiring non-custodial alternatives wherever possible.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE
The biggest-ever Pride march took place on 22 May in Chişinău, involving around 300 participants. Some counter-demonstrators attempted to assault LGBTI rights activists. The police provided an effective cordon but decided to evacuate the participants by bus just before the march reached its final destination.

DISCRIMINATION – PEOPLE WITH DISABILITIES
The UN Special Rapporteur on the rights of persons with disabilities asked the government to urgently end the institutionalization of people with disabilities in psychiatric and psycho-neurological residential institutions. Various laws allow the forced detention and non-consensual administration of psychiatric treatment for people with disabilities as well as the non-consensual termination of pregnancies on the grounds of psychosocial or intellectual impairment.

MONGOLIA
Mongolia
Head of state: Tsakhia Elbegdorj
Head of government: Jargaltulga Erdenebat (replaced Chimediin Saikhanbileg in July)

The main opposition party Mongolia’s People’s Party obtained the majority of seats in the June parliamentary elections. The new government postponed the implementation of five laws passed by the previous government, including a new Criminal Code which would have abolished the death penalty. The government failed to protect human rights defenders from threats and attacks by state agencies and non-state actors. Torture and other ill-treatment remained pervasive, particularly in custody. Residents of the capital, Ulaanbaatar, remained at risk of forced eviction and violations of their right to adequate housing because legislation did not conform to international human rights law and standards.

HOUSING RIGHTS
Despite the advanced stage of urban redevelopment in Ulaanbaatar, relevant laws and policies continued to lag behind practice at both national and local levels. Large-scale redevelopment in the ger areas – areas without adequate access to essential services – in Ulaanbaatar were initiated 10 years earlier to manage the city’s unplanned population growth and increased pollution levels. In the absence of adequate government regulation and effective consultation and monitoring, individuals affected by redevelopment were vulnerable to human rights violations, particularly the right to adequate housing.

In one case, redevelopment plans had a devastating impact on residents. People in a dilapidated building in the Sukhbaatar district of Ulaanbaatar, including people with disabilities and families with young children, remained in apartments without heating during the winter temperatures of -30°C in 2015-2016. The authorities relocated them to temporary accommodation in October. Those who were relocated remained at risk of a wide range of human rights violations and abuses without effective safeguards and mechanisms for redress.

HUMAN RIGHTS DEFENDERS
Human rights defenders continued to be subjected to physical and psychological threats and attacks by both state and non-state actors. An investigation continued into the suspicious death in late 2015 of Lkhagvasumberel Tomorsukh, an environmental activist from the Snow Leopard
Conservation Foundation. The National Human Rights Commission of Mongolia reported that the law on NGOs and other domestic laws did not fully protect the rights of human rights defenders.

**TORTURE AND OTHER ILL-TREATMENT**

Torture and other ill-treatment in detention centres continued to be widespread. The authorities frequently transferred detainees between detention centres or placed them in centres far from their homes in order to intimidate them and make their access to legal counsel and family visits difficult.

1. Mongolia: Falling short − the right to adequate housing in Ulaanbaatar (ASA 30/4933/2016)
2. Mongolia: 200 people face imminent risk of homelessness (ASA 30/3743/2016) and Further information (ASA 30/4793/2016)

**MONTENEGRO**

**Montenegro**

Head of state: Filip Vujanović

Head of government: Duško Marković (replaced Milo Đukanović in November)

Parliamentary elections in October cemented the rule of the governing coalition led by Milo Đukanović; independent election monitors reported irregularities in dozens of polling stations.

**COUNTER-TERROR AND SECURITY**

In January and June, Montenegro resettled two former detainees from the US detention centre at Guantánamo Bay, Cuba.

In September, the government signed the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, to tackle the issue of “foreign terrorist fighters”.

**DISCRIMINATION – LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE**

In May, two LGBTI organizations brought a case before an administrative court against the Ministry of Interior for failing to guarantee the right to freedom of peaceful assembly by allowing the police authorities to ban an LGBTI Pride march in Nikšić, the second largest town, three times consecutively. The organizations’ initial complaint had been rejected by the Ministry. In June, the court rejected the applicants’ claims; the organizations have turned to the Constitutional Court to request a constitutional review.

**ENFORCED DISAPPEARANCES**

By the end of the year, the authorities had not acted on the recommendations of the UN Committee on Enforced Disappearances to include disappearance as a separate criminal offence in the Criminal Code. The authorities also failed to enable access to justice and reparation for victims. Additionally, Montenegro failed to ensure that the continuous nature of enforced disappearance was recognized in its system of criminal law. The fate and whereabouts of the 61 individuals still reported missing following the 1991-1999 armed conflicts in the former Yugoslavia were not investigated.

**FREEDOM OF EXPRESSION – JOURNALISTS**

Journalists continued to receive threats and media offices were occasionally vandalized. The Minister of Interior announced in June that amendments to the Criminal Code would be introduced to address the prevalent impunity for attacks on journalists. A draft had not been submitted by end of year.

The trial of Jovo Martinović, an investigative journalist detained since October 2015, opened in late October. He was accused of being involved in the criminal network he was investigating. Human rights groups and journalist associations expressed concern that the charges were motivated by his investigative work.

**REFUGEES AND INTERNALLY DISPLACED PEOPLE**

Over 1,600 refugees who fled to Montenegro during the conflict in former Yugoslavia remained without durable solutions. They still lived in substandard conditions in camps.
without access to comprehensive integration programmes. The refugees, the majority of them Roma from Serbia/Kosovo, had not received adequate support to acquire formal international protection status, citizenship or permanent residency rights. This prevented them from accessing essential services, including health care and employment opportunities.

**MOROCCO/WESTERN SAHARA**

Kingdom of Morocco
Head of state: King Mohamed VI
Head of government: Abdelilah Benkirane

The authorities restricted rights to freedom of expression, association and assembly, prosecuting journalists and forcibly dispersing protests. Women faced discrimination in law and in practice. Consensual same-sex sexual relations remained criminalized. Courts imposed death sentences; there were no executions.

**BACKGROUND**

In March, the government forced the UN to close a Military Liaison Office of the UN Mission for the Referendum in Western Sahara (MINURSO) and withdraw civilian staff after UN Secretary-General Ban Ki-moon referred to Morocco’s “occupation” of Western Sahara. In April, the UN Security Council extended MINURSO’s mandate for another year without including any human rights monitoring component. MINURSO had not returned to its previous capacity by the end of the year.1

In September, Morocco submitted a request to join the African Union (AU).

October saw protests against social and economic grievances erupt in different parts of the country. Residents clashed with police when the authorities began demolishing informal settlements in the town of Sidi Bibi, near Agadir. Thousands of people took to the streets in major cities including the capital, Rabat, and Marrakech after Mouhcine Fikri, a fish vendor, died trying to retrieve fish that officials had confiscated from him in Al Hoceima, in the Rif region. Al Hoceima also witnessed large demonstrations. The protests subsided after four days when the authorities charged 11 people in connection with Mouhcine Fikri’s death.

The UN Human Rights Committee reviewed Morocco’s human rights record in October.2

**JUSTICE SYSTEM**

The authorities pursued their efforts to reform the justice system. In February, Parliament passed laws on the Higher Judicial Council and the Statute for Judges but these failed to establish judicial independence. In June, the Council of Government approved draft legislation to amend and complete the Penal Code; it contained some progressive provisions but failed to address the significant deficiencies of the existing Code including the death penalty and undue restrictions on freedoms of expression and religion, among others. The draft legislation had yet to be enacted at the end of the year. A draft bill to amend the Code of Criminal Procedure remained under consideration.

**FREEDOM OF EXPRESSION**

The authorities continued to prosecute journalists and critics for exercising their right to freedom of peaceful expression. They included Ali Anouzla, a leading independent journalist charged in January with advocating, supporting and inciting terrorism in an article published on the website Lakome.com in 2013. If convicted, he would face up to 20 years in prison. Seven journalists and activists faced charges that included “undermining state security” and “failing to report foreign funding” for participating in a foreign-funded project to train people in citizen journalism. If convicted, they would face prison sentences of up to five years.3

In February, the Higher Judicial Council dismissed Judge Mohamed El-Haini from
office after the Minister of Justice and Liberties accused him of violating the duty of discretion and expressing opinions of a political nature by criticizing the draft laws on the Higher Judicial Council and the Statute for Judges on social and other media.

A new Press Code adopted in August removed imprisonment as a penalty for exercising press freedom, one month after the authorities amended the Penal Code to criminalize certain forms of peaceful expression.

**FREEDOMS OF ASSOCIATION AND ASSEMBLY**

The authorities continued to block the legal registration of several human rights organizations, including branches of the Moroccan Association of Human Rights, Freedom Now and the Maghreb Coordination of Human Rights Organizations.

They also prevented human rights groups and other associations from holding public and other meetings and assemblies, and continued to expel or deny entry to foreign journalists, activists and human rights defenders. In June, the International Institute for Nonviolent Action (NOVACT), a Spanish NGO, closed its Morocco office after the authorities denied entry to two of its staff. Amnesty International remained in dialogue with the authorities to lift remaining restrictions on its own fact-finding activities in Morocco and Western Sahara.

The authorities continued to restrict the right to freedom of peaceful assembly. In January, police forcibly dispersed peaceful protests by trainee teachers in Inezgane and other cities, beating protesters with batons and shields and injuring more than 150, according to witnesses.

In August, a court sentenced eight activists after an unfair trial to prison terms ranging from four months to one year for participating in a peaceful protest in Sidi Ifni, in southern Morocco. Convictions were upheld on appeal in October, with one four-month prison sentence reduced to three months.

**REPRESSION OF DISSENT – SAHRAWI ACTIVISTS**

The authorities continued to stifle peaceful dissent in Western Sahara, dispersing peaceful protests and prosecuting and restricting Sahrawi activists who advocated self-determination or reported human rights violations. The authorities interrogated some human rights defenders when they returned from foreign travel, and continued to block the legal registration of the Collective of Sahrawi Human Rights Defenders (CODESA) and other Sahrawi rights groups.

In July the Court of Cassation ruled that 23 Sahrawi protesters and activists imprisoned following deadly clashes in 2010 in Gdeim Izik should be re-tried before a civilian court. Most had been sentenced in 2013 to long prison terms after an unfair trial before a military court based on “confessions” that they alleged were obtained through torture. The new civilian trial opened in late December but was adjourned until January 2017. Twenty-one of the 23 remained in prison at the end of the year.

The authorities continued to expel from or bar entry to Western Sahara for foreign journalists and activists as well as human rights activists. In April, they expelled Spanish, Belgian and French jurists and a Spanish judge who had travelled to Rabat to make representations on behalf of the Gdeim Izik prisoners.

**TORTURE AND OTHER ILL-TREATMENT**

In April, security forces arrested Brahim Saika, an activist of the Co-ordination of Unemployed Sahrawis group in Guelmim, as he left home to join a peaceful protest in support of greater employment. He was charged with insulting and assaulting public officials and insulting a public institution, and began a hunger strike after accusing the police of ill-treating him in custody. Soon afterwards he died in hospital while under police custody. According to media reports, an official autopsy concluded that his death was caused by a virus but the authorities failed to conduct an independent inquiry into
his death, as his family requested, and buried his remains against his family's wishes.

Dual Belgian-Moroccan national Ali Aarrass remained in prison more than three years after the UN Working Group on Arbitrary Detention concluded that he had been convicted after an unfair trial based on a torture-tainted “confession”. In June, he alleged in an open letter that he and other detainees had been subjected to ill-treatment. He was transferred to Tiflet II Local Prison in October and detained in solitary confinement where he remained at the end of the year. The Court of Cassation had yet to rule on his case, more than four years after hearing an appeal against his conviction.6

Detainees protested against harsh prison conditions, including poor hygiene, inadequate nutrition and health care, and severe overcrowding. A National Preventive Mechanism had yet to be established, more than two years after Morocco acceded to the Optional Protocol to the UN Convention against Torture, which requires such mechanisms to be set up.

IMPUNITY

The authorities failed to implement key recommendations from the Equity and Reconciliation Commission, 10 years after the Commission published its report examining human rights violations between 1956 and 1999.

WOMEN’S RIGHTS

In July, the lower house of Parliament adopted a long-awaited draft law on combating violence against women, but the draft remained under consideration before the upper house at the end of the year.7 It contained some positive elements, including measures to protect survivors of violence during and after judicial proceedings, but without significant strengthening it would not afford women effective protection against violence and discrimination.

The Penal Code continued to criminalize abortion. The authorities proposed amendments that would allow exceptions in cases of incest and rape and on certain medical grounds. However, the amendments would include requirements for third party notification and approval that could delay access to legal abortions, putting pregnant women’s health at risk. The amendments had not been enacted by the end of the year.

In July, Parliament adopted a law regulating employment of domestic workers, predominantly women and girls. It established 18 as the minimum age for domestic workers but provided a five-year transition period during which children aged 16 and 17 may continue to be employed as domestic workers.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

The authorities continued to prosecute and imprison LGBTI people under Article 489 of the Penal Code, which criminalizes consensual same-sex sexual relations. In March, they prosecuted two men who were victims of a homophobic attack by youths in the city of Beni Mellal. Film of the attack sparked wide condemnation when it was circulated on the internet. One of the attack victims received a four-month prison term under Article 489, suspended on appeal, and a fine; the other received a three-month suspended prison sentence. According to news reports, two of their attackers were sentenced to prison terms on appeal of four months and six months respectively.

REFUGEES’ AND MIGRANTS’ RIGHTS

The authorities continued to prevent people from sub-Saharan Africa from irregularly entering the Spanish enclaves of Ceuta and Melilla in northern Morocco, with some people alleging excessive use of force by the Moroccan and Spanish authorities. The authorities repeatedly destroyed makeshift camps around the northeastern city of Nador and displaced dozens of people to cities in the south, according to human rights groups.

In July, lawmakers adopted legislation approving Morocco’s ratification of ILO Convention 143 on Migrant Workers. In August the government promulgated a new
law to combat human trafficking. In December, King Mohammed VI announced a new wave of regularization of undocumented migrants.

The authorities again failed to establish a national asylum system but allowed refugees access to basic rights and services, including education. They issued Syrians registered by UNHCR, the UN refugee agency, with documents protecting them against refoulement without taking a decision on their definitive status.

POLISARIO CAMPS

The Polisario Front again failed to hold to account those responsible for committing human rights abuses in camps under its control during the 1970s and 1980s. Brahim Ghali became Secretary General of the Polisario Front following the death of Mohamed Abdelaziz in May.

DEATH PENALTY

Courts continued to hand down death sentences; there have been no executions since 1993. In July, the authorities commuted the death sentences of 23 people to life imprisonment.

MOZAMBIQUE

Republic of Mozambique
Head of state and government: Filipe Jacinto Nyusi

The security forces and opposition members and supporters committed human rights abuses with impunity, including killings, torture and other ill-treatment. Thousands of refugees fled to Malawi and Zimbabwe. People expressing dissent or criticizing human rights violations, political and military instability or the country’s hidden debts faced attacks and intimidation.

BACKGROUND

Violent clashes continued between the ruling party, the Mozambique Liberation Front (FRELIMO), and the main opposition party, the Mozambique National Resistance (RENAMO), in the centre of Mozambique.

On 5 March, President Nyusi invited Afonso Dhlakama, leader of RENAMO, to talks on “restoring peace in the country”. Talks between FRELIMO and RENAMO teams started. On 10 June, the teams agreed to invite international mediators to facilitate talks around four points: RENAMO governing the six provinces where it claims it won elections in 2014; the cessation of armed activity; the formation of joint armed forces, police and intelligence services; and the disarmament and reintegration of RENAMO armed members.

In August, the mediators presented a proposed agreement. However, the parties disagreed over the condition that the government should withdraw its armed forces from the Gorongosa region, where Afonso Dhlakama is based, and no agreement was reached. Talks were continuing at the end of the year.

In April, the existence of hidden borrowing of more than US$1 billion for security and defence spending came to light. The disclosure led to the International Monetary Fund (IMF) and other international donors suspending financial aid to Mozambique pending an independent international audit.

1. UN must monitor human rights in Western Sahara and Sahrawi refugee camps (News story, 26 April)
2. Morocco: The authorities must swiftly implement the recommendations of the UN Human Rights Committee (MDE 29/5158/2016)
3. Morocco ramps up crackdown on press freedom with trial over citizen journalism (News story, 26 January)
4. Morocco: Sidi Ifni protesters must be given fair appeal trial and released unless assault charges are proved (MDE 29/4763/2016)
5. Morocco/Western Sahara: Further information – Sahrawi defendants granted civilian re-trial (MDE 29/4615/2016)
6. Morocco: Torture survivor still detained despite UN calls for his immediate release (MDE 29/4119/2016)
7. Morocco: Violence against women bill needs stronger safeguards (MDE 29/4007/2016)
In August, a parliamentary inquiry commission was established to investigate, but it had a majority of FRELIMO members and was boycotted by RENAMO. The commission’s findings were discussed in Parliament on 9 December in a closed session. The report had not been made public by the end of the year.

Mozambique’s human rights record was examined under the UN Universal Periodic Review (UPR) process in June; Mozambique accepted 180 and rejected 30 recommendations. Recommendations on the ratification of the International Convention against enforced disappearance and the Rome Statute of the ICC, and on freedom of expression and corporate accountability were among those rejected.\(^1\)

**LACK OF ACCOUNTABILITY**

Members of the armed forces, police officials and secret service agents reportedly committed human rights violations against a number of people they suspected to be members or supporters of RENAMO. The violations included extrajudicial executions, torture and other ill-treatment, arbitrary detentions and destruction of property. There was continued impunity for such crimes under international law and human rights violations.

On 10 May, Benedito Sabão, a subsistence farmer from the town of Catandica, Manica province, was arbitrarily arrested, ill-treated and shot at by suspected secret service agents, allegedly for supporting RENAMO. He survived the attack but continued to receive threats.\(^2\) Those suspected of criminal responsibility for the attack had not been identified, let alone brought to justice, by the end of the year.

In June, a group of Mozambican subsistence farmers in a refugee camp in Malawi said that their village in Tete province in Mozambique had been invaded by four vehicles with about 60 civilians armed with guns and machetes; the village had been labelled a RENAMO stronghold. The attackers set the village ablaze and torched crops that the farmers lived off. The refugees believed that these men were members of the armed forces. RENAMO members and supporters reportedly looted health facilities and carried out attacks on highways and police stations, resulting in a number of casualties among the general population, as well as attacking the police and armed forces. The government failed to investigate and prosecute crimes against the general population committed by members and supporters of RENAMO.

In May, local and international media and civil society organizations reported the discovery of unidentified bodies and a mass grave near the Gorongosa region. An investigation was launched in June, but neither the bodies nor those suspected of responsibility had been identified at the end of the year.

On 8 October, Jeremias Pondeca, a senior RENAMO member and part of the mediation team to end the conflict between RENAMO and the government, was shot dead in the capital Maputo by unidentified men believed to be members of a death squad composed of security officers. Those suspected of criminal responsibility for the attack had not been identified at the end of the year.

**REFUGEES AND ASYLUM-SEEKERS**

According to UNHCR, the UN refugee agency, nearly 10,000 Mozambicans sought refuge in Malawi and Zimbabwe during the year. The Mozambican government did not recognize them as refugees, but considered them as economic migrants.

**FREEDOM OF EXPRESSION**

Intimidation and attacks against people expressing dissenting or critical views, including journalists and human rights defenders, occurred throughout the year.

On 23 May, political commentator and university professor José Jaime Macuane was abducted outside his home in Maputo by unidentified men believed to be members of a death squad composed of security officers. The men shot him in the legs and dumped him by the roadside in Marracuene district, 30km north of Maputo. The kidnappers told...
him that they had been ordered to leave him lame. José Jaime Macuane had publicly addressed issues of political governance, the ongoing clashes between FRELIMO and RENAMO, the hidden debts and violations of the right to freedom of expression. Those responsible for the abduction and shooting had not been identified at the end of the year.

**FREEDOM OF ASSEMBLY**

After the disclosure of hidden debts in April, a demonstration was called anonymously via text messages and social media. On 25 April, the police announced that any unauthorized demonstration would be repressed. On 28 and 29 April, the police reinforced their presence in the streets of Maputo but no demonstration took place.

In May, political parties without parliamentary representation and civil society organizations called for a peaceful demonstration to protest against the country’s hidden debts and political and military instability. However, Maputo City Council refused to allow the protest to take place.

João Massango, a leading member of the Ecology Party, was one of the organizers of this protest. On 20 May, he was the victim of an attempted abduction and was beaten by unidentified armed men believed to be members of a death squad composed of security officers in Maputo. Those responsible for the attack had not been identified at the end of the year.

1. Mozambique: Amnesty International welcomes commitment to investigate extrajudicial executions, torture and other ill-treatment (AFR 41/4449/2016)

2. Mozambique: Accused of being opposition member, shot at: Benedito Sabão (AFR 41/4099/2016)

**MYANMAR**

**Republic of the Union of Myanmar**

Head of state and government: Htin Kyaw (replaced Thein Sein in March)

The formation of a new civilian-led government did not lead to significant improvements in the human rights situation. The persecuted Rohingya minority faced increased violence and discrimination. Religious intolerance and anti-Muslim sentiment intensified. Fighting between the army and ethnic armed groups escalated in northern Myanmar. The government increased restrictions on access for UN and other humanitarian agencies to displaced communities. Although scores of prisoners of conscience were released, restrictions on freedoms of expression, of association and of peaceful assembly remained. Impunity persisted for past and ongoing human rights violations.

**BACKGROUND**

Parliament convened for the first time on 1 February following the November 2015 elections in which the National League for Democracy won a landslide victory. In March, Htin Kyaw was elected as President and the formal transfer of power took place the same month. Aung San Suu Kyi remained constitutionally barred from holding the presidency but in April was appointed State Counsellor, a role created especially for her, which made her the de facto leader of the civilian government. Despite this, the military retained significant political power, with an allocated 25% of seats in Parliament which gave it a veto over constitutional changes, and control over key ministries. The military remained independent of civilian oversight.

**DISCRIMINATION**

The Rohingya minority

The situation of the Rohingya deteriorated significantly after attacks on border police outposts in northern Rakhine State in October by suspected Rohingya militants. Nine police officers were killed. Security forces responded with a major security operation, conducting “clearance operations” and sealing the area, effectively barring humanitarian organizations, media and independent human rights monitors from entering. Security forces were responsible for unlawful killings, random firing on civilians, rape and arbitrary arrests.¹ Tens of thousands

¹ Tens of thousands
of people were displaced after their homes were destroyed, and at least 27,000 fled to Bangladesh. The response collectively punished the entire Rohingya community in northern Rakhine State and the conduct of the security forces may have amounted to crimes against humanity. The government issued blanket denials that security forces had carried out human rights violations. An investigation commission established by the government in December lacked credibility as it was headed by a former army general and its members included the Chief of Police.

Elsewhere in Rakhine State, the situation remained serious, with Rohingya and other Muslim people facing severe restrictions to their freedom of movement. They were confined to their villages or displacement camps and segregated from other communities. Access to their livelihoods, to health care including life-saving treatment, food security and education were greatly restricted.

Most Rohingya people remained deprived of a nationality. Government efforts to restart a citizenship verification process stalled, with many Rohingya rejecting it because it was based on the discriminatory 1982 Citizenship Law.

The government established two committees in an attempt to resolve the situation: the Central Committee on Implementation of Peace, Stability and Development of Rakhine State in May, chaired by Aung San Suu Kyi; and in August, the Advisory Commission on Rakhine State, chaired by former UN Secretary-General Kofi Annan.

FREEDOM OF RELIGION AND BELIEF

Discrimination, religious intolerance and anti-Muslim sentiment intensified, particularly following the October attacks in Rakhine State. The authorities failed to take effective action to counter advocacy of religious hatred, or to bring the perpetrators of attacks against religious minorities to justice.

A mob attack in Bago Region in June left one man injured and a mosque and other Muslim-owned buildings destroyed. The Region’s Chief Minister told the media that no action would be taken against the suspected perpetrators. In July, a mob attacked a Muslim prayer hall in Hpakan Township, Kachin State, for which five people were arrested but no one was brought to justice by the end of the year.

INTERNAL ARMED CONFLICT

In August, the new government held the “Union Peace Conference-21st Century Panglong”, which aimed to move the nationwide peace process forward. It was expected to convene every six months. The Conference was attended by the military, representatives of most ethnic armed groups and the UN Secretary-General.

Despite these efforts, fighting continued in some parts of the country. Between April and September conflict between the Kachin Independence Army and the Myanmar Army escalated with the latter resorting to air strikes and shelling, killing and injuring civilians. During September, fighting erupted in Kayin State when the Border Guard Force and the Myanmar Army clashed with a splinter group from the Democratic Karen Benevolent Army. Further fighting broke out between the Myanmar Army and the Arakan Army in Rakhine State. In November, the Brotherhood of the Northern Alliance, a new coalition of four armed ethnic groups in northern Myanmar, launched co-ordinated attacks on security outposts in Kachin and northern Shan states. The groups said the attacks were in response to ongoing offensives by the Myanmar Army.

Reports of violations of international human rights and humanitarian law in areas of armed conflict persisted. Violations included rape and other crimes of sexual violence, forced labour, arbitrary arrests, torture and other ill-treatment, the use of landmines and recruitment of child soldiers.

The Myanmar Army had discharged 101 children and young adults from its forces by the end of the year.
LACK OF HUMANITARIAN ACCESS
From April, the government increased restrictions on access for UN and other humanitarian agencies and actors to displaced communities in areas not under its control in northern Myanmar. It considered requiring displaced people in these areas to cross internal front lines to receive aid, a move which if implemented would violate international humanitarian law.

In Rakhine State, international humanitarian agencies were required to undergo cumbersome procedures to obtain travel authorization to provide services to vulnerable communities. Following the October attacks in northern Rakhine State, all pre-existing humanitarian services were suspended, affecting over 150,000 people. While services resumed in some areas, an estimated 30,000 internally displaced people (IDPs) had no access to sustained humanitarian aid because of security operations by the end of the year.

REFUGEES AND INTERNALLY DISPLACED PEOPLE
According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), there were over 250,000 IDPs in Myanmar. They included over 100,000 people displaced by fighting in Kachin and northern Shan states and 150,000 people, mostly Rohingya, in Rakhine State.

Around 100,000 refugees continued to live in nine camps in Thailand. In October, the first pilot voluntary return of 71 people began, supported by the Myanmar and Thailand governments, and UNHCR, the UN refugee agency, and other agencies. Many other refugees remained in Thailand and continued to express fears about returning to Myanmar.

PRISONERS OF CONSCIENCE
On 8 April, one week after the new government assumed office, dozens of student protesters detained since March 2015 were released. On 17 April, 83 prisoners, including many prisoners of conscience, were released following a presidential pardon.

Prisoners of conscience remained held, and politically motivated arrests and imprisonment continued. Dozens of people were investigated for “online defamation” under the 2013 Telecommunications Act, a vaguely worded law used increasingly to stifle peaceful criticism of the authorities. In October, Hla Phone was sentenced to two years’ imprisonment for “online defamation” and “incitement” for criticizing the former government and the Myanmar Army on Facebook.

Former prisoners of conscience continued to face a range of problems arising from the effects of their prison conditions and their status as former prisoners including lack of medical and psychological care, access to education and employment opportunities. There were no government programmes providing support and rehabilitation to former prisoners or their families.

FREEDOMS OF EXPRESSION, ASSOCIATION AND ASSEMBLY
The new government initiated a review of certain repressive laws, and repealed the 1975 State Protection Act and the 1950 Emergency Provisions Act which had been used to imprison peaceful critics of former governments. However, other repressive laws remained, leaving human rights defenders at risk of arrest and imprisonment for their peaceful activities. The legal reform process lacked transparency and Parliament failed to consult adequately with civil society and legal experts. Proposed amendments to the 2012 Peaceful Assembly and Peaceful Procession Act fell far short of requirements under international human rights law and standards. A draft privacy and security bill contained multiple provisions which, if adopted, could arbitrarily restrict the right to freedom of expression, and other rights.

Human rights defenders, lawyers and journalists continued to face intimidation, harassment and surveillance by the authorities. They reported being followed; photographed when attending events and
meetings; late-night inspections of their homes and offices; and harassment of family members. Women human rights defenders were particularly vulnerable to sexual harassment and intimidation.

**CORPORATE ACCOUNTABILITY**

In October, Parliament adopted a new Investment Law. However, there were no provisions protecting people against forced eviction or from the impact of pollution caused by business.

In May, protests resumed at the Letpadaung mine following an announcement that it had started producing copper. Two protest leaders were subsequently charged with criminal offences and faced a maximum of four years’ imprisonment. The Letpadaung project had a long history of causing forced eviction and violent repression of protests against the mine although no one had been held to account.

In October, the Ministry of Industry renewed the operating licence of the Moe Gyo acid factory which processes copper for the Letpadaung and S&K mines. The licence was renewed despite serious concerns that the health of villagers living nearby was adversely affected; and despite a decision by the Salyingyi municipal authorities not to renew the factory’s licence pending an assessment of its health and environmental impact.

**DEATH PENALTY**

No executions were carried out although courts continued to impose death sentences. In January, then President Thein Sein commuted the death sentences of 77 prisoners to life imprisonment. In October, Parliament repealed the 1950 Emergency Provisions Act which allowed for the death penalty. The death penalty remained under other laws.

**LACK OF ACCOUNTABILITY**

The institutional and legislative framework maintained obstacles to holding perpetrators of human rights violations to account, and delivering justice, truth and reparations to victims and their families. Most perpetrators of past and current human rights violations continued to evade justice.

In January, just days before it was dissolved, Parliament adopted the Former Presidents Security Law, which could grant immunity to former presidents for crimes committed while they were in office, including for crimes against humanity, war crimes and other crimes under international law.7

In July, the army made a rare public admission of wrongdoing when it announced that seven soldiers had killed five villagers in northern Shan State and that a court-martial was underway. They were sentenced to five years in prison with hard labour in September. While a step forward for military transparency, the case also highlighted the need for reform in the military and civilian justice systems. Under the 2008 Constitution, the military retains control over its own judicial processes, including when allegations of human rights violations are involved.

The Myanmar National Human Rights Commission remained ineffectual in responding to reports of human rights violations and lacked independence. In October, four Commissioners resigned after the media reported that they had negotiated a financial settlement in a case involving child forced labour and ill-treatment.

**INTERNATIONAL SCRUTINITY**

For the first time in 25 years, the UN General Assembly did not adopt a resolution on Myanmar after the EU decided not to propose a draft text. None of the key human rights recommendations in previous resolutions had been fully implemented.8

The UN Special Rapporteur on the situation of human rights in Myanmar made two official visits to the country. While her access improved, she reported ongoing surveillance and harassment of civil society members she met. She also reported finding a recording device placed by a government official during a community meeting in Rakhine State.
In March, the UN Human Rights Council adopted the outcome of the UN Universal Periodic Review (UPR) process on Myanmar. Although Myanmar accepted over half of the recommendations, it rejected key recommendations on the rights to freedom of expression, of association and of peaceful assembly, and the situation of the Rohingya. In July, the UN Committee on the Elimination of Discrimination against Women raised concerns about discriminatory laws, barriers to justice for women and girls, and their under-representation in the peace process.

There was still no agreement to establish an Office of the UN High Commissioner for Human Rights in Myanmar.

1. “We are at breaking point”: Rohingya – Persecuted in Myanmar, neglected in Bangladesh (ASA 15/5362/2016)
3. Myanmar: Lift restrictions immediately on humanitarian aid (News story, 24 October)
4. Myanmar: Continue efforts to release all remaining prisoners of conscience (ASA 16/3981/2016)
5. New expression meets old repression: Ending the cycle of political arrests and imprisonment in Myanmar (ASA 16/3430/2016)
6. Myanmar: Open letter on amending the Peaceful Assembly and Peaceful Procession Act (ASA 16/4024/2016)
7. Myanmar: Scrap or amend new law that could grant immunity to former president (News story, 28 January)
8. Myanmar: Why a UNGA resolution is still needed (ASA 16/4745/2016)
9. Myanmar: Amnesty International calls on Myanmar to protect the rights of Rohingya and to release all prisoners of conscience (ASA 16/3670/2016)
10. Myanmar: Briefing to the UN Committee on the Elimination of Discrimination against Women (ASA 16/4240/2016)

**NAMIBIA**

**Republic of Namibia**

Head of state and government: Hage Gottfried Geingob

Detainees acquitted after the long-running Caprivi treason trial lived in fear of being rearrested after the Prosecutor General decided to appeal against the court ruling. There was a high incidence of gender-based violence, including rape, against women and girls. Violations of the right to freedom of expression continued.

**BACKGROUND**

Despite calls for the introduction of a universal basic income grant after a successful pilot project, the government announced its intention to introduce food banks in urban and peri-urban areas, failing to address widespread extreme poverty in rural areas.

**CAPRIVI DETAINEES**

Forty-two released Caprivi detainees – accused of treason after their arrests in 1999 and acquitted between 2013 and 2015 – continued to live in fear after facing threats and intimidation. On 17 May, they were notified that the Prosecutor General would appeal against their acquittals.

The Vice Chairperson of the Caprivi Concerned Group (CCG), Retief Kangongo, went missing on 30 April following alleged threats by the Inspector General of the Namibian police. The CCG supported the acquitted detainees. Retief Kangongo reportedly sought asylum in Botswana.

In August, the Supreme Court ruled in favour of Boster Mubuyaeta Samuele, one of the Caprivi detainees. He had fled to Botswana, and, in December 2002, he was abducted by Namibian security forces in Botswana and brought to Namibia to face trial. He then spent 13 years in prison. Boster Mubuyaeta Samuele successfully argued that the Namibian courts had no jurisdiction to prosecute him since Namibian officials had violated international law when he was abducted and arbitrarily detained.

**FREEDOM OF EXPRESSION**

On 15 April, two Japanese journalists employed by Japan’s television group Asahi were briefly detained by Namibian security forces soon after interviewing the Deputy Prime Minister Netumbo Nandi-Ndaitwah at the Hosea Kutako International Airport. The journalists interviewed the Deputy Prime Minister in connection with a munitions factory being built by nationals of the
Democratic People’s Republic of Korea (North Korea) in Namibia. Their cameras and laptops were confiscated by Namibian security forces.

VIOLENCE AGAINST WOMEN AND GIRLS
Gender-based violence, including rape, against women and girls continued at a high rate as the government failed to address the problem adequately.

For example, on 20 June, Janet Haoes was strangled with electric wire, stabbed several times and hit with a hammer by her partner in the Otjomuise suburb of the capital, Windhoek. On 26 August, the body of Rosina Gaoses, who was pregnant, was found in the riverbed in the Dolam suburb of Windhoek. The body showed signs that she had been raped before being murdered.

Although the Namibian police initiated some investigations into cases of gender-based violence, efforts to eradicate violence against women and girls remained inadequate.

NAURU

Republic of Nauru
Head of state and government: Baron Waqa

The Crimes Act 2016 contained provisions to protect human rights but was inadequately implemented. Concerns about the denial of the rights to freedom of expression and of peaceful assembly, freedom of movement and access to the country for foreign media persisted. Passports of several former MPs were suspended. Nauru continued to hold hundreds of refugees and asylum-seekers in a centre while others were placed in the community under its transfer agreement with Australia. The death penalty was repealed for all crimes in May.

SEXUAL AND REPRODUCTIVE RIGHTS
The Crimes Act 2016, which came into force in May, decriminalized same-sex relations, abortions carried out by medical professionals and criminalized marital rape. The authorities took no steps to implement the law to protect women and girls from gender-based violence or to ensure their access to sexual and reproductive health information and services, particularly affecting those in remote locations and/or in marginalized communities.

The Act criminalized the buying and selling of sex, impeding sex workers’ access to sexual and reproductive health information and services and making them vulnerable to exploitation, abuse, violence and other crimes. It also adversely impacted HIV treatment and prevention.

FREEDOM OF MOVEMENT
In September, new laws granted the Foreign Ministry powers to cancel passports without court review. Twenty Nauruans claimed that the Ministry cancelled their passports. They included opposition MPs who were suspended after being charged in 2015 in connection with a pro-democracy rally in 2014. In September, Sprent Dabwido, former MP, was prevented from leaving Nauru for medical care. The government later reversed the decision. Roland Kun, a former MP, had his passport confiscated in 2015 after he was charged in connection with speaking to foreign media and protests against the government. He was granted a New Zealand passport and fled Nauru in July.

REFUGEES AND ASYLUM-SEEKERS
There were around 1,200 refugees and asylum-seekers remaining in Nauru. As of 30 November, there were 383 in the Australian-run Regional Processing Centre (RPC), of whom 44 were children, 49 women and 290 men (see Australia entry). There were around 800 refugees living in the community.

There was evidence that children were assaulted by staff working for companies hired by the Australian government to run the RCP and by private individuals. Health care was inadequate and many children were not attending school. Reports of attempted suicide and self-harm were commonplace.
Omid Masoumali, an Iranian refugee, died after setting himself on fire in April. The authorities failed to protect refugees and asylum-seekers from continued physical and verbal attacks by the community, as well as arbitrary arrest and detention. The conditions amounted to torture and caused severe psychological harm.¹

In August, the UK newspaper The Guardian published over 2,000 leaked incident reports (known as the “Nauru Files”) which had been recorded by staff employed at the RPC. The files documented incidents including physical and sexual abuse of refugees and asylum-seekers, including children, in Nauru, as well as cases of hunger strikes, self-harm and medical emergencies.

In November, the Australian government announced that some of the refugees detained in Nauru and Papua New Guinea’s Manus Island would be resettled in the USA (see Papua New Guinea entry).

¹. Island of despair: Australia’s “processing” of refugees on Nauru (ASA 12/4934/2016)

NEPAL

Federal Democratic Republic of Nepal
Head of state: Bidhya Devi Bhandari
Head of government: Pushpa Kamal Dahal (replaced Khadga Prasad Sharma Oli in August)

Tens of thousands of people continued to be denied the right to adequate housing and other human rights following the 2015 earthquake. Marginalized groups expressed dissatisfaction with constitutional amendments, on the grounds that they did not address discriminatory clauses. The use of torture and unnecessary or excessive force against protesters in the Tarai region were not effectively investigated. There was little progress on justice for the grave human rights violations committed during the armed conflict. Migrant workers were exploited by recruitment companies despite a new government policy regulating the sector. Discrimination on the basis of gender, caste, class, ethnic origin, sexual orientation, gender identity and religion persisted. Women and girls were not adequately protected against gender-based violence.

RIGHT TO ADEQUATE HOUSING

Hundreds of thousands of people affected by the April 2015 earthquake continued to live in temporary shelters. The National Reconstruction Authority began work in January and reconstruction officially started in April. By December, detailed housing damage assessments were completed for 11 of the 14 worst affected districts. Grant distributions to enable people to reconstruct their houses were delayed and people affected expected to endure another cold season lacking basic shelter and other essential services. In September, Prime Minister Dahal announced a grant increase from around US$1,850 to 2,800 which was approved by the cabinet in late December.

In July the UN Committee on the Rights of the Child expressed concern about the earthquake’s impact on children’s rights and the number of displaced children living in camps for internally displaced people or informal settlements, without adequate access to food, safe drinking water, sanitation, health care or education.

EXCESSIVE USE OF FORCE

The use of torture and unnecessary or excessive force against protesters in the Tarai region were not effectively investigated. Madhesi and other marginalized groups in the Tarai continued to protest against the 2015 Constitution and its January amendments which, they claimed, discriminated against them and denied them fair political representation. Protesters blocked border crossings with India resulting in severe shortages of fuel, food, medicine and construction materials.

In August, an official commission to investigate incidents of excessive force by security forces in the Tarai during these
protests which resulted in the killing of 27 men, four women and six children, and other incidents, was established but made little progress.

MIGRANT WORKERS’ RIGHTS
The recruitment industry continued to be poorly regulated and allowed for the widespread abuse of migrants’ rights. Subjected to extortionate recruitment fees, Nepalese working abroad were exposed to debt bondage, labour trafficking and forced labour. The abuse of migrants in destination countries was facilitated by, on the one hand, restrictive labour migration laws and, on the other hand, poorly implemented laws. There were few investigations into or prosecutions of local agents and private agencies for such abuses. Labour migration law and policy were ineffective, and there was little improvement in protection mechanisms for migrant workers. The government’s no-fee recruitment system largely failed because it was inadequately implemented or monitored.

As a result of age restrictions placed on women migrant workers, women frequently turned to informal channels to undertake foreign employment which left them susceptible to human trafficking.

TORTURE AND OTHER ILL-TREATMENT
Torture in police custody continued, particularly during pre-trial detention to extract confessions and intimidate people. In September, the Torture and Cruel, Inhuman or Degrading Treatment (Control) Bill was tabled before Parliament but had not been adopted by the end of the year. It contained provisions that did not meet international human rights standards, such as an overly narrow definition of torture and a 90-day time limit for registering complaints.

In February, Kumar Lama, a Nepal Army Colonel, was tried by a UK court under the universal jurisdiction principle on two charges of torture committed in Nepal. He was acquitted of one charge in July and released in September after the prosecuting authorities decided not to proceed to a retrial on the second charge, as the jury had been unable to reach a verdict.

IMPUNITY
In May, the ruling Communist Party of Nepal Unified Marxist Leninist and the Communist Party of Nepal (Maoist Centre) agreed an amnesty for perpetrators of human rights abuses during the conflict. In July, the Communist Party of Nepal (Maoist Centre) and the Nepali Congress agreed to form a coalition government with an understanding that the Commission on Truth and Reconciliation (TRC) and the Commission on Investigation of Enforced Disappeared Persons (CIEDP) would focus on reconciliation and compensation, and not prioritize criminal prosecutions for past human rights violations.

The 2014 Truth and Reconciliation Commission Act retained language which allowed amnesties for serious crimes under international law, despite the Supreme Court’s ruling against these provisions in 2015. The government did not amend the law. The TRC and the CIEDP began registering complaints in mid-April, 14 months after their establishment. Officials of both commissions raised concerns about government delays and non-co-operation, lack of resources and unrealistically short deadlines for filing cases.

FREEDOM OF EXPRESSION
In April, the office of Prime Minister Oli summoned commissioners of the National Human Rights Commission for questioning about a statement they made while Nepal was being examined under the UN Universal Periodic Review (UPR) process.

In May, Kanak Dixit, a journalist and activist, was arrested by the Commission for the Investigation of Abuse of Authority on corruption charges. Ten days after his arrest, the Supreme Court ruled that his detention was illegal and ordered his release. Kanak Dixit said his arrest was an attempt to silence his critical views. In the same month, Canadian national residing in Nepal, Robert Penner, was arrested and deported for
sowing “social discord” in social media. During the year, Madhesi activist Chandra Kant Raut and several supporters faced multiple sedition charges for peacefully expressing political opinions.

**DISCRIMINATION**

Discrimination on the basis of gender, caste, class, ethnic origin, sexual orientation, gender identity and religion persisted. Constitutional amendments did not guarantee equal rights to citizenship for women, or provide protection from discrimination to marginalized communities, including Dalits and lesbian, gay, bisexual, transgender and intersex people.

The law criminalizing rape was amended so that the statute of limitations on reporting the crime was raised from 35 to 180 days rather than being abolished altogether as required by human rights standards. Gender-based discrimination continued to undermine women’s and girls’ rights to control their sexuality and make informed choices related to reproduction; challenge early and forced marriages; and enjoy adequate antenatal and maternal health care. Women continued to face domestic violence, including marital rape. Women from marginalized groups, including Dalits and Indigenous women, remained at greater risk of intersecting forms of discrimination.

**NETHERLANDS**

**Kingdom of the Netherlands**

Head of state: King Willem-Alexander

Head of government: Mark Rutte

Irregular migrants continued to be routinely deprived of their liberty and the government still did not adequately consider alternatives to detention. Ethnic profiling by the police continued to be a matter of serious concern.

**REFUGEES’ AND MIGRANTS’ RIGHTS**

Following a fire in a detention facility in Rotterdam on 25 May, several migrants were placed in solitary confinement as a punitive measure for “disturbing public order” during the evacuation.

In October, a draft law regulating immigration detention was tabled before Parliament. It offered minor improvements, but major concerns remained as irregular migrants could be deprived of their liberty for a wide range of reasons. The punitive character of the detention regime also remained in place. Furthermore, the draft law included powers to hold migrants in a cell for at least 16 hours a day.

**RIGHT TO AN ADEQUATE STANDARD OF LIVING**

The authorities remained unwilling to implement the recommendation by the European Committee of Social Rights that all people, including irregular migrants, should have unconditional access to shelter and other basic necessities.

**DISCRIMINATION**

Ethnic profiling by police

Ethnic profiling by the police continued to be a matter of serious concern. While the authorities acknowledged the damaging effects of ethnic profiling, they failed to formulate a comprehensive plan for the fair and effective use of stop-and-search powers. The police also continued to refuse to systematically monitor and record stop-and-search operations, making it difficult to assess whether measures to combat ethnic profiling, such as training, diversity management and dialogue with communities, were effective in reducing discrimination.

Partial ban on face-covering

A government proposal for a ban on face-covering attire in certain spaces, such as public transport and public educational and health care institutions, passed the House of Representatives in November but was still pending before the Senate. The ban would restrict the rights to freedom of religion and of expression, particularly of Muslim women.
COUNTER-TERROR AND SECURITY

In May, the House of Representatives passed two controversial administrative counter-terrorism bills, which were likely to be debated by the Senate in early 2017. If enacted, the laws would enable the Minister of Security and Justice to impose administrative control measures on individuals, including travel bans, based on indications that they may pose a future terrorist risk. It would also allow for the revocation of Dutch nationality of dual citizens who have travelled abroad to join a foreign terrorist group and are believed to pose a risk to national security. The procedures to appeal the imposition of the measures lacked effective safeguards.

In October, a draft law on the Intelligence and Security Services was presented to Parliament. If enacted, the law would legitimize sweeping surveillance powers for the intelligence and security services, potentially leading to violations of the right to privacy, the right to freedom of expression and the right to non-discrimination. The draft law provides insufficient safeguards against abuse of powers by the intelligence and security services, and there are serious concerns that communications could be shared with other countries where the information could be used for human rights violations.

HUMAN RIGHTS DEFENDERS

Since February, Nada Kiswanson, a human rights lawyer based in The Hague, representing the Palestinian NGO Al-Haq, has been the subject of ongoing threats in response to her work at the International Criminal Court. She has received several death threats and been subjected to interference of her communications, intimidation, harassment and defamation. However, only in April did the Dutch authorities take specific measures to protect her and launch an investigation.

NEW ZEALAND

New Zealand

Head of state: Queen Elizabeth II, represented by Patricia Lee Reddy (replaced Jerry Mateparae in September)
Head of government: Bill English (replaced John Key in December)

New Zealand received criticism from the UN Human Rights Committee and Committee on the Rights of the Child for its high rates of Indigenous Māori incarceration, child poverty and domestic violence. The state’s refugee resettlement quota was marginally increased.

JUSTICE SYSTEM

Rates of Māori representation among those facing the criminal justice system remained disproportionately high. An Ombudsman investigation was launched into the circumstances in which an intellectually disabled man was held in a health facility for five years, often in isolation, in conditions amounting to cruel, inhuman or degrading treatment. The government announced that it was considering a formal extradition treaty with China, where criminal suspects could be at risk of serious human rights violations.

REFUGEES AND ASYLUM-SEEKERS

The government announced plans to increase the annual refugee resettlement quota from 750 to 1,000 by 2018. As of March, two refugees were held in detention facilities alongside remand detainees. The Human Rights Committee expressed concerns over disparities in the quality of services provided to refugees who arrived under the humanitarian quota system and other categories of refugees. In June, New Zealand publicly reiterated the agreement to annually resettle 150 refugees from Nauru and Manus. The agreement was made in 2013 with the Australian government but Australia has since refused to carry out the deal.
VIOLENCE AGAINST WOMEN AND GIRLS
Sexual and other physical violence against women and girls remained high, despite wide recognition of the problem and efforts to address it. The Human Rights Committee expressed concern about low rates of reporting and prosecution of perpetrators. An overhaul of domestic violence laws was announced. After years of insufficient funding, the government announced NZ$46 million (US$33 million) will be provided to support services for victims of sexual violence.

CHILDREN’S RIGHTS
The 2016 Technical Report on Child Poverty found that nearly one in three New Zealand children live below the poverty line. The Human Rights Committee expressed concern about the significant number of children suffering physical and psychological abuse and neglect. The government announced the creation of a Ministry for Vulnerable Children, to be implemented in 2017.

LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS
By the end of the year, the government had still not formally responded to recommendations by the 2013 Constitutional Advisory Panel to improve the Bill of Rights Act 1990. Economic, social and cultural rights continued to lack full protection in domestic legislation, as recommended by the Advisory Panel.

NICARAGUA
Republic of Nicaragua
Head of state and government: Daniel Ortega Saavedra

Conflict over land in the North Atlantic Autonomous Region sparked violent attacks against Miskitu Indigenous Peoples. Human rights defenders continued to experience threats and intimidation because of their work. Indigenous and Afro-descendant communities denounced violations of their rights to consultation and free, prior and informed consent in the context of the development of the Grand Interoceanic Canal. Communities and human rights organizations expressed concern at the potential negative impact of the Canal on their lives. A total abortion ban remained in place.

BACKGROUND
In November, Daniel Ortega of the Sandinista Front for National Liberation (FSLN) was re-elected President for a third consecutive term. Rosario Murillo, his wife, was elected Vice-President for the first time. According to media reports, the FSLN also increased their representation in the Congress.

WOMEN’S RIGHTS
Impunity for gender-based violence against women persisted. A local observatory run by women’s rights organizations reported that between January and October there had been 44 gender-based killings of women, 30 of which remained unprosecuted.

Women living in poverty continued to be the main victims of maternal mortality, and Nicaragua had one of the highest teenage pregnancy rates in the Americas region. Abortion was banned in all circumstances, even when vital to save the woman’s life.

GRAND INTEROCEANIC CANAL
The proposal to build the Grand Interoceanic Canal continued to generate controversy, with civil society organizations reporting a number of potential human rights violations linked to the project. According to local organizations, if built, the Canal would lead to the eviction of tens of thousands of people and would directly affect the livelihoods of peasant farmer communities, Indigenous Peoples and others.

In April, members of the National Council for the Defence of the Land, Lake and National Sovereignty presented the National Assembly’s First Secretary a citizen-sponsored bill supported by nearly 7,000 signatories calling for the repeal of the law
regulating the Canal. Also in April, the proposal was rejected on grounds of lack of competence. 1 The issue was referred to the Supreme Court and a decision was pending at the end of the year. 2

In February, leaders from affected Indigenous and Afro-descendant Rama-Kriol communities brought their case before a national court. They stated that officials had pressured communities to give consent to the project. According to the appeal, 52% of the Canal’s route would affect Indigenous and Afro-descendant Rama-Kriol communities. 3

In May, authorities from the Rama-Kriol community brought an action before a Court of Appeal. The communal authorities alleged that the agreement of prior, free and informed consent for the implementation of the Grand Interoceanic Canal had been signed without an effective consultation process. In June, the Court of Appeal declared the petition inadmissible. In July, community leaders and authorities filed another appeal with the Supreme Court; a decision was pending at the end of the year. 4

INDIGENOUS PEOPLES’ RIGHTS
Violence flared in the North Atlantic Autonomous Region. Indigenous Miskitu Peoples were threatened, attacked, subjected to sexual violence, killed and forcibly displaced by non-Indigenous settlers.

Against this background of territorial conflict and a lack of effective protection measures from the state, the Inter-American Commission on Human Rights granted precautionary measures in favour of Miskitu Peoples. In addition, in September the Inter-American Court of Human Rights ordered the state to immediately adopt all necessary measures to end the current violence and guarantee respect of the right to life, personal and territorial integrity and cultural identity.

HUMAN RIGHTS DEFENDERS
In June, six foreign environmental activists were detained and expelled from the country. In the same context, several community members, who had publicly expressed their concerns about the Grand Interoceanic Canal’s impact on their livelihoods, were briefly detained.

In August, the Inter-American Commission on Human Rights granted precautionary measures in favour of human rights defenders at the Centre for Justice and Human Rights of the Atlantic Coast of Nicaragua. According to the Commission, the defenders had stated that they had received death threats because of their work on Indigenous rights.

In October, the Inter-American Court of Human Rights held a hearing in the case of Acosta et al. v Nicaragua. According to his family, Francisco García, who was killed in 2002, was targeted because of his wife’s human rights work as director of the Centre for Legal Assistance for Indigenous Peoples. His relatives allege that the state failed to diligently investigate the attack.

In addition, the Co-ordinator of the National Council for the Defence of the Land, Lake and National Sovereignty, reported intimidation and harassment against her and her family. She had actively denounced the potential impact of the Grand Interoceanic Canal on Nicaraguan peasant farmer communities.

1. Nicaragua: The state must guarantee the security and integrity of communities peacefully demonstrating their concerns over construction of the Canal (AMR 43/3887/2016)
2. Nicaragua: Authorities must listen to those expressing concern over the Grand Interoceanic Canal (AMR 43/4744/2016)
4. Nicaragua: El Estado nicaragüense no debe ignorar a las comunidades indígenas y afrodescendientes que demandan el respeto a sus derechos (AMR 43/4919/2016)
Armed conflict continued, particularly in the southeastern region of Diffa where most attacks were carried out by the armed group Boko Haram. Over 300,000 people needed humanitarian aid as a result of the conflict and the continuing state of emergency in the Diffa region. Over 1,400 suspected Boko Haram members were in prison, most held in lengthy pre-trial detention in poor conditions and at risk of torture. The rights of refugees and migrants travelling through Niger were violated.

BACKGROUND
President Issoufou was re-elected in March after an election that was boycotted by the main opposition parties. His principal opponent, Hama Amadou, was in detention during the election charged with complicity in kidnapping; he was released shortly after the election.

Niger was examined under the UN Universal Periodic Review (UPR) process and accepted almost all of the recommendations, including those relating to abolition of the death penalty, protection of human rights defenders, measures to eradicate traditional harmful practices such as early and forced marriage and female genital mutilation, and guaranteeing the right to food. Niger rejected one recommendation on ensuring participation of Indigenous Peoples in decision-making.

ABUSES BY ARMED GROUPS
Civilians, including refugees from Nigeria, continued to be affected by armed conflict, most of it concentrated in the Diffa region. The exact number of civilian casualties could not be determined; the UN estimated that at least 177 civilians had been killed since February 2015. Boko Haram carried out more than 50 attacks in the Diffa region in 2016.

Other armed groups were active in western areas bordering Mali. In October, an unidentified group attacked the refugee camp of Tazalit, Tahoua region; and a US aid worker was abducted in Abalak, Tahoua region. On 17 October, a group calling itself Islamic State attacked the high-security detention centre in Koutoukalé, near Niamey, Tillabéri region.

INTERNALLY DISPLACED PEOPLE
More than 300,000 displaced people needed humanitarian assistance in the Diffa region by the end of the year, according to the UN Office for the Coordination of Humanitarian Affairs (OCHA). This included more than 184,000 internally displaced people from Niger, 29,000 returning Niger nationals and 88,000 Nigerian refugees. Many lived in harsh conditions in makeshift camps. Insecurity impeded access to basic commodities and services, including food, water and education, and the continuing state of emergency hampered economic activity.

REFUGEES’ AND MIGRANTS’ RIGHTS
Niger hosted more than 60,000 refugees from Mali in the Tillabéri and Tahoua regions, who also needed assistance.

The number of people transiting through Niger trying to reach Europe continued to grow, with Agadez the principal transit hub for West Africans. In October, a survey by the International Organization for Migration reported that 70% of people arriving in Italy by boat – many of whom had travelled through Niger – had been a victim of trafficking or exploitation, including thousands of women and girls forced into prostitution in Libya or Europe. Despite an anti-trafficking law passed in 2015, there was limited action to prevent trafficking in Niger.

An undetermined number of people died during dangerous journeys through the desert in Niger. In June, 14 adults and 20 children were found dead in the desert after
they left the town of Tahoua aiming to reach Algeria.

In October, the UN Committee on Migrant Workers highlighted several concerns, including forced labour of migrant workers, including children, particularly as domestic labour and in the mines.

COUNTER-TERROR AND SECURITY

More than 1,400 people accused of being members of Boko Haram remained in detention, many charged under Niger’s anti-terror law. Most had been arrested in the Diffa region since 2013, although some had been detained since 2012. Among them were Nigerians, including refugees from areas affected by Boko Haram. The vast majority remained held in lengthy pre-trial detention. In June, the Prosecutor responsible for terrorism cases said that most arrests followed denunciations, and that insecurity and the state of emergency in Diffa region had prevented effective investigations.

In June, the authorities said that they planned to extradite to Nigeria all adult Nigerian detainees to reduce prison overcrowding and because Nigeria was better placed to investigate their nationals. The plan was formally announced in September.

Torture and other ill-treatment remained widespread in Nigeria, particularly against people accused of supporting Boko Haram. The authorities announced that the Code of Criminal Procedure was to be amended to extend pre-charge detention in police custody (garde à vue) from 5 to 15 days, renewable for a further 15 days.

PRISON CONDITIONS

Prison conditions remained poor despite steps taken to monitor them. The large number of people arrested for alleged links with Boko Haram aggravated the problem. During the year, Koutoukalé detention centre held more than twice its capacity of 250 detainees, including around 400 Boko Haram suspects.

ENFORCED DISAPPEARANCES

The fate of eight people arrested by security forces in May 2015 remained unclarified. El Hadj Kannaï Kouliyi, Malam Bandama, Ari Kannai, Abor Madou, Awa Malloumi, El Hadj Katchouloumi, Mouché Ali Kou Lawan Dalla and El Hadji Bara were arrested in N’Guigmi, Diffa region. The families’ request for information about their relatives’ whereabouts were left unanswered.

FREEDOM OF EXPRESSION

Some people were prosecuted for exercising their right to freedom of expression.

In June, Ousmane Moumouni, President of Action for Democracy and Human Rights in Niger, was given a six-month suspended prison sentence for “plotting to change the constitution” after posting a message on Facebook about Niger’s security situation following a Boko Haram attack.

Also in June, journalists Ali Soumana and Moussa Dodo were handed a three-month suspended sentence for “putting pressure on the judiciary”. They had published in Le Courrier newspaper a list of people accused of trying to influence a national exam. The list included influential people such as the President of the Constitutional Court. The journalists were prosecuted under the Penal Code, not the Press Law, which made the punishment harsher.

NIGERIA

Federal Republic of Nigeria
Head of state and government: Muhammadu Buhari

The conflict between the military and the armed group Boko Haram continued and generated a humanitarian crisis that affected more than 14 million people. The security forces continued to commit serious human rights violations including extrajudicial executions and enforced disappearances. The police and military continued to commit torture and other ill-
treatment. Conditions in military detention were harsh. Communal violence occurred in many parts of the country. Thousands of people were forcibly evicted from their homes.

ARMED CONFLICT
Boko Haram

Boko Haram continued to commit war crimes and crimes against humanity in the northeast, affecting 14.8 million people. The group continued to carry out attacks and small-scale raids throughout the year. The national and regional armed forces recaptured major towns from Boko Haram’s control.

In its response to Boko Haram attacks, the military continued to carry out arbitrary arrests, detentions, ill-treatment and extrajudicial executions of people suspected of being Boko Haram fighters – acts which amounted to war crimes and possible crimes against humanity.

In May, 737 men detained as Boko Haram suspects by the army were transferred to the prison in Maiduguri, capital of Borno state. They were charged for being “incorrigible vagabonds”, which carried up to two years’ imprisonment and/or a fine.

In April, the Defence Ministry started Operation Safe Corridor to “rehabilitate repentant and surrendered Boko Haram fighters” in a camp.

On 13 October, 21 Chibok schoolgirls abducted in 2014 were released by Boko Haram fighters following negotiations. One more girl was found in November; about 195 Chibok schoolgirls remained missing at the end of the year.

INTERNALLY DISPLACED PEOPLE

There remained at least 2 million internally displaced persons (IDPs) in northern Nigeria; 80% of them lived in host communities, while the remainder lived in camps. The camps in Maiduguri remained overcrowded, with inadequate access to food, clean water and sanitation.

In the so-called inaccessible territories in Borno state, tens of thousands of IDPs were held in camps under armed guard by the Nigerian military and the Civilian Joint Task Force (CJTF), a state-sponsored civilian militia formed to fight Boko Haram. Most of the IDPs were not allowed to leave the camps and did not receive adequate food, water or medical care. Thousands of people have died in these camps due to severe malnutrition. In June, in a guarded camp in Bama, Borno state, the NGO Médecins Sans Frontières reported over 1,200 bodies had been buried within the past year.

Both the CJTF and the army were accused of sexually exploiting women in the IDP camps in exchange for money or food, or for allowing them to leave the camps.

ARBITRARY ARRESTS AND DETENTIONS

The military arbitrarily arrested thousands of young men, women and children who fled to the safety of recaptured towns, including Banki and Bama, Borno state. These arrests were largely based on random profiling of men, especially young men, rather than on reasonable suspicion of having committed a recognizably criminal offence. In most cases, the arrests were made without adequate investigation. Other people were arbitrarily arrested as they attempted to flee from Boko Haram. Those detained by the military had no access to their families or lawyers and were not brought before a court. More than 1,500 detainees were released throughout the year.

The mass arrests by the military of people fleeing Boko Haram led to overcrowding in military detention facilities. At the military detention facility at Giwa barracks, Maiduguri, cells were overcrowded. Diseases, dehydration and starvation was rife. At least 240 detainees died during the year. Bodies were secretly buried in Maiduguri’s cemetery by the Borno state environmental protection agency staff. Among the dead were at least 29 children and babies, aged between newborn and five years.

At Giwa barracks, children under five were detained in three overcrowded and insanitary women’s cells, alongside at least 250 women
and teenage girls per cell. Some children were born in detention.

**LACK OF ACCOUNTABILITY**

There was continued lack of accountability for serious human rights violations committed by security officers. No independent and impartial investigations into crimes committed by the military had taken place despite the President’s repeated promises in May. Moreover, senior military officials alleged to have committed crimes under international law remained uninvestigated; Major General Ahmadu Mohammed was reinstated into the army in January. He was in command of operations when the military executed more than 640 detainees following a Boko Haram attack on the detention centre in Giwa barracks on 14 March 2014.

In its November preliminary report, the Office of the Prosecutor of the International Criminal Court (ICC) announced that it will continue its analysis of any new allegations of crimes committed in Nigeria and its assessment of admissibility of the eight potential cases identified in 2015, in order to reach a decision on whether the criteria for opening an investigation are met.

**CORPORATE ACCOUNTABILITY**

In June, the government launched a programme to clean up the contamination caused by oil spills and restore the environment of the Ogoniland region in the Niger Delta. There were hundreds of spills during the year.

The government continued to fail to hold oil companies to account, including Shell. It did not provide the oversight needed to ensure that companies prevented spills, or responded to oil spills. The National Oil Spill Detection and Response Agency (NOSDRA) remained ineffective and certified areas as clean that remained contaminated.

In March, two Niger Delta communities affected by oil spills filed a new law suit against Shell in the UK courts.

Oil companies continued to blame their failure to prevent spills, or restore contaminated areas, on sabotage and theft. Their claims were based on a flawed oil spill investigation led by the oil companies rather than NOSDRA.

**Niger Delta**

In January, the armed group Niger Delta Avengers began attacking and blowing up pipelines in the Niger Delta region. The government responded by significantly increasing military presence in the region. The activities of Niger Delta Avengers caused oil production to slow down.

**DEATH PENALTY**

Three men were secretly executed on 23 December in Benin prison in Edo state. One of them was sentenced to death by a military tribunal in 1998, which meant he did not have a right to appeal. Judges continued to impose death sentences throughout the year. On 4 May, the Senate resolved to enact a law prescribing the death penalty as the punishment for kidnapping, following the rise in abductions across the country. A number of states have either enacted or proposed similar laws.

**FREEDOM OF EXPRESSION – JOURNALISTS**

The government arrested and detained, some without trial, at least 10 journalists and bloggers.

In August, Abubakar Usman, a prominent blogger, was arrested in Abuja, the capital, by the anti-corruption agency Economic and Financial Crimes Commission and accused of contravening the Cyber Crimes Act. The Commission did not point out the specific provisions the blogger had contravened; he was released without being charged. In September, Jamil Mabai, was arrested and detained by the police for posting comments on Facebook and Twitter that were critical of the Katsina state government.

In early September, the publisher Emenike Iroegbu was arrested in Uyo, Akwa Ibom state, over alleged defamation.

On 5 September, Ahmed Salkida, a Nigerian journalist based in the United Arab Emirates, was declared wanted by the
military and later arrested by the state security services on arrival in Nigeria. He was among three people arrested and briefly detained for alleged links to Boko Haram and for facilitating the release of a Boko Haram video on the abducted Chibok girls. He was later released; his passport remained confiscated.

**FREEDOM OF ASSEMBLY**
The security forces disrupted, in some cases violently and with excessive use of force, peaceful protests and assemblies. On 6 September, police stopped members of the Bring Back Our Girls movement. They had given notice of the protest and gathered peacefully outside the office and residence of the President in Abuja to demand the release of the abducted Chibok girls.

On 22 September in Abuja, police fired tear gas canisters to disperse a peaceful protest by the Islamic Movement in Nigeria, resulting in some minor injuries.

A number of supporters of Biafran independence were in detention – many of them since late January – for attempting to hold or participate in peaceful assemblies. On several occasions, security forces used excessive force against pro-Biafran activists across southeastern Nigeria.

**UNLAWFUL KILLINGS**
The military was deployed in 30 out of Nigeria’s 36 states and in the Federal Capital Territory of Abuja where they performed routine policing functions including responding to non-violent demonstrations. The military deployment to police public gatherings contributed to the number of extrajudicial executions and unlawful killings. Since January, in response to the continued agitation by pro-Biafra campaigners, security forces arbitrarily arrested and killed at least 100 members and supporters of the group Indigenous People of Biafra (IPOB). Some of those arrested were subjected to enforced disappearance.

On 9 February, soldiers and police officers shot at about 200 IPOB members who had gathered for a prayer meeting at the National High School in Aba, in Abia state. Video footage showed soldiers shooting at peaceful and unarmed IPOB members; at least 17 people were killed and scores injured.

On 29 and 30 May, at least 60 people were killed in a joint security operation carried out by the army, police, Department of State Security (DSS) and navy. Pro-Biafra campaigners had gathered to celebrate Biafra Remembrance Day in Onitsha. No investigation into these killings had been initiated by the end of the year.

**ENFORCED DISAPPEARANCES**
On 3 April, Chijioke Mba was arrested and detained by the anti-kidnapping unit of the police force in Enugu for belonging to an unlawful society. His family and lawyer had not seen him since May.

On 16 August, Sunday Chucks Obasi was abducted from his home in Amuko Nnewi, Anambra state, by five armed men suspected to be Nigerian security agents in a vehicle with a government registration number plate. Witnesses said he was injured during the incident. His whereabouts remained unknown.

**TORTURE AND OTHER ILL-TREATMENT**
The police and military continued to commit torture and other ill-treatment during the interrogation of suspects or detainees to extract information and confessions. The Special Anti-Robbery Squad (SARS) of the police frequently committed torture and other ill-treatment during interrogations.

In September, the Inspector General of the police warned SARS against committing torture and encouraged them to follow due process of law.

On 18 May, Chibuike Edu died in police custody after he was arrested for burglary and detained for two weeks by the SARS in Enugu. The police authorities were investigating the incident; no one had been held accountable for his death at the end of the year.

The National Assembly was yet to pass into law the anti-torture bill which seeks to further prohibit and criminalize torture. In

*Amnesty International Report 2016/17*
June, it passed its first reading in the Senate. It had earlier been passed by the House of Representatives and was revised by the Nigeria Law Reform Commission. The revised version was to be debated at the Senate.

COMMUNAL VIOLENCE

Inter-communal violence occurred in many parts of the country. Many incidents were linked to lingering clashes between herdsmen and farming communities.

In February, at least 45 people were killed in Agatu, Benue state, after attacks by suspected herdsmen. In April, at least nine people were killed by suspected herdsmen in the Nimbo/Ukpabi community in Enugu state. The community said they had warned the authorities about the pending attack but the security agencies failed to prevent it. Five people detained by the police over the killings were yet to be tried.

In May, at least two people were killed in the Oke-Ako community, Ekiti state, by suspected herdsmen. In response, in August, the state government enacted a law banning cattle on undesignated land in the state.

FREEDOM OF ASSOCIATION

Ibrahim El-Zakzaky, leader of the Islamic Movement of Nigeria (IMN), remained in incommunicado detention without trial since his arrest in December 2015. Between 12 and 14 December 2015, soldiers killed more than 350 protesters and supporters of IMN at two sites in Zaria, Kaduna state.

Hundreds of IMN members were arrested and continued to be held in detention facilities in Kaduna, Bauchi, Plateau and Kano states.

On 11 April, the Kaduna state authorities admitted to a Judicial Commission of Inquiry that they had secretly buried 347 bodies in a mass grave two days after the December 2015 massacre.

On 15 July, the Commission presented its report to the state government indicting the Nigerian military for unlawful killings. In December, the Kaduna state government published its white paper on the report, which rejected most of the Commission's recommendations.

On 22 September, the National Human Rights Commission released a report indicting the IMN for provoking the clashes that led to the killings of IMN members and the military for the killings of IMN members. On the same day, police blocked IMN protesters and fired tear gas canisters at members of the IMN during a protest to demand the release of their leader. On 6 October, the Governor of Kaduna state declared the IMN an unlawful society. Following the declaration, members of the IMN were violently attacked in several states across the country, including Kaduna, Kano, Katsina and Plateau. Several IMN members were also arrested and detained by the military.

HOUSING RIGHTS

Forced evictions of thousands of people from their homes impacting on a range of their rights occurred in at least two states and in the Federal Capital Territory of Abuja.

In February, a Tribunal of Inquiry set up by the Lagos state government found that the government had failed to genuinely and adequately consult, compensate and provide promised resettlement to agricultural communities who were forcibly evicted from their homes and farmlands between 2006 and January 2016.

Between 2 and 5 July, the Rivers state government forcibly evicted over 1,600 residents in Eagle Island claiming that this was to tackle crime.

Following earlier forced evictions in March and September, on 9 October the Governor of Lagos state announced plans to commence the demolition of all settlements along the state's waterfronts. The justification was the need to respond to kidnapping incidents in the state. There were no plans announced to consult the communities prior to eviction.

On 15 October, hundreds of residents in Ilubirin waterfront community were forcibly evicted from their homes. Between 9 and 10 November, over 30,000 residents of Otodo Gbame, a waterfront community in Lagos...
state, were forcibly evicted when state authorities set fire to and demolished their homes with a bulldozer. On 11 November, hundreds of residents were forcibly evicted from another nearby waterfront community, Ebute Ikate, in Lagos state.

**WOMEN’S RIGHTS**

In September, the Gender and Equal Opportunities Bill to eliminate all forms of discrimination against women passed its second reading in the Senate. Although Nigeria ratified the CEDAW in 1985, it was yet to domesticate the Convention as part of the national law.

**RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE**

The law prohibiting same-sex marriages remained in force. Police continued to arrest LGBTI people. Men perceived to be gay were attacked by mobs and were blackmailed and targeted for extortion.

**CHILDREN’S RIGHTS**

In May, Bayelsa state passed the Child Rights Law bringing to 23 the number of states that have enacted the law. In addition, the State House of Assembly in Enugu state passed the law in August; the Governor was yet to give his assent.

**NORWAY**

**Kingdom of Norway**

Head of state: **King Harald V**

Head of government: **Erna Solberg**

The Immigration Law was amended to introduce significant restrictions on access to asylum. A new law granting transgender people the right to legal gender recognition was passed. Serious concerns remained about rape and other violence against women.

**REFUGEES AND ASYLUM-SEEKERS**

In April, the government tabled 40 amendments to the Immigration Law to restrict access to asylum. This was in line with the Minister of Immigration and Integration’s aim of ensuring that Norway had “the strictest refugee policy in Europe”. The proposals included granting police at the border – rather than the Immigration Directorate and the Immigration Appeal Board – the power to assess whether a person is in need of international protection. They also included severe restrictions on the right to family reunification and the rights of asylum-seeking children. The most restrictive elements of the proposed legislation did not pass; but the package approved by Parliament in June, which began to be implemented in August, marked a significant retrogression on Norway’s approach to international protection. The new provisions included a requirement for refugees applying for permanent residency to demonstrate economic self-sufficiency for 12 months and a “crisis mechanism” allowing expulsions at the border when faced with large numbers of arriving asylum-seekers. As of August, 84 children in families whose claims for asylum had been rejected were detained together with their adult family members at the Trandum police immigration detention centre near Oslo Airport Gardermoen, pending return to their country of origin.

In early December, 40 young male Afghan nationals, some of whom claimed to be under 18, were returned to Afghanistan as part of the government’s policy to return Afghan asylum-seekers.

**RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE**

In June, Parliament adopted a new law on legal gender recognition, granting transgender people aged 16 or older the right to legal gender recognition on the basis of self-identification. Children aged between six and 16 can apply for legal gender recognition with the consent of their parents or guardians. Violence motivated by discriminatory attitudes towards transgender people was still not classified as a hate crime in the Penal Code.
DISCRIMINATION – SEX WORKERS
While selling sex was not illegal, sex workers remained subject to a high level of policing and penalization. Sex workers faced human rights abuses such as physical and sexual violence including rape, exploitation and harassment, and risked facing penalization if they engaged with police. The enforcement of sex work, public nuisance and immigration laws to disrupt and prohibit sex work led to sex workers being subjected to forced eviction, police surveillance, fines, discrimination, loss of livelihood and deportation.¹

VIOLENCE AGAINST WOMEN AND GIRLS
Rape and other sexual violence against women and girls remains endemic. The legal definition of rape in the Penal Code was not consent-based. Serious concerns remained about attrition rates in rape investigations and prosecutions, and in the lack of gender sensitivity among lay judges in hearing rape cases. There was systemic failure to ensure women’s rights to legal protection and equality before the law. The number of rapes reported to police increased by 12% from 2014 to 2015, according to police statistics published in May.

INTERNATIONAL JUSTICE
On 24 June the Ministry of Justice ruled that a 43-year-old Rwandan national accused of complicity in the 1994 genocide in Rwanda, whose appeal rights were exhausted, could be extradited to Rwanda. The extradition had not been carried out by the end of the year.

The authorities continued to restrict freedoms of expression and association, arresting and detaining government critics and human rights activists. Most were released within days but some faced prosecution and imprisonment, creating an environment of self-censorship. Women remained subject to discrimination in law and in practice. Migrant workers were exposed to exploitation and abuse. The death penalty remained in force; no executions were reported.

BACKGROUND
Oman accepted a number of recommendations following the UN Universal Periodic Review (UPR) of Oman’s human rights record in 2015, but it rejected others, including abolition of the death penalty and bringing freedoms of expression and assembly in line with international standards.

In March, the UN Committee on the Rights of the Child urged Oman to cease harassment of human rights defenders engaged in children’s rights and to allow Omani women to pass on their nationality to their children on an equal basis with Omani men.

In June, the UN CERD Committee expressed concern about government restrictions on NGOs, racial discrimination and migrant workers’ rights.

The government enacted a new Penal Code in April as well as laws prohibiting money laundering and financing terrorism.

In January, the authorities accepted the transfer of 10 detainees, all Yemeni nationals, from the US detention centre at Guantánamo Bay, Cuba.

FREEDOMS OF EXPRESSION AND ASSOCIATION
The authorities restricted freedoms of expression and association. State Security personnel arrested and detained online and print journalists, bloggers and others. Most were interrogated and then released without charge after several days but at least eight individuals were sentenced to prison terms

---

¹. The human cost of ‘crushing’ the market: Criminalization of sex work in Norway (EUR 36/4034/2016)

OMAN

Sultanate of Oman
Head of state and government: Sultan Qaboos bin Said Al Said
under vaguely worded public order, insult or national security provisions, for the peaceful expression of their opinions.

Those sentenced included Hassan al-Basham, a former diplomat, sentenced in February to three years’ imprisonment for Facebook posts the authorities said insulted God and the Sultan; Naser al-Busaidi, whose one-year prison sentence for criticizing officials was confirmed by the Nizwa Court of Appeal in February; and Sayyid Abdullah al-Darouri, whose 18-month sentence on sedition and public order charges imposed in 2015 was reduced to six months in February.

In May the authorities released former parliamentarian Talib al-Ma’mari after the Sultan issued a pardon. He was serving a four-year prison sentence imposed after an unfair trial in 2014 in connection with a demonstration to protect the environment.

In August, the authorities released Saeed Jaddad, a blogger and prisoner of conscience imprisoned following his convictions in September and November 2015.1

In August, the authorities closed down Azamn newspaper and arrested and prosecuted the editor and two of its journalists after it published articles alleging corruption by the government and the judiciary. Ibrahim al-Ma’mari, Azamn’s editor, faced four charges, local news editor Zaher al-Abri faced one charge and deputy editor Yousef al-Haj faced six charges. Internal Security Service officers arrested another journalist, Hamoud al-Shukaily, for Facebook posts criticizing the action taken against the Azamn journalists. In December an appeal court overturned the ban on the newspaper, acquitted Zaher al-Abri, and reduced the sentences handed down to Ibrahim al-Ma’mari and Yousef al-Haj.

WOMEN’S RIGHTS

Women faced discrimination in law and in practice, being accorded lesser rights than men in both criminal law and in personal status or family law in relation to matters such as divorce, child custody, inheritance and passing their nationality on to their children.

MIGRANT WORKERS’ RIGHTS

Migrant workers faced exploitation and abuse. Domestic workers, mainly women from Asia and Africa, complained that employers to whom they were tied under the official kafala sponsorship system confiscated their passports, forced them to work excessive hours without time off, and denied them their full wages and adequate food and living conditions. The kafala system does not provide domestic workers with the protections available under the Labour Law. They remained vulnerable to abuse in the confines of private homes.

DEATH PENALTY

The death penalty remained in force for a range of crimes. Amendments to the Penal Code confirmed the use of firing squad as the method of execution. No executions were reported.


PAKISTAN

Islamic Republic of Pakistan

Head of state: Mamnoon Hussain
Head of government: Muhammad Nawaz Sharif

Armed groups continued to carry out targeted attacks against civilians, including government employees, which resulted in hundreds of casualties. Security forces, particularly paramilitary Rangers in Karachi, committed human rights violations with almost total impunity. Executions continued, often after unfair trials. State and non-state actors discriminated against religious minorities. Despite a new law in Punjab to protect women from violence, so-called “honour” crimes continued to be reported. Human rights defenders and media workers experienced threats, harassment and abuse from security forces and armed groups. Minorities continued to
face discrimination across a range of economic and social rights. Access to quality health care, particularly for poor and rural women, remained limited.

BACKGROUND
Operation Zarb-e-Azb, the Pakistan military’s offensive against non-state armed groups that started in June 2014, continued in North Waziristan and Khyber tribal agency. Significant levels of armed conflict and political violence continued, in particular in the provinces of Khyber Pakhtunkhwa, the Federally Administered Tribal Areas (FATA), Balochistan and Sindh.

The National Commission for Human Rights, set up in May 2015, continued to lack sufficient staff and other resources, despite its budget finally being approved by Parliament. Concerns remained about the Commission’s limited mandate with regard to investigation of cases of human rights violations allegedly committed by state agencies.

In late September, cross-border tension between Pakistan and India increased, with both states accusing the other of human rights violations at the UN Human Rights Council. There were repeated violations by both sides of the 2003 ceasefire, with exchange of fire across the Line of Control. India claimed to have carried out “surgical strikes” on militants in Pakistani-administered Azad Kashmir, which Pakistan denied.

ABUSES BY ARMED GROUPS
Armed groups continued to carry out attacks, despite a government-mandated National Action Plan to counter terrorism. The Plan was implemented in the wake of a Taliban attack on an army school in Peshawar in December 2014 that killed at least 149 people, mostly children.

On 20 January, armed attackers killed at least 30 people, mostly students and teachers, in Bacha Khan University, Charsadda, northwest Pakistan. Responsibility was claimed by a Pakistani Taliban commander who allegedly planned the 2014 army school attack in Peshawar, but this claim was contested. The army subsequently claimed to have apprehended five “facilitators” of the attack.

On 16 March, a bomb attack on a bus carrying government employees in Peshawar killed at least 15 people and severely injured 25.

On 8 August, a suicide bomb attack killed at least 63 people, mostly lawyers, and wounded more than 50 others at the Civil Hospital in Quetta, south-west Pakistan. Mourners had gathered to accompany the body of Bilal Anwar Kasi, President of the Balochistan Bar Association, who had been killed by gunmen earlier that day.

POLICE AND SECURITY FORCES
Security forces including the Rangers, a paramilitary force under the command of the Pakistan Army, perpetrated human rights violations such as arbitrary arrests, torture and other ill-treatment, and extrajudicial executions. Security laws and practices, and the absence of any independent mechanisms to investigate the security forces and hold them accountable, allowed government forces to commit such violations with near-total impunity. Victims included members of political parties, in particular the Muttahida Qaumi Movement (MQM), and human rights defenders.

On 1 May, plainclothes police arrested Aftab Ahmed, a senior MQM member. On 3 May, after he was moved to Rangers custody, news of his death emerged, alongside photographs apparently showing wounds sustained during torture. The Director-General of the Rangers for Sindh publicly acknowledged that Aftab Ahmed had been tortured in custody, but denied that his forces were responsible for the death. According to media reports, five Rangers soldiers were suspended after an investigation ordered by the Chief of Army Staff, but no further information was made public.

By the end of the year little progress had been made in the case of Dr Asim Hussain, a senior member of the Pakistan People’s Party and a former federal minister who was
allegedly ill-treated and denied proper medical attention while in the custody of the Rangers in 2015. Asim Hussain had been arrested on charges including for “being involved in offences relating to misappropriation of funds and for enhancing, supporting terrorism activities, and other criminal links/activities by using authority punishable under the Anti-Terrorism Act 1997”.

Security forces detained several political activists without trial during the year. Some of them continued to be at risk of torture and other ill-treatment.

According to information published in August by the Pakistan Commission of Inquiry on Enforced Disappearances, 1,401 out of more than 3,000 cases of disappearance had not yet been investigated by the Commission.

DEATH PENALTY
Since the December 2014 lifting of a six-year moratorium on executions, more than 400 have been carried out. Some of those executed were juveniles at the time of the offence or had a mental disability.

Both civil and military courts imposed death sentences, in many cases after unfair trials. Contrary to international law, the 28 offences carrying the death penalty included non-lethal crimes.

MILITARY COURTS
Military courts were given jurisdiction in 2015 to try all those accused of terrorism-related offences, including civilians. By January 2016, the government had constituted 11 military courts to hear such cases.

In August, the Supreme Court ruled for the first time on cases from these courts, upholding the verdicts and death sentences imposed on 16 civilians. The Court ruled that the appellants had not proved that the military violated their constitutional rights or failed to follow procedure. According to lawyers, the accused were denied access to legal counsel of their choice, and to military court records when preparing their appeals. Some of the accused were allegedly subjected to enforced disappearance, torture and other ill-treatment, and at least two were reportedly under 18 when arrested.

DISCRIMINATION – RELIGIOUS MINORITIES
State and non-state actors continued to discriminate against religious minorities, both Muslim and non-Muslim, in law and practice. Blasphemy laws remained in force and several new cases were registered, mostly in Punjab. The laws violated the rights to freedom of expression, thought, conscience and religion. Minorities, particularly Ahmadis, Hazaras and Dalits, continued to face restricted access to employment, health care, education and other basic services.

Mumtaz Qadri, a security guard convicted of killing the Governor of Punjab in 2011 because he had criticized the blasphemy laws, was executed in February. His funeral was attended by thousands of people and was followed by protests in the capital, Islamabad, Lahore and Karachi where protesters damaged public property, attacked media stations and clashed with the police.

Asia Noreen, a Christian woman sentenced to death for blasphemy in 2010, remained imprisoned in Sheikhupura. On 13 October, the Supreme Court was scheduled to hear her case in the ultimate stage of her appeal process but adjourned it indefinitely.

Armed groups attacked a park in Lahore on 27 March, killing at least 70 people, many of them children, and injuring many more. A faction of the Pakistani Taliban, Jamaat-ul-Ahrar, claimed responsibility for the attack, saying they had targeted Christians celebrating Easter.

VIOLENCE AGAINST WOMEN AND GIRLS
The Human Rights Commission of Pakistan recorded almost 3,000 cases of violence against women and girls, including murder, rape and gang rape, sodomy, domestic violence and kidnappings.

The Punjab Protection of Women against Violence Act was passed by the Punjab Provincial Assembly in February, despite opposition from Islamic parties.
An amendment to the law on so-called “honour-based” killings was introduced to end impunity for such crimes, but allowed for the death penalty as a possible punishment and for perpetrators to have their sentences lessened if they secure a pardon from the victim’s family. It remained unclear how the authorities will distinguish between an “honour killing” and other murders, or what standards of evidence would apply, or what penalties would ensue. Human rights NGOs and activists were concerned that the penalty imposed should not depend on whether or not the victim’s family had pardoned the crime. According to the Human Rights Commission of Pakistan, around 512 women and girls, and 156 men and boys, were killed in 2016 by relatives on so-called “honour” grounds. As many cases went unreported, or were falsely described as suicides or natural deaths, the actual number was almost certainly much higher. Qandeel Baloch, a social media celebrity, was drugged and killed by her brother in July. He confessed to murdering her for “dishonouring the Baloch name”.

Child marriage remained a concern. In January a bill to raise the legal minimum age of marriage to 18 for girls was withdrawn following pressure from the Council of Islamic Ideology, who considered it “un-Islamic and blasphemous”.

**RIGHT TO HEALTH – WOMEN AND GIRLS**

Access to quality health care, particularly for poor and rural women, remained limited due to information, distance and cost barriers, as well as to perceived norms concerning women’s health and wellbeing.

**FREEDOM OF EXPRESSION – JOURNALISTS**

Media workers continued to be harassed, abducted and sometimes murdered. Those in FATA and Balochistan and those working on national security issues were particularly at risk.

According to the Pakistani Press Foundation, as of October, at least two media workers were killed, 16 were injured and one was abducted in connection with their work. The authorities generally failed to provide adequate protection to media workers from attacks by non-state armed groups, security forces, political activists and religious groups. Of the 49 media workers murdered since 2001, only four cases had resulted in a conviction by the end of 2016. In March, a man convicted of murdering journalist Ayub Khattak in 2013 was sentenced to life imprisonment and a fine.

Zeenat Shahzadi, a journalist abducted by gunmen in August 2015 in Lahore, remained forcibly disappeared. The Human Rights Commission of Pakistan believed she had been abducted by security forces. In October Cyril Almeida, assistant editor of *Dawn* newspaper, was placed briefly on the Exit Control List, which prohibits certain people from leaving Pakistan. The Prime Minister’s Office had objected to an article he wrote on tensions between the civilian government and the military. A few weeks later the authorities held the Minister for Information responsible for leaking the information that led to Cyril Almeida’s news report.

The Pakistan Electronic Media Regulatory Authority, the federal regulator of the broadcast media, restricted media outputs by issuing fines, threatening to cancel broadcasting licences, and, in some cases, threatening prosecutions. Self-censorship was routine as a result of these measures and because of the fear of reprisals from the intelligence agencies and armed groups.

A new law on cybercrimes – the Prevention of Electronic Crimes Act – was passed in August, giving the authorities broad powers to surveil citizens and censor online expression. There were fears that it posed a risk to the right to freedom of expression, as well as the right to privacy and access to information.

**HUMAN RIGHTS DEFENDERS**

State and non-state actors continue to harass, threaten, detain and kill human rights defenders, especially in Balochistan, FATA and Karachi.
On 8 May, the Pakistani Taliban shot dead prominent human rights activist and website editor Khurram Zaki in Karachi. A spokesman for a faction of the Pakistani Taliban said it had killed him because of his campaign against Abdul Aziz, a cleric of the Red Mosque in Islamabad.

On 16 January, Rangers personnel arrested human rights defender Saeed Baloch, an advocate for fishing communities, in Karachi. Following national and international pressure, he was presented in court on 26 January and released on bail in August.

According to eyewitnesses, human rights defender Wahid Baloch was abducted on 26 July by masked men in plain clothes, believed to be representatives of security forces in Karachi. He was released on 5 December.

A policy was implemented from early 2016 requiring international NGOs to obtain government consent to raise funds and operate. In an increasingly hostile climate for human rights work, security forces harassed and intimidated several NGO staff.

In September, the Home Ministry shut down Taangh Wasaib, an NGO working for women’s rights and against religious intolerance, stating that it was involved in “dubious activities”.

**REFUGEES AND ASYLUM-SEEKERS**

The legal status of the 1.4 million registered Afghan refugees became increasingly precarious as hostility towards them intensified and abuses, including physical attacks, escalated. The authorities estimated that an additional 1 million unregistered Afghan refugees were also living in the country.

Senior Pakistani officials threatened to expedite the forced return of all Afghan refugees. On 29 June, the authorities extended the right of registered refugees to remain in Pakistan legally, but only until March 2017.

Following the December 2014 attack on the army public school in Peshawar, police targeted Afghan settlements, demolished their homes, and subjected refugees to arbitrary detention and harassment.

**WORKERS’ RIGHTS**

Despite the Bonded Labour System (Abolition) Act of 1992, bonded labour practices continued, particularly in the brick kiln and textile industries and among the scheduled castes (Dalits).

---

1. Pakistan: Armed attack on Bacha Khan University a potential war crime (News story, 20 January)
2. Pakistan: Government must deliver justice for victims of Peshawar bus bombing (News story, 16 March)
3. Pakistan: Attack on Quetta hospital abhorrent disregard for the sanctity of life (News story, 8 August)
4. Pakistan: Investigation crucial after Karachi political activist tortured and killed in custody (News story, 4 May)
5. Pakistan: Human rights defender at risk of torture (ASA 33/4580/2016)

---

**PALESTINE (STATE OF)**

State of Palestine
Head of state: Mahmoud Abbas
Head of government: Rami Hamdallah

The Palestinian authorities in the West Bank and the Hamas de facto administration in the Gaza Strip both continued to restrict freedom of expression, including by arresting and detaining critics and political opponents. They also restricted the right to peaceful assembly and used excessive force to disperse some protests. Torture and other ill-treatment of detainees remained rife in both Gaza and the West Bank. Unfair trials of civilians before military courts continued in Gaza; detainees were held without charge or trial in the West Bank. Women and girls faced discrimination and violence. Courts in Gaza continued to hand down death sentences and Hamas carried out executions; no death sentences were imposed or executions carried out in the West Bank.
BACKGROUND
Negotiations between Israel and the Palestine Liberation Organization, which was led by President Abbas, remained stalled despite international efforts to revive them. Continued tension between Fatah and Hamas undermined the Palestinian national consensus government formed in June 2014; the Hamas de facto administration continued to control Gaza.

Gaza remained under an Israeli air, sea and land blockade, in force since June 2007. The continuing restrictions on imports of construction materials under the blockade, and funding shortages, contributed to severe delays in reconstruction of homes and other infrastructure damaged or destroyed in recent armed conflicts. Continuing restrictions on exports crippled the economy and exacerbated widespread impoverishment among Gaza’s 1.9 million inhabitants. The Egyptian authorities’ almost total closure of the Rafah border crossing with Gaza completed its isolation and compounded the impact of the Israeli blockade.

In June, Prime Minister Hamdallah said new municipal elections would be held on 8 October. However, the Palestinian High Court ruled in September that the elections should be indefinitely suspended on the grounds that Israeli controls prevented the participation of Palestinians in East Jerusalem and due to the illegality of local courts in Gaza. Both Palestinian authorities harassed and detained opposition candidates in the period before the court’s decision.

There was a marked rise in tension in Nablus, Jenin and other northern governorates of the West Bank where gunmen affiliated to Fatah clashed with the security forces resulting in some deaths.

LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS
In February, President Abbas signed the juvenile protection bill into law, paving the way for the establishment in March of the West Bank’s first juvenile court in Ramallah.

In March President Abbas approved the National Insurance Law establishing for the first time a state social security system for private sector workers and their families. The new law covered issues such as pensions for the elderly and the disabled, and employment injury benefits for workers in the Palestinian private sector. Civil society organizations criticized the new law, arguing that it failed to provide minimum standards of protection and social justice and could cause further marginalization of the most vulnerable.

In April a presidential decree established a nine-judge Palestinian Supreme Constitutional Court with supremacy over other Palestinian courts, a move seen widely as an unprecedented example of executive interference in the judiciary. In October, the President of the High Judicial Council was removed from his position. He stated in a media interview that he had been forced to sign his resignation at the time of his inauguration.

In December, the President stripped five members of the Palestinian Legislative Council of their immunity, including his political opponents, after a judgment by the Supreme Constitutional Court allowing him to do so. The move was criticized by civil society organizations as undermining the rule of law and separation of powers.

Palestine ratified the Kampala amendments to the Rome Statute on the crime of aggression in June. Representatives of the Office of the Prosecutor of the International Criminal Court visited Israel and the West Bank but did not travel to Gaza.

ARBITRARY ARRESTS AND DETentions
Security authorities in the West Bank, including Preventative Security and General Intelligence, and those in Gaza, particularly the Internal Security Service, arbitrarily arrested and detained critics and supporters of rival political organizations. In the West Bank, security forces used administrative detention by order of governors to hold detainees without charge or trial for periods of up to several months.
UNFAIR TRIALS
In both the West Bank and Gaza, authorities failed to ensure adherence to basic due process rights, such as prompt access to legal counsel and the right to be charged or released. Palestinian security forces in the West Bank held detainees for long periods without trial on the orders of regional governors, and delayed or failed to comply with court orders for the release of detainees in dozens of cases. In Gaza, Hamas military courts continued to convict defendants, including civilians, in unfair trials, sentencing some to death.

TORTURE AND OTHER ILL-TREATMENT
Torture and other ill-treatment of detainees remained common and was committed with impunity by Palestinian police and other security forces in the West Bank, and Hamas police and other security forces in Gaza. In both areas, the victims included children. The Independent Commission for Human Rights, Palestine’s national human rights institution, reported receiving a total of 398 allegations of torture and other ill-treatment of detainees between January and November; 163 from the West Bank and 235 from Gaza. The majority of complaints in both areas were against police. Neither the Palestine national consensus government nor the Hamas de facto administration in Gaza independently investigated torture allegations or held perpetrators to account.

Basel al-Araj, Ali Dar al-Sheikh and three other men alleged that General Intelligence officers held them incommunicado and tortured and otherwise ill-treated them for almost three weeks following their arrest on 9 April. They said officers beat them, forced them to remain in stress positions, and deprived them of sleep, leading them to launch a hunger strike protest on 28 August. Officers then subjected them to solitary confinement for the duration of their hunger strikes. They were released on bail and appeared before the Ramallah Magistrates’ Court on 8 September on charges that included illegal possession of arms. Their trial was ongoing at the end of the year.

Ahmad Izzat Halaweh died in Jeneid prison in Nablus on 23 August shortly after being arrested. A national consensus government spokesperson said security officials had severely beaten Ahmad Halaweh prior to his death. The authorities began an investigation headed by the Minister of Justice. The investigation was continuing at the end of the year.

FREEDOMS OF EXPRESSION, ASSOCIATION AND ASSEMBLY
The authorities in both the West Bank and Gaza severely curtailed rights to freedom of expression, association and peaceful assembly, harassing, arresting and detaining critics and supporters of their political rivals and forcibly dispersing protests, assaulting journalists and others.

In the West Bank, police arrested university professor Abd al-Sattar Qassem in February after he criticized the Palestinian authorities on al-Quds TV, a Hamas-affiliated broadcaster. He was charged with incitement and released on bail after five days in custody.

In Gaza, Internal Security Service officers briefly detained journalist Mohamed Ahmed Othman in September. He reported being subjected to torture and other ill-treatment in an attempt to force him to reveal the source for a government document he had published. He was released the next day without charge. He was summoned again twice in the two days following his release.

In February, a two-day walkout by West Bank teachers complaining about low pay escalated into several weeks of mass strikes and protests following heavy-handed intervention by Palestinian security forces, who set up roadblocks around Ramallah to prevent teachers joining demonstrations and arrested 22 teachers. Those arrested were subsequently released without charge. Harassment of teachers continued at the end of the year, targeting those organizing a new union.
UNLAWFUL KILLINGS

Security forces in the West Bank killed at least three men and injured others while carrying out law enforcement activities.

On 7 June, Adel Nasser Jaradat was killed by gunfire from West Bank security forces in Silet al-Harethiya, a village northwest of Jenin. The authorities failed to hold those responsible to account.

On 19 August, security forces killed Fares Halawa and Khaled al-Aghbar in Nablus in unclear circumstances. Though the local authorities maintained they were killed in clashes, witnesses said they were alive and unarmed when the security forces seized them. An investigation was continuing at the end of the year.

In Gaza, the military wing of Hamas, the ‘Izz al-Din al-Qassam Brigades, summarily executed one of their members, Mahmoud Rushdi Ishteiwi, on 7 February after the group said its “Military and Shari’a Judiciaries” had sentenced him for “behavioural and moral excesses”. The victim’s family said he had been detained incommunicado by the Brigades since 21 January 2015. The Hamas de facto administration in Gaza took no steps to investigate or bring the perpetrators of the killing to justice.

WOMEN’S AND GIRLS’ RIGHTS

Women and girls continued to face discrimination in law and in practice, and were inadequately protected against sexual and other violence, including so-called “honour” killings. Women and girls were reported to have been killed by male relatives in “honour” killings.

In February the Attorney General issued a decision establishing a specialized prosecution unit to investigate and prosecute cases of family violence and violence against women.

DEATH PENALTY

The death penalty remained in force for murder and other crimes. Courts in the West Bank did not hand down any death sentences during the year.

In May, members of the Change and Reform Bloc, the Hamas parliamentary group in Gaza, paved the way for the Gaza authorities to execute prisoners whose sentences have not been ratified by the Palestinian President, contrary to the Palestinian Basic Law of 2003 and the 2001 Penal Procedure Law.

PAPUA NEW GUINEA

Independent State of Papua New Guinea

Head of state: Queen Elizabeth II, represented by Michael Ogio

Head of government: Peter Charles Paire O’Neill

The authorities failed to prevent widespread violence against children, women, sex workers, asylum-seekers and refugees. Cases of violence were rarely prosecuted. Cultural practices, including polygamy, continued to undermine women’s rights. There was insufficient protection against torture or other ill-treatment. The police continued to use excessive force against protesters. Poverty remained endemic, particularly in rural areas, despite economic wealth generated by the mining industry. The death penalty was retained; no executions had been carried out since 1954.

FREEDOMS OF EXPRESSION AND PEACEFUL ASSEMBLY

Weeks of peaceful protests by students at the University of Papua New Guinea against alleged government corruption ended in violence on 8 June, when police fired shots and assaulted peaceful protesters. Thirty-eight people were injured and received medical treatment, including two who suffered gunshot wounds. Although separate investigations were initiated by the police, the Ombudsman and a parliamentary committee,
the outcomes were not known at the end of the year.

**VIOLENCE AGAINST WOMEN AND GIRLS**
The government failed to address widespread sexual and gender-based violence in legislation or in practice. Cultural practices were allowed to persist, including the custom whereby wives are forced to repay a “bride price” to their husbands if they wish to separate from him, placing women in abusive marriages at greater risk. Women accused of “sorcery” were subjected to violence from the community.

There was also limited psychosocial support, women’s shelters or other services to protect women from domestic violence.

**DISCRIMINATION – SEX WORKERS**
There were high levels of violence by state and non-state actors against sex workers on grounds of their gender identity, sexual orientation or status as sex workers and as a result of legislation criminalizing sex work.¹ Systemic gender inequality and discrimination in education, employment and in the community generally, forced many women, including transgender women, and gay men into selling sex for a living. Police officers were responsible for violations against sex workers, such as rape, physical assault, arbitrary arrest and detention and other ill-treatment. The criminalization of same-sex sexual relations as well as of sex work continued to drive and compound violence and discrimination against gay and transgender people. It also led to discrimination in the provision of health care and undermined the prevention and treatment of HIV.

**REFUGEES AND ASYLUM-SEEKERS**
As of 30 November, around 900 refugees and asylum-seekers, all men, remained in two Australian-run detention centres on Papua New Guinea’s Manus Island (see Australia entry). In April, the Supreme Court held that their detention – for over three years – was illegal and unconstitutional. It ordered the Australian and Papua New Guinean governments to close the camps immediately. Both camps remained open at the end of the year.

Refugees and asylum-seekers filed a civil court case seeking orders to force the camps’ closure; for them to be returned to Australia; and for compensation for their unlawful detention.

A Sudanese refugee, Faysal Ishak Ahmed, died on 24 December, after being airlifted from one of the detention centres, to an Australian hospital, after a fall and a seizure. Refugees in the centre said his health had deteriorated over months but he was not given adequate health care.

There were continued reports of violence against refugees and asylum-seekers for which the perpetrators were rarely held to account. In April, two Papua New Guinean nationals employed in one of the detention centres were convicted of murdering asylum-seeker Reza Berat in 2014 although others allegedly involved were not prosecuted.

In November, the Australian government announced that some of the refugees detained on Nauru (see Nauru entry) and Manus Island would be resettled in the USA.

1. Outlawed and abused: Criminalizing sex work in Papua New Guinea (ASA 34/4030/2016)

---

**PARAGUAY**

**Republic of Paraguay**
**Head of state and government:** Horacio Manuel Cartes Jara

Figures on poverty reduction improved, although children and adolescents continued to be those principally affected. Indigenous Peoples continued to be denied their rights to land and to free, prior and informed consent on projects affecting them. Both Indigenous Peoples and Afro-Paraguayans faced racial discrimination. A bill to eliminate all forms of discrimination was pending approval at the end of the year. There were reports of violations of freedom
of expression and of the persecution of human rights defenders and journalists. Abortion remained criminalized and child and teenage pregnancies continued to be a concern.

BACKGROUND
In October a new Ombudsman was appointed after a gap of seven years.

INTERNATIONAL SCRUTINY
In January, Paraguay’s human rights record was examined under the UN Universal Periodic Review (UPR) process. The Human Rights Council made a number of recommendations, including urging Paraguay to approve a bill to eliminate all forms of discrimination on the basis of sexual orientation and gender identity; to develop legal systems to prevent and punish violence against women and girls; to reinforce protection of the rights of Indigenous Peoples; to protect the free exercise of freedom of the press, expression and opinion; and to address impunity for human rights violations committed against human rights defenders and journalists. Paraguay accepted all the recommendations except those related to the decriminalization of abortion.

In October the UN CERD Committee issued its report and concluding observation based on Paraguay’s fourth to sixth periodic reports. It made a number of recommendations, including urging Paraguay to take affirmative action to overcome systemic discrimination against Indigenous Peoples and Afro-Paraguayans. The Committee also highlighted weak state protection of rights to prior consultation and Indigenous Peoples’ rights over their lands, territories and resources.

In November, the UN Special Rapporteur on the right to food visited Paraguay and met with public authorities and members of civil society. She was due to present her report on the visit in 2017.

INDIGENOUS PEOPLES’ RIGHTS
In February, the Inter-American Commission on Human Rights granted precautionary measures to Ayoreo Totobiegosode communities living in voluntary isolation, calling on the Paraguayan government to protect the communities from third parties seeking to access their ancestral lands. In October, the CERD Committee called on Paraguay to fully abide by these precautionary measures.

In October, the Yakye Axa community remained without access to their lands despite a ruling from the Inter-American Court of Human Rights ordering the government to construct an access route. The CERD Committee called on Paraguay to intensify efforts to effectively comply with the Court’s judgment.

The case regarding the ownership of land expropriated from the Sawhoyamama community was still pending at the end of the year despite the fact that in June 2015 the Supreme Court of Justice had rejected the appeal brought by a livestock company to stall the effects of a law passed to return the land to the community.

In October, the CERD Committee urged Paraguay to take effective measures to address problems related to access to food, drinking water, sanitation and child malnutrition among Indigenous Peoples and Afro-Paraguayans living in rural areas.

HOUSING RIGHTS – FORCED EVICTIONS
In September, members of the Senate filed a complaint with the Attorney General over the forced eviction of 200 families from the Guahory campesino (peasant farmer) community and the failure of the government to investigate the situation. In December, another eviction took place in this community during a dialogue process between Guahory members and representatives of the National Institute of Rural Development and Land, aimed at assessing information related to land tenure in the community.

In September, human rights organizations reported the forced eviction of the Avá
Guaraní de Sauce community in connection with the Itaipu hydroelectric installation.

JUSTICE SYSTEM
In July, the UN High Commissioner for Human Rights expressed concern over the conviction of 11 campesinos in connection with a massacre in Curuguaty in 2012 that left 17 dead. There were reports of irregularities during proceedings regarding the right to an adequate defence and due process.

In October, following a UPR recommendation, the Senate initiated proceedings to create an independent committee to investigate the massacre at Curuguaty in order to ensure access to justice for the victims and their relatives.

WOMEN’S AND GIRLS’ RIGHTS
In December, the Chamber of Deputies issued Law 5.777 on comprehensive protection of women from all forms of violence. Femicide was recognized as a distinct criminal offence punishable by a minimum of 10 years’ imprisonment. A ban on requiring conciliation between victims of violence and offenders was also approved. The law was due to enter into force after one year.

Pregnancies among girls and young teenagers were alarmingly high. In October, the Centre for Documentation and Research reported that there were on average between 500 and 700 pregnancies among girls aged between 10 and 14 each year. Similar concerns were raised in a UNFPA report, Young Paraguay, which indicated that pregnancy among this group had risen by over 62.6% in the last decade. The principal causes were given as violence against women, social exclusion and macho culture.

FREEDOM OF EXPRESSION
In November a draft bill was presented to establish protection mechanisms for journalists, media workers and human rights defenders. The failure to investigate and prosecute the killings of 17 journalists since 1991 was among the principal drivers behind the demand for increased protection.

HUMAN RIGHTS DEFENDERS
Lawyer and human rights defender Julia Cabello Alonso was warned that she would be disbarred from the Bar Association of Paraguay and prevented from exercising her professional functions because of alleged non-compliance with professional ethics when defending the restitution of Indigenous Peoples’ lands.

In its October report, the CERD Committee recommended that Paraguay take steps to strengthen the protection of human rights defenders, including Indigenous leaders and those who defend Indigenous Peoples’ rights, against intimidation, threats and arbitrary actions by governmental officials.

Similarly, the Human Rights Council recommended that Paraguay combats impunity for all violations against, including killings of, human rights defenders, as well as investigates allegations of abusive practices by security and law enforcement forces targeted at Indigenous People, and prosecutes those found responsible.

PERU

Republic of Peru
Head of state and government: Pedro Pablo Kuczynski Godard (replaced Ollanta Moisés Humala Tasso in July)

There was a notable increase in violence towards – and lack of protection of – marginalized groups, particularly women and girls, Indigenous Peoples as well as lesbian, gay, bisexual, transgender and intersex (LGBTI) people. The government ratified the Arms Trade Treaty.

BACKGROUND
In June, Pedro Pablo Kuczynski Godard was elected President in the second round of elections.

Over 200 cases of social protest were registered, around 70% of which were related to disputes between communities, extractive
companies and the government over the ownership, use and enjoyment of natural resources as well as the protection of the environment.

**HUMAN RIGHTS DEFENDERS**

Human rights defenders continued to be harassed, threatened and attacked in the context of social protests – especially those related to land, territorial and environmental issues. The police used excessive and unnecessary force, including lethal weapons, to repress protests. In October, Quintino Cereceda died of a bullet wound to the head when the police dispersed a protest against the mining project in Las Bambas, Apurímac region.

On two occasions, Máxima Acuña and her family were attacked and intimidated by security personnel from the Yanacocha mining company, who destroyed their crops. The company claimed it was exercising its “possessory right to defence”. Máxima Acuña, her family and another 48 activists and peasant farmers from Cajamarca region were beneficiaries of precautionary measures granted in 2014 by the Inter-American Commission on Human Rights to guarantee their safety.

**INDIGENOUS PEOPLES’ RIGHTS**

The investigation into the deaths of four Asháninka leaders from Ucayali region who had allegedly been killed in 2014 by illegal loggers had yet to be concluded by the end of the year. The leaders had previously denounced the continuous illegal logging on their territory.

Throughout the year there were 13 oil spills from the Northern Peruvian Pipeline, contaminating water and land belonging to Indigenous Peoples in the Amazon basin. Indigenous organizations in the affected areas went on strike from September, demanding that the government address issues like the population’s health and reparations for damage to the environment. In December the Indigenous organizations and the government signed an agreement on the issue.

In September, the Bagua Criminal Court acquitted 53 accused Indigenous people, who had been charged with crimes including killing 12 police officers in clashes with security forces in 2009. At the end of the year no state officials had been prosecuted for their role in escalating the conflict.

**IMPURITY**

Some progress was made in the investigation of human rights violations committed during the internal armed conflict (1980-2000).

In June, the Law on the Search of Disappeared Persons was enacted.

In July, the trial began of 11 military personnel accused of sexual violence against rural women between 1984 and 1995 in Manta and Vilca, Huancavelica region.

In August, 10 military personnel were found guilty of the extrajudicial execution of 69 people in Acocamarca village in 1985. There were 23 children among the victims.

In September, three high-ranking officials were charged with having forcibly disappeared two students and a teacher in 1993 in basements of the Military Intelligence Service headquarters.

In October, the trial of 35 former marines began for the massacre in El Frontón prison in 1986, when 133 prisoners accused of terrorism were extrajudicially executed.

**VIOLENCE AGAINST WOMEN AND GIRLS**

Violence against women and girls continued; there were reports that 108 women had been killed by their partners as well as reports of 222 cases of attempted murder of women and girls. Most cases were not investigated or resulted in suspended prison sentences.

**Trafficking for sexual exploitation**

Women made up 80% of human trafficking victims; 56% of the victims were under 18 years of age, with the majority trafficked for sexual exploitation in mining areas.

In September, the Permanent Criminal Chamber of the Supreme Court of Justice ratified a judgment of acquittal in a human trafficking case involving a 15-year-old girl. The Chamber argued that working over 13
Amnesty International Report 2016/17

hours a day as an “escort” in a bar in an illegal mining operation did not constitute labour exploitation or sexual exploitation, as “the workload did not exhaust the worker”.

SEXUAL AND REPRODUCTIVE RIGHTS

The rate of teenage pregnancy increased. In some regions of the Amazon it reached 32.8% of girls and women between 15 and 19 years of age; 60% of pregnancies among girls aged 12-16 resulted from rape.

Forty-three cases of “risk to personal safety” (cases of threats and intimidation) and eight murders of LGBTI people were registered by NGOs. However, a reform to the Criminal Code which would have criminalized discrimination and attacks on the grounds of sexual orientation and gender identity failed to pass due to the change of government and of Congress.

In December, a bill that would recognize the gender of transgender people was presented in Parliament.

In July, the Public Prosecutor’s Office closed the investigation into the case of over 2,000 Indigenous men and women who were allegedly forcibly sterilized in the 1990s. Only five health personnel were investigated for their role in the forced sterilization.

The registration of victims of forced sterilization was initiated in five regions of the country, and by the end of the year more than 2,000 victims were registered.

In August, a court of first instance in Lima, the capital, ordered the Ministry of Health to distribute emergency oral contraceptives free of charge.

Abortion remained criminalized in almost all cases, leading to clandestine and unsafe abortions. In October, several members of Parliament presented draft legislation to Congress to decriminalize abortion in cases of sexual violence.

PHILIPPINES

Republic of the Philippines

Head of state and government: Rodrigo Roa Duterte (replaced Benigno S. Aquino III in June)

The government launched a campaign to crackdown on drugs in which over 6,000 people were killed. Human rights defenders and journalists were also targeted and killed by unidentified gunmen and armed militia. The use of unnecessary and excessive force by police continued. In a landmark ruling the courts convicted a police officer for torture for the first time under the 2009 Anti-Torture Act.

BACKGROUND

In September, the Philippines accepted the Chair of ASEAN for 2017.

In November, street protests took place after the body of former President Ferdinand Marcos, during whose presidency widespread human rights violations were committed, was re-buried in the Heroes Cemetery, a move backed by the President. The Philippines was reviewed by the UN Committee against Torture, the UN Committee on Economic, Social and Cultural Rights (CESCR) and the UN Committee on the Elimination of Discrimination against Women (CEDAW).

UNLAWFUL KILLINGS

In June, the government launched a campaign to crackdown on drugs which led to a wave of unlawful killings across the country, many of which may have amounted to extrajudicial executions. These killings followed the election of President Duterte, who repeatedly and publicly endorsed the arrest and killing of those suspected of using or selling drugs. No police officers or private individuals were known to have faced charges for over 6,000 deaths during the year. Witnesses and families of victims feared coming forward in case of reprisals.

The majority of victims were reported to be young men, some of whom were suspected
of using or selling small amounts of methamphetamine. Victims included the Mayor of Albuera, Rolando Espinosa Senior, who was shot dead in his prison cell while being served a search warrant. President Duterte had publicly branded the Mayor a leading drug dealer. Despite an investigation by the National Bureau of Investigations, which recommended that charges be filed against the police officers allegedly responsible, the President promised to protect the police. As a result of the so-called “war on drugs”, at least 800,000 people reportedly “surrendered” to the authorities in fear they would be targeted on suspicion of drug-related offences. Consequently, prisons were severely overcrowded, exacerbating an already acute problem.

Journalists remained at risk, with at least three killed while carrying out their work. Alex Balcoba, a crime reporter for the People’s Brigada, was killed when he was shot in the head in May by an unidentified gunman in Quiapo in the capital Manila, outside his family’s shop. Families of victims marked the seventh anniversary of the Maguindanao massacre in which 32 journalists and another 26 people were killed. No one had been held to account for these crimes by the end of the year.

TORTURE AND OTHER ILL-TREATMENT

Reports of torture and other ill-treatment in police custody continued. In March, police officer Jerick Dee Jimenez was convicted of torturing bus driver Jerryme Corre, and sentenced to a maximum of two years and one month’s imprisonment. It was the first conviction under the 2009 Anti-Torture Act. However, many other cases were still awaiting justice. In July, a postmortem conducted by the Commission on Human Rights of the Philippines recorded torture marks on the bodies of father and son Renato and J.P. Bertes, who were shot dead in police custody.

A bill to establish a National Preventative Mechanism on torture stalled during the year. In May, the UN Committee against Torture expressed concern about torture by police and urged the Philippines to close all places of secret detention where detainees, including children, were subjected to torture or other ill-treatment.

EXCESSIVE USE OF FORCE

The use of unnecessary and excessive force by police continued. In April, the police used force, including firearms, to disperse over 5,000 farmers who had blockaded a national highway in Kidapawan City during a demonstration demanding rice subsidies. At least two people died during the incident and dozens were injured. In July, the Commission on Human Rights of the Philippines published a report which found that excessive and unjustified force had been used by the police during the incident but no police officers were prosecuted for related offences by the end of the year.

HUMAN RIGHTS DEFENDERS

In July, environmentalist Gloria Capitan was killed by two gunmen in Mariveles, Bataan province. She was involved in opposing a coal mining project in her community. In October, the UN CESCR expressed concern at the continuing harassment, enforced disappearances and killings of human rights defenders, and the low level of investigations into, and prosecutions and convictions for these crimes.

DEATH PENALTY

In July, ruling party congressmen proposed bills to reintroduce the death penalty for a wide range of offences. If passed, the punishment, which was abolished in 2006, would apply to crimes including rape, arson, drug trafficking and possession of small amounts of drugs. The bills sparked an outcry from human rights organizations on the grounds that they would violate international human rights law, and would not
deter crime. Bills were also filed proposing to lower to nine years old the age of criminal responsibility.

**ABUSES BY ARMED GROUPS**

Abuses of international human rights and humanitarian law by armed militia continued. More than a year after the 2015 killing of three leaders of the Lumad community in Lianga, Surigao del Sur province, the suspected perpetrators had not been prosecuted and over 2,000 people remained displaced from their homes. In October, anti-mining activist, Jimmy P. Sayman died a day after being shot in an ambush by unidentified gunmen in Montevista town, Mindanao. Local human rights organizations alleged that paramilitaries were responsible.

**RIGHT TO AN ADEQUATE STANDARD OF LIVING, EDUCATION AND JUSTICE**

The UN CESCR condemned the failure to pay the minimum wage for all but 13% of the workforce, and the fact that several sectors were exempt from benefiting from the minimum wage.

1. Philippines: Duterte’s 100 days of carnage (News story, 7 October)
2. Philippines: Historic ruling on police torture following Amnesty International campaign (News story, 1 April)
3. Philippines: Ensure accountability for police use of excessive force against demonstrators (ASA 35/3800/2016)
4. Philippines: Lawmakers must urgently oppose attempts to reintroduce death penalty (ASA 35/5222/2016)

**POLAND**

Republic of Poland  
Head of state: Andrzej Duda  
Head of government: Beata Szydło

The government undertook significant legal reforms, in particular concerning the Constitutional Tribunal. There were 214 legislative amendments and laws enacted since the Law and Justice party came to power in October 2015. The speed of the legal reforms and the lack of adequate consultation with civil society were widely criticized.

**LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS**

Several amendments to the Law on the Constitutional Tribunal deepened the constitutional crisis that started in 2015; they were considered wholly or partially unconstitutional, according to the Constitutional Tribunal’s rulings in March and August.

In January, the European Commission initiated for the first time a structured dialogue with Poland under the Rule of Law Framework giving it until 27 October 2016 to outline steps taken to remedy the crisis. Poland responded that it would not implement the recommendations and that they were “based on incorrect assumptions”.

The judges elected by the previous Parliament were not appointed and the Prime Minister refused to publish several of the Tribunal’s judgments. A July amendment to the Law on the Constitutional Tribunal introduced a requirement to examine cases in sequence of registration, depriving the Tribunal of its case prioritization competence.

Following the adoption of three new laws regarding the Constitutional Tribunal and the appointment of a new Tribunal President, the European Commission raised new concerns and issued a complementary Recommendation in December, giving Poland two months to address the systemic threat to the rule of law in the country.

**JUSTICE SYSTEM**

Under the new Law on Prosecution enacted in January, the functions of Prosecutor General and Minister of Justice were merged and the Prosecutor General’s powers
broadened. These reforms had significant implications for the right to a fair trial and the independence of the judiciary.²

In June, President Duda refused to appoint nine judges nominated for promotion to higher instance courts and one judge nominated for office by the National Council of the Judiciary. No reason was given for the President’s decision.

Counter-terror and security
In June, a new Counter-terrorism Law was enacted, following a fast-track legislative process. It consolidated extensive powers in the hands of the Internal Security Agency with no independent oversight mechanism to prevent abuse and ensure accountability.

Terrorism-related crimes and “incidents” were broadly defined in the law and the accompanying regulation. Foreign nationals were particularly targeted in the new law, which allowed for their covert surveillance, including through wire-tapping, monitoring of electronic communications, telecommunication networks, and devices without judicial oversight for three months, after which the surveillance may be extended by a court order. These measures could be employed if there was a “fear”, rather than a reasonable suspicion, that the person may be involved in terrorism-related activities. The Counter-terrorism Law introduced several other provisions, such as admissibility of illegally obtained evidence, extension of pre-charge detention to 14 days, and the removal of certain safeguards around permissible use of lethal force in the context of counter-terrorism operations.

Under the amended Police Act, surveillance powers were expanded allowing courts to authorize secret surveillance for three months – to be extended to a maximum of 18 months – on the basis of a broad list of crimes and without a requirement to consider proportionality. The amendments also allowed for metadata to be accessed directly by the police without a court order. Confidentiality of information covered by professional privilege, for example, available to criminal defence solicitors, was also compromised as surveillance of lawyers’ communications was not prohibited.³

The UN Human Rights Committee recommended, among other issues, that Poland ensured the Penal Code defined terrorism-related crimes in terms of purpose, narrowly defined their nature and that it provided a precise definition of “terrorist incidents”.

The criminal investigation into Poland's co-operation with the CIA and the hosting of a secret detention site was still pending. The 2015 European Court of Human Rights (ECtHR) judgments in the cases of al-Nashiri and Abu Zubaydah were not fully implemented.

FREEDOM OF EXPRESSION – JOURNALISTS
In July, the National Media Council became operational; it appointed and recalled management and supervisory boards of public media organizations. Its composition and the rules of voting allowed the ruling party to control the Council’s decisions.

The government’s effective control over public media and the resulting restrictions on the freedom of the press resulted in Poland’s drop in the 2016 World Press Freedom Index from place 18 down to 47, out of 180 countries. By the end of the year, 216 journalists and administrative staff in public media organizations were dismissed, forced to resign or transferred to less influential positions, according to the association Society of Journalists. In December, a proposal of the Marshal of the Sejm (lower house of the Parliament) to severely restrict journalists’ access to the Parliament sparked mass protests and a parliamentary crisis, with opposition MPs “occupying” the podium.

FREEDOM OF ASSEMBLY
In December, the Parliament passed a restrictive amendment to the Law on Assemblies, despite negative opinions of the Polish Human Rights Commissioner and the Supreme Court and strong criticism from nearly 200 NGOs. The President did not sign
the amendment, referring it to the Constitutional Tribunal instead.

**DISCRIMINATION**

Serious gaps remained in the law regarding discrimination and hate crimes related to age, disability, gender, gender identity and expression, sexual orientation and social or economic status. In April, the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance was abolished.

**REFUGEES’ AND MIGRANTS’ RIGHTS**

Poland did not accept any refugees from other EU member states under the mandatory relocation quota. The authorities continued to use detention disproportionately for migrants and asylum-seekers.

Civil society organizations reported there were barriers to accessing the asylum procedure, including numerous cases where people were unable to apply for international protection at the Brest/Terespol border crossing between Belarus and Poland. In June, the ECtHR communicated the cases A.B. v Poland and T.K. and S.B. v Poland to the government. They concerned a family of three Russian citizens who tried unsuccessfully to enter Poland and lodge asylum claims at the Brest/Terespol border four times.

**SEXUAL AND REPRODUCTIVE RIGHTS**

Women continued to face systemic difficulties in accessing safe and legal abortion; a petition proposing to further restrict their access was considered before Parliament at the end of the year.

After mass protests and a general women’s strike on 3 October, Parliament rejected a bill which proposed a near total ban on abortion and criminalization of women and girls who obtained an abortion and anyone assisting or encouraging them to have an abortion.  

---

   118th session, 17 October - 04 November 2016 (EUR 37/4849/2016)
2. Poland: Dismantling rule of law? Amnesty International submission for the UN Universal Periodic Review – 27th session of the UPR working group, April/May 2017 (EUR 37/5069/2016)
3. Poland: New surveillance law a major blow to human rights (EUR 37/3357/2016)
4. Poland: Women force historic U-turn on proposed abortion ban (News story, 6 October); A dangerous backward step for women and girls in Poland (News story, 19 September)

---

**PORTUGAL**

**Portuguese Republic**  
Head of state: Marcelo Rebelo de Sousa (replaced Aníbal António Cavaco Silva in March)  
Head of government: António Costa

**Austerity measures restricted the rights of people with disabilities. There were reports of ill-treatment in prisons and of inadequate prison conditions. Discrimination against Roma continued unabated.**

**DISCRIMINATION**

Portugal continued to fail to ensure that hate crimes were prohibited in law, and had not created a national data collection system for hate crimes.

**People with disabilities**

In April, the UN Committee on the Rights of Persons with Disabilities asked Portugal to review austerity measures that have reduced the availability of services for people with disabilities and forced many of them into poverty or extreme poverty. The Committee expressed concern about cuts to resources for inclusive education for children with disabilities and support for their families. These measures had particularly negative effects on women caregivers who in most cases cared for children with disabilities.

**Roma**

In June, the European Commission against Racism and Intolerance reported that Portugal had not fully implemented the measures it had recommended in 2013 to address racism and discrimination towards Roma communities, especially regarding data collection and the simplification of
procedures to report cases of discrimination to the High Commissioner for Migration.

RIGHT TO HEALTH
In June, the Portuguese Observatory on the Health System reported continuing inequalities in accessing health care, in particular for the most marginalized people.

TORTURE AND OTHER ILL-TREATMENT
There were reports of unnecessary or excessive use of force by law enforcement officials throughout the year.

In October, according to a report by a Portuguese NGO, 13 prisoners were beaten by prison guards during the inspection of their cells at Carregueira Prison in the capital Lisbon. At least three of them required hospital treatment as a result.

PRISON CONDITIONS
Prison conditions remained inadequate; in some prisons they were degrading. There was a lack of hygiene, food quality, medical care and access to medicines.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE
In February, Parliament voted to override a presidential veto of a law granting same-sex couples the right to adopt children. The law was initially passed in November 2015; the new law entered into force in March.

REFUGEES’ AND MIGRANTS’ RIGHTS
Thirty-nine refugees previously selected for resettlement in Portugal between 2014 and 2016 had arrived in the country by the end of 2015. The government committed to resettle over 260 refugees in 2016/2017.

Only 781 asylum-seekers were transferred from Greece and Italy to Portugal under the EU relocation mechanism as of the end of the year, out of the 1,742 that Portugal had committed to receive.

In October, the municipal authorities of Amadora forcibly evicted at least four migrant families without meaningful prior consultation and the provision of adequate alternative accommodation.

SEXUAL AND REPRODUCTIVE RIGHTS
In February, the Parliament approved changes to legislation on access to sexual and reproductive health services. The new law removed mandatory psychological and social counselling as a condition for women’s access to abortion.

In May, new legislation was adopted giving all women access to assisted reproductive technology (ART) – including in vitro fertilization and other methods – regardless of their marital status or sexual orientation. This put an end to former restrictions that limited ART to married women or women in a civil partnership with a man.

VIOLENCE AGAINST WOMEN AND GIRLS
In November, the government announced plans to exempt victims of sexual harassment, rape, female genital mutilation, slavery and human trafficking from the payment of judicial costs.

According to data provided by the NGO UMAR, as of November, 22 women had been killed, and there were 23 attempted murders.

PUERTO RICO

Commonwealth of Puerto Rico
Head of state: Barack Obama
Head of government: Alejandro García Padilla

There was progress towards achieving equality and justice in relation to the human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people; however, they continued to face discrimination in terms of their health and wellbeing. The reform of the police continued to have limited impact and incidents of excessive use of force were reported. The new federal law Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) caused serious concern as to its possible repercussions on economic, social and cultural rights, in particular for the most vulnerable groups in society.
RIGHT TO AN ADEQUATE STANDARD OF LIVING

A report compiled by academic organizations and presented to the Inter-American Commission on Human Rights in April raised concerns about the impact of government fiscal austerity measures on the standard of living of Puerto Ricans. There were fears that these measures would trigger an increase in poverty among vulnerable groups and cause increased exclusion, inequality and discrimination.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

Despite recent progress in ensuring the rights of LGBTI people, there were continued reports of violations of rights related to access to health services, particularly for transgender people. The policies of the Department of Health in relation to guaranteeing equal access to health services remained unchanged and, although the government allowed gender to be changed on state identity documents, there were continued reports of incidents of discrimination at the time of issue of identity documents.

Following the introduction of Charter 19, a new internal policy of the Puerto Rican Department of Education which sought to implement an educational curriculum with an integrated gender perspective in the country’s public schools, cases of discrimination and harassment of LGBTI students or those perceived to be LGBTI came to light. There were reports of students being suspended for wearing a uniform or having a hairstyle which were “inconsistent with their biological sex”.

In July, a US federal government directive was published which stipulated that transgender students must be allowed to use bathrooms which correspond to the gender they identify with. This directive had not been fully implemented.

POLICE AND SECURITY FORCES

In 2013, the government signed an agreement with the US Department of Justice aimed at bringing about an in-depth reform of the policies and practices of the Puerto Rican police. This led to the creation of important new policies on areas such as control of the use of force and interaction with members of the transgender community. However, civil society organizations expressed serious concern over the legitimacy of the reform due to the lack of transparency and genuine participation of civil society in the process. Internal accountability mechanisms for the police remained deficient and an external monitoring mechanism had still not been put in place, despite repeated calls from civil society for this to be implemented.

Civil society organizations continued to report excessive use of force by the police, death threats by police against citizens and excessive use of electric-shock weapons, including on people with mental health problems or people who did not comply with police orders.

DEATH PENALTY

Although the death penalty was abolished in Puerto Rico in 1929, it could still be imposed under US federal law. No death penalty cases were reported in 2016.

QATAR

State of Qatar
Head of state: Sheikh Tamim bin Hamad bin Khalifa Al Thani
Head of government: Sheikh Abdullah bin Nasser bin Khalifa Al Thani

The authorities unduly restricted the rights to freedom of expression, association and peaceful assembly. One prisoner of conscience was pardoned and released. Migrant workers faced exploitation and abuse. Discrimination against women remained entrenched in both law and practice. The courts imposed death sentences; no executions were reported.
BACKGROUND
Qatar remained part of the Saudi Arabia-led international coalition engaged in armed conflict in Yemen (see Yemen entry).

FREEDOMS OF EXPRESSION,
ASSOCIATION AND ASSEMBLY
The authorities continued to unduly restrict the rights to freedom of expression, association and peaceful assembly. The authorities did not permit the existence of independent political parties, and worker associations were only permitted for Qatari citizens if they met strict criteria. Unauthorized public gatherings were not permitted and were dispersed, and laws criminalizing expression deemed offensive to the Emir were maintained.

The poet and prisoner of conscience Mohammed al-Ajami (also known as Ibn Dheeb) was released on 15 March under an unconditional pardon granted by the Emir. He had been serving a 15-year prison sentence imposed in 2012 for writing and reciting poems deemed offensive to the Emir and the state.

The independent online news outlet Doha News was blocked within Qatar for “licensing issues”. Doha News’ independent journalism had covered sensitive topics in Qatar, which is likely to have led to their blocking by the two local internet service providers.

MIGRANT WORKERS’ RIGHTS
Migrant workers, who comprise a large majority of Qatar’s population, continued to face exploitation and abuse. Law No.21 of 2015, which took effect on 13 December 2016, more than a year after its enactment, replaced the 2009 Sponsorship Law, introducing some minor improvements such as the removal of the two-year ban on migrant workers returning to Qatar after leaving. However, it retained key elements of the 2009 law that facilitate serious human rights abuses, including forced labour. Under the new law, migrant workers were still required to obtain an exit permit from their employer to leave Qatar, violating their right to freedom of movement. If workers were blocked from leaving, they could appeal; however, no official guidance on how appeals would be determined was published. The new law also allowed employers to prevent migrant workers from changing their jobs for up to five years, depending on the terms of their contracts, and allowed employers to retain migrant workers’ passports with their written consent, enshrining into law the practice of passport retention which is used by exploitative employers to exert control over migrant workers.

The International Labour Organization (ILO) visited Qatar in March 2016. The high-level delegation assessed measures taken by the government to address issues raised in a complaint filed in relation to violation of the Forced Labour Convention and Labour Inspection Convention. The delegation’s report acknowledged steps taken by the Qatari authorities to address migrant labour abuse but noted many remaining challenges. The ILO governing body deferred its decision on whether to appoint a commission of inquiry on Qatar until March 2017.

The Wage Protection System, which made payment of wages by electronic bank transfer mandatory, was implemented throughout 2016. According to government figures, by November some 1.8 million people were...
covered by the system. Some migrant workers employed on high-profile construction projects were relocated to the Labor City and Barwa Al Bahara complexes, built by the government to accommodate up to 150,000 low-income migrant workers with better conditions and facilities. A 2010 law effectively prohibiting migrant workers from living in urban residential districts continued to restrict the supply of available housing for migrant workers, thereby exacerbating overcrowding elsewhere and condemning most migrant workers to inadequate living conditions. In April, census data published by the Ministry of Development Planning and Statistics indicated that 1.4 million people were living in labour camps.

Domestic workers, mostly women, remained at particular risk of exploitation and abuse as they continued to be excluded from existing labour protections. A long-proposed law to protect domestic workers’ rights continued to be delayed. In July, Qatar’s National Human Rights Committee recommended the introduction of a law to protect the human rights of domestic migrant workers and provide them with access to justice for abuses.

In response to evidence that migrant workers had been subjected to abuse while refurbishing the Khalifa International Stadium and surrounding Aspire Zone sporting complex – a 2022 World Cup venue – the government announced in April that the Ministry of Administrative Development, Labour and Social Affairs would investigate the contractors involved in the abuses. The Supreme Committee for Delivery and Legacy, which is responsible for overseeing all 2022 World Cup projects, announced “rectification” programmes for contractors involved in the abuses. The Supreme Committee, which is responsible for overseeing all 2022 World Cup projects, announced “rectification” programmes for contractors involved in the abuses. The Supreme Committee, which is responsible for overseeing all 2022 World Cup projects, announced “rectification” programmes for contractors involved in the abuses. The Supreme Committee announced “rectification” programmes for contractors involved in the abuses. The Supreme Committee announced “rectification” programmes for contractors involved in the abuses. The Supreme Committee announced “rectification” programmes for contractors involved in the abuses.

**Women’s Rights**

Women continued to face discrimination in law and practice and were inadequately protected against violence within the family. Personal status laws continued to discriminate against women in relation to marriage, divorce, inheritance, child custody, nationality and freedom of movement.

**Death Penalty**

The courts imposed new death sentences and others were confirmed by the Appeals Court; no executions were reported.

**Romania**

Republic of Romania

Head of state: Klaus Iohannis
Head of government: Dacian Julien Cioloș

Roma continued to experience systemic discrimination, forced evictions and other human rights violations. The Council of Europe Convention on preventing and combating violence against women and domestic violence entered into force in September. A public hearing was held in the European Court of Human Rights (ECtHR) case against Romania for complicity in the US-led rendition and secret detention programmes, but a ruling in the four-year-old case remained pending. Following parliamentary elections in December, Sorin Mihai Grindeanu was nominated as Prime Minister by the President and was to take office on 4 January 2017.

**Discrimination – Roma**

In his April report, the UN Special Rapporteur on extreme poverty and human
rights called on the authorities to acknowledge the severe discrimination against Roma, to implement the 2015-2020 Roma Inclusion Strategy and take targeted measures in education, health care and employment, including the introduction of legal safeguards against forced evictions and improved access to social housing. In June, the Council of Europe Commissioner for Human Rights raised similar concerns.

**Housing rights – forced eviction**

In March, the ECtHR issued interim measures urging the authorities to stop the eviction of 10 Roma families in the town of Eforie. This would have been the third forced eviction of the families who were among the 101 people, including 55 children, whose homes had been demolished in 2013. In June, the Constanţa County Court ruled that the 2013 demolition was unlawful and the municipality should provide the families with adequate housing. At the end of year, their housing situation remained precarious.

The 300 Roma forcibly evicted from the centre of Cluj-Napoca in 2010 and relocated to Pata Rat area – known for its waste dump, chemical dump and two already existing Roma settlements – were still fighting for justice in domestic courts, assisted by the NGO European Roma Rights Centre (ERRC). Toxic smoke from several fires on newly established waste dumps caused inhabitants respiratory issues, according to residents and NGOs. The UN Special Rapporteur on extreme poverty and human rights visited the Pata Rat area and noted the “primitive conditions”, including no electricity, as well as damp and overcrowded accommodation.

**Right to education**

In May, the NGOs ERRC and Romani CRISS urged the European Commission to launch an investigation into breaches by Romania of EU anti-discrimination legislation with respect to persistent patterns of segregation of Roma children in schools. The Centre for Advocacy and Human Rights in partnership with the Centre for Resources for Public Participation surveyed 112 municipalities in northeast Romania and found that 82 out of the 394 schools across the region displayed some form of segregation of Roma children. In November and December, the Ministry of Education held a public consultation on a draft framework which prohibited school segregation. The framework expanded the criteria for inclusion in education, set new legal obligations and sanctions for authorities and defined the role of a National Commission for Desegregation and Inclusion.

**POLICE AND SECURITY FORCES**

In January, the ECtHR ruled that Romania had violated the rights of four members of the Boaca family. It found that they were subjected to torture and other ill-treatment and discriminated against. In March 2006, police officers had physically assaulted them in the police station in Clejani in Giurgiu County. Ion Boaca, father of the other three Roma victims, required 19 days of hospitalization after being kicked in the ribs and punched.

In June, the Committee of Ministers of the Council of Europe closed the supervision of the implementation of a group of key ECtHR judgments – known as the Barbu Anghelescu group – concerning police brutality against Roma and ineffective investigations, including possible racist motives. ERRC, Romani CRISS and APADOR-Helsinki Committee warned against the decision arguing that the government had not taken adequate measures to execute the judgments and tackle, among other issues, widespread institutional racism.

**DISCRIMINATION – PEOPLE WITH DISABILITIES**

The monitoring mechanism required by the UN Convention on the Rights of Persons with Disabilities, ratified by Romania in 2011, was created but was not operational at the end of 2016.

**RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE**

According to the Civil Code, same-sex marriages and civil unions were prohibited
and those contracted abroad not recognized. The case of a same-sex couple seeking recognition of their marriage officiated in Belgium remained under examination by the Constitutional Court. In November, the Constitutional Court sought preliminary ruling from the European Court of Justice on the harmonic interpretation of EU legislation on freedom of movement and residence for same-sex couples.

The Coalition for Family – a group of some 30 associations and foundations – ran a campaign until May to put forward a legislative proposal to restrict the constitutional definition of “family” from “marriage between spouses” to “marriage between a man and a woman”. In July, the Constitutional Court allowed the proposal to be put to Parliament to decide on whether or not to hold a national referendum. The decision remained pending at the end of the year.

In April, the ECtHR found that authorities failed to carry out an effective investigation into the attack – including its potentially discriminatory motive – on Bucharest Pride march participants in 2006.

COUNTER-TERROR AND SECURITY

In June, the ECtHR held a public hearing in the case against Romania for complicity in the US-led rendition and secret detention programmes, which the CIA operated globally in the aftermath of the 11 September 2001 attacks in the USA. Abd al-Rahim al-Nashiri, a Saudi Arabian national currently held in the US detention centre at Guantánamo Bay, Cuba, had lodged an application against Romania in 2012 alleging that he was forcibly disappeared and tortured at a secret CIA detention centre in Bucharest between 2004 and 2006, and that Romania had failed to effectively investigate his secret detention. The hearing came after the Council of Europe Secretary General summarily closed in February 2016 its Article 52 inquiry into European states’ involvement in the CIA operations – a severe blow to accountability. The Romanian government denied the allegations and argued an investigation was ongoing. A judgment in the case remained pending at the end of the year.

VIOLANCE AGAINST WOMEN AND GIRLS

According to General Police Inspectorate data, 8,926 cases of domestic violence were registered in the first six months of 2016 – 79% of the victims were women and 92.3% of the aggressors were men. National NGOs reported that the actual number of cases was much higher. In July, NGOs requested that the government expedite the adoption of measures to combat violence against women and domestic violence. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) entered into force in September.

VIOLENCE AGAINST WOMEN AND GIRLS

According to General Police Inspectorate data, 8,926 cases of domestic violence were registered in the first six months of 2016 – 79% of the victims were women and 92.3% of the aggressors were men. National NGOs reported that the actual number of cases was much higher. In July, NGOs requested that the government expedite the adoption of measures to combat violence against women and domestic violence. The Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) entered into force in September.

RUSSIAN FEDERATION

Russian Federation
Head of state: Vladimir Putin
Head of government: Dmitry Medvedev

Restrictions on rights to freedom of expression, association and peaceful assembly increased. Prosecutions of those who had taken part in anti-government protests in Bolotnaya Square continued and gave rise to further concerns regarding the respect for fair trial standards. Human rights defenders faced fines or criminal prosecution because of their activities. The first criminal prosecution for failure to comply with the “foreign agents” law was initiated. A number of individuals were charged under anti-extremism legislation for criticizing state policy and publicly displaying or possessing materials alleged to be extremist. There were reports of torture and other ill-treatment in
penitentiary institutions, and prisoners’ lives were at risk because of inadequate medical care in prisons. Serious human rights violations continued to be reported in the context of security operations in the North Caucasus. People criticizing the authorities in Chechnya faced physical attacks by non-state actors and prosecution, and human rights defenders reporting from the region faced harassment from non-state actors. Russia faced international criticism in relation to allegations of war crimes by its forces in Syria. The International Criminal Court (ICC) continued its preliminary examination of the situation in Ukraine, which included crimes committed in eastern Ukraine and Crimea. Russia failed to respect the rights of asylum-seekers and refugees.

LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS

On 7 July, amendments to anti-extremism legislation known as the “Yarovaya package” were passed. The amendments were largely inconsistent with Russia’s international human rights obligations as they banned any form of missionary activity outside of specially designated religious institutions, obliged providers of information technology to store records of all conversations for six months and metadata for three years, increased the maximum punishment for extremism from four to eight years in prison, and increased the penalty for encouraging people to take part in mass disturbances from five to 10 years in prison.

FREEDOM OF ASSEMBLY

In March, the legislation governing public assemblies was extended to “unauthorized” motorcades. In August, this new provision was used to prosecute a group of farmers from Kuban in southern Russia who were travelling to the capital, Moscow, in tractors and private cars to protest against land grabbing by agricultural holding companies. Their leader, Aleksei Volchenko, was sentenced to 10 days’ administrative detention for taking part in an “unsanctioned” demonstration after participating in a meeting between the farmers and the deputy regional Plenipotentiary of the President. Other participants of the meeting paid fines or served short periods of administrative detention.

Four people were still serving their sentences for taking part in the Bolotnaya Square demonstration in Moscow on 6 May 2012, and two more people were charged in connection with the events. On 5 January, the European Court of Human Rights (ECtHR) found that Yevgeniy Frumkin’s right to freedom of peaceful assembly had been violated and that he had been arbitrarily detained for 15 days for “failing to obey police orders” following his participation in the Bolotnaya Square protest. The Court found that Yevgeniy Frumkin’s arrest, detention and administrative punishment had been “grossly disproportionate” and designed to discourage him and others from participating in protest rallies or engaging in opposition politics.

On 12 October, Dmitry Buchenkov was charged with taking part in mass disorder and six counts of “non-lethal force” against police officers during the Bolotnaya Square demonstration. He claimed that he had been in Nizhny Novgorod at the time and had not participated in the demonstration. He remained in detention at the end of the year, having been detained since December 2015.

FREEDOM OF ASSOCIATION – HUMAN RIGHTS DEFENDERS

During the year, dozens of independent NGOs receiving foreign funding were added to the list of “foreign agents”, including the International Historical and Human Rights Society of Memorial.

NGOs continued to face administrative fines for failing to comply with legislation on “foreign agents”. On 24 June, Valentina Cherevatenko, the founder and Chair of the Women of the Don Union, was informed of criminal proceedings initiated against her for “systematic evasion of duties imposed by the law on non-profit organizations performing
the functions of a foreign agent”, charges punishable by up to two years in prison. This was the first time the relevant Criminal Code article had been invoked since its introduction in 2012. The criminal investigation against Valentina Cherevatenko was ongoing at the end of the year. Staff of the Women of the Don Union were frequently questioned by investigators who also monitored all the organization’s publications.

Lyudmilla Kuzmina, a retired librarian and the co-ordinator of the Samara branch of the election watchdog Golos, was sued by the tax authorities for 2,222,521 roubles (€31,000). The tax authorities classified a grant given to Golos by the US funding organization USAID as profit following the declaration of the organization as “undesirable”, and claimed that Lyudmilla Kuzmina had falsely declared the money a grant. On 14 March 2016, the tax authorities successfully appealed against a decision taken by the Samara District Court on 27 November 2015 which found that Lyudmilla Kuzmina had not defrauded the government of that amount, and had not used the money for her own gain. Following the successful appeal by the tax authorities, bailiffs confiscated her car and her pension payments were stopped.

**FREEDOM OF EXPRESSION**

Anti-extremism legislation continued to be used excessively in violation of the right to freedom of expression. According to the NGO SOVA Centre, 90% of all convictions under anti-extremism legislation were for statements and reposts on social media websites. On 3 November, following a request from SOVA Centre and other NGOs, the Plenum of the Supreme Court issued guidelines to judges on the use of anti-extremism legislation specifying that in order to qualify as incitement to hatred, statements need to include an element of violence such as calls for genocide, mass repression, deportation or calls for violence.

On 20 February, Yekaterina Vologzheninova, a shop assistant from Yekaterinburg in the Ural region, was found guilty of “inciting hatred and enmity on the grounds of ethnicity” under Article 282 of the Criminal Code following her online criticism of Russia’s annexation of Crimea and Russia’s military involvement in Donbass, eastern Ukraine, which consisted primarily of reposts of articles from Ukrainian media. Yekaterina Vologzheninova, a single mother and sole carer for her elderly mother, served 320 hours of unpaid “corrective labour”. The judge also ruled that her computer must be destroyed as a “crime weapon”.

The trial of Natalya Sharina, prisoner of conscience and director of the state-run Library of Ukrainian Literature in Moscow, began on 2 November. She was accused of “inciting hatred and enmity through misuse of office” under Article 282 of the Criminal Code and of fraudulent use of library funds, offences for which she could face up to 10 years’ imprisonment. A number of books classified as “extremist” were purportedly found among uncatalogued literature in the library. She remained under house arrest which began on 30 October 2015.

**NORTH CAUCASUS**

Serious human rights violations, including enforced disappearances and alleged extrajudicial executions committed in the course of security operations continued to be reported from the North Caucasus. Human rights defenders were also at risk. On 9 March, two members of the human rights organization Joint Mobile Group (JMG), along with their driver and six journalists from Russian, Norwegian and Swedish media, were assaulted while travelling from North Ossetia to Chechnya. Their minibus was stopped by four cars near a security checkpoint at the administrative border between Ingushetia and Chechnya. Twenty masked men dragged them out of the vehicle and severely beat them before setting fire to the minibus. Two hours later, the JMG’s office in Ingushetia was ransacked. On 16 March, the JMG’s leader Igor Kalyapin was asked to leave a hotel in the Chechen capital Grozny by the manager because he “did not love” the Chechen leader Ramzan Kadyrov. Igor Kalyapin was then punched and pelted with
eggs, cakes, flour and disinfectant by an angry mob.

On 5 September, Zhalaudi Geriev, an independent journalist known for his criticism of the leadership of Chechnya, was sentenced to three years’ imprisonment by the Shali District Court of Chechnya for possessing 167g of marijuana. At his trial he withdrew his confession to the drugs charge, saying that three men in plain clothes had detained him on 16 April, forced him into a car and driven him to a forest outside Grozny, where he was tortured before being handed over to law enforcement officers who forced him to “confess”.

The Chechen leadership continued to exercise direct pressure on the judiciary. On 5 May, Ramzan Kadyrov called a meeting of all judges and forced four of them to resign. There was no response from the federal authorities.

UNFAIR TRIALS

Ukrainian nationals Mykola Karpyuk and Stanislav Klykh were sentenced after an unfair trial at the Supreme Court in Chechnya to 22-and-a-half and 20 years’ imprisonment respectively on 26 May. The sentence was confirmed on appeal at the Russian Supreme Court. They were convicted of leading and fighting in an armed group that allegedly killed 30 Russian soldiers during the conflict in Chechnya (1994 to 1996). Both men said that they were tortured following their arrests in March 2014 and August 2014 respectively. Their lawyers were denied access and basic information about their clients’ whereabouts for several months after their arrest. Stanislav Klykh, who had no history of mental illness, appeared severely disturbed throughout the trial, which began in October 2015, possibly as a result of torture. Mykola Karpyuk’s lawyer alleged that vital evidence for the defence that supported his client’s alibi was left out of the case file. The judge refused to allow witnesses to be interviewed in Ukraine.

TORTURE AND OTHER ILL-TREATMENT

Torture and other ill-treatment continued to be widespread and systematic during initial detention and in prison colonies.

On 30 August, Murad Ragimov and his father were beaten and tortured by officers from the Ministry of the Interior’s Special Response Unit for two hours in the kitchen of their home in Moscow. The officers accused Murad Ragimov of killing a policeman in Dagestan, and of fighting for the armed group Islamic State in Syria. Murad Ragimov's cousin was handcuffed to the kitchen table while officers tortured Murad Ragimov using an electric-shock baton, and suffocating him with a plastic bag. Finally, the officers claimed to find drugs in his pockets. Murad Ragimov was taken to the police station and remained in detention at the end of the year facing trial on drugs charges.

Ildar Dadin said in a letter to his wife that he had been subjected to torture and other ill-treatment in the prison colony in Segezha in the Karelia region of Russia. He described how he was repeatedly beaten by groups of 10 to 12 prison guards, including on one occasion by the director of the prison colony. He described his head being pushed down a toilet and being hung by handcuffs and threatened with rape. Ildar Dadin was placed in a punishment cell seven times between his arrival in the prison colony in September and the end of the year. Following his allegations, the prison authorities carried out an inspection and asserted that there had been no ill-treatment. In 2015, Ildar Dadin was the first person to be convicted for participating in peaceful demonstrations under Article 212.1 of the Criminal Code, which criminalized violating the regulations for the conduct of public meetings. He was sentenced to three years’ imprisonment, reduced to two-and-a-half years on appeal.

Failure to provide adequate medical care

During the course of the year the European Court of Human Rights found in 12 cases that prisoners in Russia had been subjected to torture or other ill-treatment because of
failure to provide adequate medical care in prisons and pre-trial detention centres. On 27 April, in a report to the Federal Council, the Prosecutor General stated that lack of antiretroviral drugs in prisons was placing at risk the lives of prisoners living with HIV. According to a report by the NGO Zona Prava, released in November, prison health services were critically underfunded, resulting in shortages of antiretroviral drugs for treating HIV. The report also found that many conditions were only diagnosed at the critical stage, and medical staff who were employees of the Prison Service were not sufficiently independent. The law in principle allowed for early release on health grounds, but this was granted in only one in five cases where the prisoner requested early release.

Amur Khakulov died in a prison hospital in Kirov region, central Russia, of kidney failure in early October. On 15 June, a court had refused to release Amur Khakulov on medical grounds despite a medical panel’s recommendation that he be released. Amur Khakulov had been in detention since October 2005; according to his family he developed chronic kidney disease while in detention.

ARMED CONFLICT – SYRIA
Together with the Syrian government, Russia carried out indiscriminate attacks and direct attacks on civilians and civilian objects in Syria, including civilian residential areas, medical facilities and aid convoys, causing thousands of civilian deaths and injuries.

INTERNATIONAL JUSTICE
On 14 November the Prosecutor of the ICC said that the situation within the territory of Crimea and Sevastopol amounted to an international armed conflict between Russia and Ukraine. The ICC Prosecutor was conducting an assessment as to whether the same was true for eastern Ukraine.

On 16 November, President Putin announced that Russia no longer intended to become a party to the Rome Statute of the ICC, which it signed in 2000 but did not ratify.

REFUGEES’ AND MIGRANTS’ RIGHTS
Russia continued to return asylum-seekers, refugees and migrant workers to Uzbekistan and other countries despite the real risk that they would be tortured and otherwise ill-treated. In many cases the individuals were deported for overstaying their visa or not having the correct documents under the Administrative Code, which does not require the court to take into account the seriousness of the offence committed, the circumstances of the individual and any potential consequences for them if expelled from Russia, nor does it provide for the individual to receive free legal advice.

On 1 July, Uzbekistani asylum-seeker Olim Ochilov was forcibly returned from Russia to Uzbekistan in blatant disregard of interim measures issued by the ECtHR on 28 June to stop his forcible return to Uzbekistan, where he would be at real risk of torture.

1. Russian Federation: Farmers and truck drivers imprisoned for a peaceful protest against corruption (EUR 46/4760/2016)
2. Russian Federation: Urgent Action: Victim of unfair trial, health at risk (EUR 46/4398/2016)
3. Uzbekistan: Fast track to torture, abductions and forcible returns from Russia to Uzbekistan (EUR 62/3740/2016); Uzbekistan: Asylum-seeker returned from Russia to Uzbekistan in blatant violation of international law (EUR 62/4488/2016)

RWANDA
Republic of Rwanda
Head of state: Paul Kagame
Head of government: Anastase Murekezi

In the run-up to presidential elections in 2017, the environment for free debate and dissent continued to be hostile. High-ranking army officers were handed heavy sentences after a flawed trial.

BACKGROUND
President Paul Kagame announced a substantial cabinet reshuffle in October and the closure of the Ministry for Internal
Security, whose responsibilities were taken over by the Ministry of Justice.

Rwanda hosted the African Union Summit in July.

FREEDOMS OF ASSOCIATION AND ASSEMBLY

In March, the Democratic Green Party of Rwanda, a registered opposition political party, announced that it would not participate in the 2017 presidential elections if the government did not respond to its demands for political and electoral reforms. The Rwanda Governance Board rejected the requested reforms in September. The party nominated their president Dr Frank Habineza as their presidential candidate on 17 December.

The United Democratic Forces (FDU-Inkingi), an unregistered opposition political party, continued to face serious challenges. Party member Illuminée Iragena went missing on her way to work on 26 March. People close to her believe she was unlawfully detained and tortured, and may have died. Family members who requested a police investigation were not given an official response.

Another FDU-Inkingi member, Léonille Gasengayire, was arrested and detained for three days in March after visiting the party’s president, Victoire Ingabire, in Kigali Central Prison. She was arrested again in August in Kivumu, Rutsiro district, and charged with inciting insurrection. She remained in custody awaiting trial.

CRIMES UNDER INTERNATIONAL LAW

Individuals suspected of involvement in the 1994 genocide faced trial in Rwanda and Sweden.

In March, the Congolese authorities transferred Ladislas Ntaganzwa to Rwanda to stand trial on charges of genocide and crimes against humanity, in line with an arrest warrant issued by the UN Mechanism for International Criminal Tribunals – the body responsible for following up the work of the International Criminal Tribunal for Rwanda, which closed in December 2015.

In April, Rwanda’s High Court sentenced to life imprisonment Léon Mugesera, extradited from Canada in 2012. He was convicted of incitement to commit genocide, inciting ethnic hatred and persecution as a crime against humanity. He was acquitted of preparing and planning the genocide and conspiracy to commit genocide.

In May, a court in Sweden convicted Claver Berinkindi of genocide and sentenced him to life in prison. Damages of US$3,900 to 13,000 were awarded to 15 people who had witnessed the loss of a relative or had survived the threat of being killed themselves.
In December, a French court confirmed the 25-year prison sentence of Rwandan former intelligence chief Pascal Simbikangwa for genocide and complicity in crimes against humanity.

Other action was taken against people suspected of genocide-related crimes.

In July, Enoch Ruhigira, who in 1994 was chief of staff of the then President, Juvenal Habyarimana, was arrested in Germany at the request of the Rwandan authorities, who are seeking his extradition on genocide charges.

On 28 September, university professor Léopold Munyakazi was deported from the USA to Rwanda. He was charged with committing genocide, complicity in genocide, conspiracy to commit genocide, extermination and genocide negation. He had been arrested after the genocide, but was released in 1999 due to a lack of evidence. Rwanda issued an international warrant for his arrest in 2006 a month after he gave a speech in which he described the massacres of 1994 as fratricide rather than genocide. In a hearing in October, Léopold Munyakazi pleaded not guilty.

On 12 November, genocide suspects Jean-Claude Iyamuremye and Jean-Baptiste Mugimpwa were extradited from the Netherlands and transferred to Kigali Central Prison. On 17 November, Henri Jean-Claude Seyoboka was deported from Canada, accused of involvement in the genocide. He had not disclosed his military background in his asylum application.

UNFAIR TRIALS
On 31 March, the Military High Court of Kanombe sentenced Colonel Tom Byabagamba and retired Brigadier General Frank Rusagara to 21 and 20 years in prison respectively. Both were found guilty of inciting insurrection and tarnishing the image of the government when in a leadership position. In violation of their right to freedom of expression, their conviction was based on accusations of sharing critical online articles by email and for comments made in social gatherings. Colonel Byabagamba was additionally convicted of concealing evidence and for contempt of the flag, and stripped of his military rank and decorations. Frank Rusagara was additionally convicted of illegal possession of weapons. His former driver, retired Sergeant François Kabayiza, was sentenced to five years’ imprisonment for concealing evidence. An appeal was lodged against the verdict.

The judges failed to address adequately François Kabayiza’s complaints in court that he had been tortured during interrogation and his request for the resulting testimony to be set aside. The court found that he had not provided evidence that he was tortured, in violation of the principle that the prosecution bears the burden of proving beyond reasonable doubt that evidence was obtained lawfully. Rwanda’s law on evidence and its production prohibits the use of evidence obtained through torture in court proceedings.

As both Frank Rusagara and François Kabayiza were retired from the military, their lawyers argued that they should not be tried in a military tribunal and asked for the cases to be separated. This was refused. Despite repeated requests, Frank Rusagara was not permitted to call his wife in the UK before her death from terminal cancer in August.

REFUGEES AND ASYLUM-SEEKERS
Burundians continued to seek asylum in Rwanda, although at a slower rate than in 2015. At the end of 2016, Rwanda was hosting over 80,000 Burundian refugees. Following allegations of recruitment and military training of refugees from camps in Rwanda, the government announced in February that it planned to relocate Burundian refugees to third countries. It later clarified that it had no relocation plans and would continue to receive refugees from Burundi.

Reports continued of Eritrean and Sudanese asylum-seekers being sent from Israel to Rwanda (see Israel and the Occupied Palestinian Territories entry). In a joint press conference with President Kagame during his visit to Israel on 6 July,
Israeli Prime Minister Benjamin Netanyahu said that these were not asylum-seekers but “job seekers”. President Kagame said the two countries were discussing the issue.

**SAUDI ARABIA**

**Kingdom of Saudi Arabia**
Head of state and government: King Salman bin Abdul Aziz Al Saud

The authorities severely curtailed the rights to freedom of expression, association and assembly, detaining and imprisoning critics, human rights defenders and minority rights activists on vaguely worded charges. Torture and other ill-treatment of detainees remained common, particularly during interrogation, and courts continued to accept torture-tainted “confessions” to convict defendants in unfair trials. Women faced discrimination in both law and practice and were inadequately protected against sexual and other violence. The authorities continued to arrest, detain and deport irregular migrants. Courts imposed many death sentences, including for non-violent crimes and against juvenile offenders; scores of executions were carried out. Coalition forces led by Saudi Arabia committed serious violations of international law, including war crimes, in Yemen.

**BACKGROUND**

Saudi Arabia faced growing economic problems due to the fall in world oil prices and the cost of its continued military intervention in the armed conflict in Yemen. This was reflected by reduced state spending on social welfare and on construction leading to the laying off of thousands of mostly south Asian migrant workers. In April, the authorities launched “Vision 2030”, a plan to diversify the economy and end the country’s dependence on income from fossil fuel extraction. In September, the Cabinet announced cuts to government ministers’ salaries and bonuses paid to state employees.

Relations between Saudi Arabia and Iran continued to deteriorate, exacerbated by their support for opposing sides in the region’s conflicts. Following the government’s execution of prominent Shi’a Muslim Sheikh Nimr al-Nimr and others on 2 January, protesters stormed the Saudi Arabian embassy in Iran’s capital, Tehran, and set it alight, prompting Saudi Arabia to sever diplomatic relations with Iran and expel Iranian diplomats. The Tehran authorities prohibited Iranians from attending the annual Hajj pilgrimage to Mecca in Saudi Arabia.

On 4 July, suicide bombers carried out apparently co-ordinated attacks on one of Islam’s holiest sites in Medina, the US Consulate in Jeddah, and a Shi’a mosque in Qatif, killing four people.

In September, the US Congress voted by a large majority to overturn US President Barack Obama’s veto of the Justice Against Sponsors of Terrorism Act (JASTA), opening the way for families of those killed in the 11 September 2001 terrorist attacks in the USA to seek damages from the Saudi Arabian government.

In October, the UN Committee on the Rights of the Child urged the government to immediately halt the execution of death row prisoners sentenced for crimes allegedly committed when they were under 18; to immediately release all children sentenced to death after unfair trials and to commute the sentences of others; and to “unambiguously” prohibit by law the sentencing to death of offenders aged under 18 at the time of their alleged crime.

**ARMED CONFLICT IN YEMEN**

Throughout the year the Saudi Arabia-led military coalition supporting the internationally recognized government in Yemen continued to bomb areas controlled or contested by Huthi forces and their allies in Yemen, killing and injuring thousands of civilians. Some attacks were indiscriminate, disproportionate or directed against civilians and civilian objects including schools,
hospitals, markets and mosques. Some coalition attacks amounted to war crimes. The coalition used armaments supplied by the US and UK governments, including internationally banned cluster bombs that are inherently indiscriminate and pose a continuing risk to civilians because of their frequent failure to detonate on initial impact. In December the coalition admitted that its forces had used UK-manufactured cluster munitions in 2015 and stated that it would not do so in the future. The US and UK governments continued to assist the coalition with arms, training, intelligence and logistical support, despite the serious violations of international law committed by its forces in Yemen.

In June the UN Secretary-General removed Saudi Arabia from a list of states and armed groups responsible for serious violations of children’s rights during conflict after the government threatened to cut its funding support for key UN programmes.

Huthi forces and their allies repeatedly carried out indiscriminate cross-border attacks, shelling civilian populated areas such as Najran and Jazan in southern Saudi Arabia, killing and injuring civilians and damaging civilian objects.

FREEDOMS OF EXPRESSION, ASSOCIATION AND ASSEMBLY

The authorities maintained tight restrictions on freedom of expression and repressed dissent. They harassed, arrested and prosecuted critics, including writers and online commentators, political and women’s rights activists, members of the Shi’a minority, and human rights defenders, imprisoning some after courts sentenced them to prison terms on vague charges.

In March, the Specialized Criminal Court (SCC) in the capital, Riyadh, sentenced journalist Alaa Brinji to five years in prison and a fine, followed by an eight-year travel ban, for comments he posted on Twitter.

Also in March, the SCC sentenced writer and Islamic scholar Mohanna Abdulaziz al-Hubail to six years’ imprisonment followed by a six-year travel ban after convicting him in his absence on charges that included “insulting the state and its rulers”, inciting and participating in demonstrations, and “being in solidarity with the detained members” of the Saudi Civil and Political Rights Association (ACPRA) held as prisoners of conscience. The SCC also ordered the closure of his Twitter account.

The authorities did not permit the existence of political parties, trade unions or independent human rights groups, and continued to arrest, prosecute and imprison those who set up or participated in unlicensed organizations.

All public gatherings, including peaceful demonstrations, remained prohibited under an order issued by the Ministry of the Interior in 2011. Some who previously defied the ban were arrested and imprisoned. Strikes remained extremely rare but in September foreign and Saudi Arabian nationals employed at a private hospital in Khobar took strike action to protest against months of unpaid wages.

HUMAN RIGHTS DEFENDERS

The authorities continued to arrest, detain and prosecute human rights defenders on vague and overly broad charges using anti-terrorism legislation and laws designed to stifle peaceful criticism. Those detained, on trial or serving prison sentences included several members of ACPRA, an independent human rights organization formed in 2009, which the authorities closed down in 2013.

In May the SCC sentenced Abdulaziz al-Shubaily, one of ACPRA’s founders, to eight years in prison followed by an eight-year travel ban and a ban on communicating through social media. He was convicted of defaming and insulting senior judges under the anti-cybercrime law. Other charges against him included “communicating with foreign organizations” and providing information on human rights violations to Amnesty International.

In October, Mohammad al-Otaibi and Abdulllah al-Attawi, both co-founders of the Union for Human Rights, were brought to trial before the SCC. Both men were
presented with a list of charges related to their human rights work including, among other things, “participating in setting up an organization and announcing it before getting an authorization” and “dividing national unity, spreading chaos and inciting public opinion”.

Scores of other activists and human rights defenders continued to serve lengthy prison sentences on similar charges based on their peaceful exercise of their human rights.

In January, security officials briefly detained human rights defender Samar Badawi in connection with her activities in campaigning for the release of her former husband, the imprisoned human rights lawyer Waleed Abu al-Khair.

COUNTER-TERROR AND SECURITY
The authorities said that the security forces had rounded up and detained hundreds of people they suspected of terrorism-related offences, including alleged supporters and affiliates of the armed groups Islamic State and al-Qa’ida, but provided few details. Some detainees were held in the Mohammed bin Naif Counselling and Care Centre, a centre designated for “terrorists” and those “following deviant thought”.

The US authorities transferred nine detainees – all Yemeni nationals – from their Guantánamo Bay detention facility in Cuba to Saudi Arabia in April.

Human rights defenders and those who expressed political dissent continued to be equated to “terrorists”. After being released from al-Ha’ir prison in Riyadh where he served a four-year term, Mohammed al-Bajadi, a human rights defender and ACPRA founder was held for a further four months in the Mohammed bin Naif Counselling and Care Centre where he received weekly religious and psychological “counselling sessions”.

In February the SCC began trying 32 defendants, including 30 members of the Shi’a minority, on charges of spying for, and passing military intelligence to Iran and supporting protests in Qatif in the Eastern Province, where Shi’a form a majority of the population. The prosecution sought the death penalty against 25 of the defendants. In December, the SCC sentenced 15 of the defendants to death following an unfair trial. Another 15 received prison terms ranging from six months to 25 years, and two were acquitted.

In November, 13 women were put on trial at the SCC on charges relating to their participation in protests in the city of Buraydah.

ARBITRARY ARRESTS AND DETENTIONS
In April, the Council of Ministers issued new regulations reducing the powers of the Committee for the Promotion of Virtue and Prevention of Vice, Saudi Arabia’s religious police. In particular, the regulations barred the religious police from making arrests and from following suspects and requiring the suspects to produce identification.

The authorities continued to carry out numerous arbitrary arrests and held detainees for prolonged periods without referring them to a competent court, although the Law of Criminal Procedures requires that all detainees be referred to a court within six months. Detainees were frequently held incommunicado during interrogation and denied access to lawyers, undermining their right to fair trial and putting them at increased risk of torture and other ill-treatment.

In September, security authorities arbitrarily arrested human rights activist Salim al-Maliki after he published video footage on Twitter of border guards evicting tribal residents of the Jazan region, close to Saudi Arabia’s border with Yemen. He was held incommunicado for the first six weeks and remained in detention at the end of the year.

TORTURE AND OTHER ILL-TREATMENT
Security officials continued to torture and otherwise ill-treat detainees with impunity, particularly to extract “confessions” for use as evidence against them at trial. Courts frequently convicted defendants on the basis of contested pre-trial “confessions”.

314
Amnesty International Report 2016/17
The lawyer representing most of the 32 defendants accused of spying for Iran said that they were forced to “confess”. After arrest, they were detained incommunicado and denied access to their families and lawyers for three months; some were subjected to prolonged solitary confinement.

**Cruel, inhuman or degrading punishment**

The authorities continued to impose and administer corporal punishments that violate the prohibition of torture and other ill-treatment, particularly floggings. In February, the General Court in Abha sentenced Palestinian poet and artist Ashraf Fayadh to 800 lashes and eight years’ imprisonment when commuting his death sentence for apostasy on account of his writing in 2015.

**DISCRIMINATION – SHI’A MINORITY**

Saudi Arabia’s Shi’a Muslim minority continued to face entrenched discrimination that severely limited their access to government services and state employment and their freedom of religious expression. The authorities continued to arrest, detain and sentence Shi’a activists to prison terms or death after unfair trials before the SCC.

In June, the SCC sentenced 14 members of the Shi’a minority to death after convicting them on charges that included shooting at security officials, inciting chaos and participating in demonstrations and riots. Nine others received prison terms and one was found not guilty.

**WOMEN’S RIGHTS**

Women and girls continued to face discrimination in law and in practice, and were inadequately protected against sexual and other forms of violence. Women remained legally subordinate and inferior in status to men in relation to marriage, divorce, child custody and inheritance, and could not access higher education, take paid employment or travel abroad without the approval of their male guardian. Women also remained banned from driving.

The government’s “Vision 2030” economic reform plan included goals to increase the participation of women in Saudi Arabia’s workforce from 22% to 30% and “invest” in their productive capabilities so as “to strengthen their future and contribute to the development of our society and economy”. No legal reforms or other measures needed to achieve these aims appeared to have been initiated by the end of the year, although the Minister of Justice ruled in May that women must be given a copy of their marriage certificate, which is required in case of legal disputes between spouses. The Shura Council debated a proposed law that, if enacted, would allow women to obtain a passport without the approval of a male guardian.

In August, an online Twitter campaign entitled “Saudi women demand the end of guardianship” prompted tens of thousands of women to express opposition to the system of male guardianship. Activists reported that by September an estimated 14,000 Saudi Arabian women had signed an online petition calling on King Salman to abolish the system.

On 11 December, Malak al-Shehri was detained and interrogated after she posted a picture of herself on social media without an abaya (full-length garment). She was released on 16 December, but her legal status remained unclear.

**MIGRANT WORKERS’ RIGHTS**

The authorities maintained their crackdown on irregular migrants, arresting, detaining and deporting hundreds of thousands of migrant workers.

Tens of thousands of migrant workers were laid off without having been paid for months, after the government cut spending on contracts with construction and other companies. Indian, Pakistani, Filipino and other foreign nationals were left stranded without food, water or exit visas; some took to the streets to block roads in protest.

**DEATH PENALTY**

Courts continued to impose death sentences for a range of crimes, including non-violent drugs offences which, under international law, should not incur the death penalty. Many
Amnesty International Report 2016/17

defendants were sentenced to death after unfair trials by courts that convicted them without adequately investigating their allegations that their “confessions” were coerced, including with torture.

On 2 January the authorities carried out 47 executions, reportedly 43 by beheading and four by shooting, in 12 locations around the country.

Those facing execution included juvenile offenders, including four Shi’a men sentenced to death for participating in protests in 2012 when they were under 18.

SENEGAL

Republic of Senegal
Head of state: Macky Sall
Head of government: Mohammed Dionne

The authorities continued to restrict the rights to freedom of peaceful assembly and expression. Prisons remained overcrowded. Although several police officers were convicted of unlawful killings, impunity remained a concern. Men and women faced arrest because of their real or perceived sexual orientation. Despite efforts to reduce the number of children begging on the streets, impunity for child exploitation and child abuse persisted.

BACKGROUND

In May the capital, Dakar, hosted the Extraordinary African Chambers which sentenced former Chadian President Hissène Habré to life imprisonment after he was found guilty of crimes against humanity, war crimes and torture committed in Chad between 1982 and 1990.

Amendments to the Constitution were adopted following a referendum in March, including one which reduced the presidential mandate to five years.

FREEDOM OF ASSEMBLY

The authorities banned peaceful demonstrations and arrested demonstrators.

In October, the security forces fired tear gas to disperse a peaceful demonstration organized by the opposition. The Prefect of Dakar had justified a decision to impose an alternative route on the march on the basis of a 2011 decree banning all assemblies in parts of the city centre.

FREEDOM OF EXPRESSION

Journalists and artists who expressed dissent, including through their choice of clothing, were subjected to intimidation, harassment and arbitrary detention.

In February, Mamadou Mouth Bane, journalist and President of the social movement Jubanti, was detained for more than 12 hours at the Police Department of Criminal Investigation for comments deemed “seditious” made on television in the run-up to a constitutional referendum. He was later released without charge.

In June, rapper Ramatoulayye Diallo, also known as Déesse Major, was detained for three days and charged with “indecency” and “offending moral principles” for her choice of clothing in videos posted on social media. All charges were dropped and she was released.

At least two people were detained in Dakar for insulting religion.

COUNTER-TERROR AND SECURITY

The National Assembly adopted amendments to the Criminal Code and the Code of Criminal Procedure which could be used to stifle dissent. The amendments provide vague and broad definitions of terrorism-related offences, criminalize the production and dissemination of “immoral material” online and empower the authorities to restrict access to “illicit content” online.

Amendments to the Code of Criminal Procedure violated the right to personal liberty by extending to 12 days the period that people can be detained before appearing before a judge in terrorism-related cases. The amendments also undermined the right to fair trial by failing to provide that people should have access to a lawyer as soon as they are deprived of their liberty.
At least 30 people were in detention for terrorism-related offences. Several detainees raised concerns about the conditions of their arrest and detention. For example, Imam Ndao, who remained in pre-trial detention throughout the year on various charges including “acts of terrorism” and “glorifying terrorism”, was only allowed out of his cell for 30 minutes a day.

**PRISON CONDITIONS AND DEATHS IN CUSTODY**

Prisons remained overcrowded. Some 2,090 people were held in Rebeuss Prison in Dakar, which has a maximum capacity of 1,600.

At least six people died in custody in 2016, including a detainee who was shot during a mutiny at Rebeuss Prison in September. Forty-one others were wounded, including 14 prison guards.

**IMPUNITY**

After protracted legal proceedings, there were breakthroughs in four cases of unlawful killings by the security forces. However, no commanding officers were held to account for failing to prevent excessive use of force and no one was brought to justice for the dozens of other cases of torture, unlawful killings and deaths in custody since 2007.

In January, the driver of the police vehicle that killed student Mamadou Diop during a peaceful pre-election demonstration in 2012 was sentenced to two years’ imprisonment and fined for “assault causing death” and “intentional assault and battery.” The co-driver was sentenced to three months’ imprisonment for “failure to prevent a crime against physical integrity”. The court also ordered the two policemen to pay damages to Mamadou Diop’s relatives.

In June, a policeman who shot Bassirou Faye during a peaceful demonstration at the University Cheikh Anta Diop in Dakar in August 2014 was found guilty of murder and sentenced to 20 years’ hard labour and ordered to pay damages to Bassirou Faye’s family.

In June, a policeman was sentenced to two years’ imprisonment in connection with the killing of Ndiaga Ndiaye, also known as Matar Ndiaye, who died after being shot in the leg during a police operation in 2015.

In July, four policemen were convicted of the killing of Ibrahima Samb in 2013 and sentenced to 10 years’ hard labour. Ibrahima Samb suffocated after the officers locked him in the trunk of a car for over 16 hours.

**DISCRIMINATION – SEXUAL ORIENTATION**

At least seven men and one woman were detained in relation to their perceived sexual orientation.

In January, the Dakar Court of Appeal acquitted seven men of “acts against nature.” They had been arrested in July 2015 and sentenced in August 2015 to 18 months’ imprisonment with 12 months suspended.

**CHILDREN’S RIGHTS**

In July, the government launched an operation to remove children from the streets. However, the authorities continued to fail to fully implement laws criminalizing child exploitation and abuse, with few cases investigated or prosecuted.

**SERBIA**

Republic of Serbia, including Kosovo
Head of state: Tomislav Nikolić
Head of government: Aleksandar Vučić

Pro-government media continued to smear independent journalists and human rights defenders, as well as the Ombudsperson’s Office. Prosecutions of crimes under international law committed during the armed conflict in the 1990s remained stalled. Several forced evictions took place in Belgrade. Refugees and migrants stranded in Serbia on their way to the EU lacked access to protection and essential services.

**BACKGROUND**

Early elections in April increased the majority of the Serbian Progressive Party led by Prime
CRIMES UNDER INTERNATIONAL LAW
Prosecutions of war crimes and crimes against humanity continued to stall as the position of chief war crimes prosecutor remained vacant throughout the year. In March, the Prosecutor's Office confirmed the indictment of eight former members of the Special Brigade of the Ministry of the Interior of Republika Srpska, the ethnic Serb party to the war in Bosnia, for war crimes committed against civilians in Srebrenica in 1995.

Also in March, the International Criminal Tribunal for the former Yugoslavia acquitted Vojislav Šešelj, President of the Serbian Radical Party. He had been indicted on three counts of crimes against humanity (persecution, deportation and inhumane acts of forcible transfer) and six counts of war crimes (murder, torture and cruel treatment, wanton destruction, destruction or wilful damage done to institutions dedicated to religion or education and plunder of public or private property). The prosecution lodged an appeal which was pending at the end of the year. Following the April elections, Vojislav Šešelj returned to the National Assembly.

FREEDOM OF EXPRESSION
Proceedings against Radomir Marković, former head of state security, and three former security service officers for the murder in April 1999 of journalist Slavko Ćuruvija were stalled as a key witness failed to appear at court.

Independent journalist associations registered dozens of incidents targeting journalists, including physical assaults and death threats.

HOUSING RIGHTS
More than 200 families had been evicted in central Belgrade since the beginning of works in 2015 making way for the construction of the Belgrade Waterfront site. In April, a forced eviction was carried out at night by 30 masked men, who violently destroyed residents’ homes. Local police were alerted but refused to intervene. The Ombudsperson and activist groups condemned these acts; several protests were held calling for the municipal and state authorities to be held accountable. The Minister of the Interior subsequently sued a newspaper for defamation for alleging that he and the Ministry were responsible for failing to act during the demolitions. In late November, the court upheld the allegations and ordered the newspaper to pay the minister compensation of RSD 300,000 (€2,400).

Following her mission to Serbia the UN Special Rapporteur on the right to adequate housing highlighted the deplorable situation of people, in particular Roma, living in informal settlements without access to essential services. As well as calling for a housing law to prohibit forced evictions and an end to discrimination, the Special Rapporteur stressed the need to prioritize addressing insecure tenure and the lack of access to public services for those without a registered residence.

A draft law regulating evictions and resettlement was passed at the end of the year.

REFUGEES’ AND MIGRANTS’ RIGHTS
Over 120,000 refugees and migrants travelled through Serbia on their way to the EU. This significant decrease compared to 2015 was in part due to the closure of borders to irregular migrants in the south and north. Serbia’s refusal to provide beds to accommodate more than 6,000 people on the move at any one time resulted in thousands being stranded in informal makeshift camps in appalling conditions at the border with Hungary, in derelict buildings and parks in Belgrade and other locations across the country. Infections and serious diseases among refugees and migrants were reported by volunteer groups and medical organizations.

In November, the Ministry of Labour and Employment, which is responsible for organizing accommodation and care for refugees and migrants, informed groups providing support that they should cease all
activity outside the formal reception centres, which were overcrowded and mostly unsuitable for long-term accommodation. Many refugees and migrants were subsequently evicted and returned to the south, where they remained at risk of unlawful and summary return to the former Yugoslav Republic of Macedonia and to Bulgaria.

Serbia failed to provide access to a fair and individualized asylum process for the vast majority of registered asylum-seekers, including refugee status determination procedures, and considered itself to be a country of transit towards the EU. Serbian asylum authorities allowed most asylum-seekers to remain in accommodation centres while waiting to enter Hungary on the basis of an informal waiting list co-ordinated between the asylum-seekers and the Serbian and Hungarian authorities respectively. Some of the nominally open accommodation centres restricted the free movement of asylum-seekers and were effectively places where people were being arbitrarily detained.

International border police patrols operated at the borders with Macedonia and Bulgaria from 22 July onwards. This dramatically reduced the number of refugees and migrants arriving in Serbia. According to the Ministry of Defence, by the end of November, over 16,000 people had been prevented from entering the country. The authorities failed to deploy adequately trained civilian personnel along with border guards in a systematic way to ensure that the intention to claim asylum could be declared at the border, as required by Serbian and international law.

The Serbian authorities upheld the suspension of a re-admission agreement with its northern neighbour, Hungary. Thousands returned by the Hungarian authorities despite the suspension remained stranded in Serbia without legal status or access to basic services.

Over 12,000 asylum applications were submitted between January and the end of the year, but only 74 decisions were issued by the end of October: 17 applicants were granted refugee status and 17 were given subsidiary protection while 40 asylum applications were rejected. Almost half of all asylum applications were filed by children.

KOSOVO

A Stabilization and Association Agreement between the EU and Kosovo entered into force in April. In November, the first Council between the two parties was held, paving the way for Kosovo’s future accession to the EU. The de facto administration of Kosovo continued to be implemented by the Kosovo authorities jointly with the EU Rule of Law Mission (EULEX). Progress in the EU-facilitated dialogue between Serbia and Kosovo remained limited.

Access to justice

In June, the Human Rights Advisory Panel (HRAP) of the UN Mission in Kosovo (UNMIK) issued a scathing final report, condemning the UN mission for its overall failure to ensure accountability for human rights violations committed under UNMIK’s mandate and for failing to follow any of its recommendations.

Crimes under international law

The mandate of EULEX was extended until June 2018. However, the EU Rule of Law Mission announced it would not launch new investigations into cases of crimes under international law. At the end of the year, hundreds of pending cases were due to be transferred to the Kosovo authorities despite the European Commission declaring the Kosovo judiciary “slow” and “vulnerable to undue political influence”.

The Kosovo Special Prosecution Office remained understaffed and struggled to recruit adequately trained and experienced prosecutors to investigate and prosecute crimes under international law and to launch new investigations.

The Kosovo Specialist Chambers, a relocated special court to prosecute former members of the Kosovo Liberation Army (KLA), was set up in The Hague. At the end of the year, the first indictments by the
Specialist Prosecutor had yet to be issued. The Council of the EU allocated €29 million to support the setting up and functioning of the relocated judicial proceedings between April 2016 and June 2017.

In January, Oliver Ivanović, leader of a Kosovo Serb political party, was sentenced by a panel of international judges at the Basic Court of Mitrovicë/Mitrovica to nine years’ imprisonment for ordering the murder of ethnic Albanians in the town in April 1999. He remained under house arrest at the end of the year while his appeal against his conviction was pending before the Court of Appeals in Pristinë/Pristina.

**Enforced disappearances**

Over 1,600 people remained missing in the aftermath of the armed conflict. No further grave sites were identified in Serbia or Kosovo despite exhumations at potential mass graves. Co-operation agreements between the two parties remained unimplemented.

**Discrimination – Roma, Ashkali and Egyptians**

Roma, Ashkali and Egyptian communities continued to suffer institutional discrimination, in particular in accessing sustainable solutions for housing and employment, as internally displaced persons (IDPs). These communities continued to live in overcrowded conditions in informal settlements without adequate access to water and other essential services.

In February, the HRAP issued its opinion on a complaint brought to it by Roma, Ashkali and Egyptian families who had suffered lead poisoning in a UN-run camp for IDPs in the northern town of Mitrovicë/Mitrovica. The HRAP found that the UN Mission had subjected the families to inhuman and degrading treatment, failed to respect their rights to respect for private and family life and to health and discriminated against them on the grounds of their ethnic background. The HRAP found the UN action to have been particularly detrimental for women and children who were exposed to multiple discrimination. It called on UNMIK to publicly acknowledge the failure to comply with human rights standards and, among other measures, to pay adequate compensation to the families. By the end of the year, UNMIK had not implemented the HRAP’s recommendations.

**SIERRA LEONE**

Republic of Sierra Leone  
Head of state and government: Ernest Bai Koroma

Sierra Leone agreed to ratify several international human rights treaties, but did not accept a number of recommendations made during the UN Universal Periodic Review (UPR) process. Unwarranted restrictions on the freedoms of expression, peaceful assembly and association continued to be imposed. Violence against women and girls was widespread and pregnant girls were excluded from school, including exams. Disputes over land use caused growing tensions.

**INTERNATIONAL SCRUTINY**

After undergoing its second UPR in April, Sierra Leone accepted 177 of 208 recommendations. These included ratifying international human rights treaties, such as Optional Protocols to the ICCPR, the ICESCR, the Convention against Torture and CEDAW. Sierra Leone agreed to repeal or revise laws used to restrict freedom of expression and association, but refused to prohibit by law female genital mutilation (FGM), to allow pregnant girls to attend school or to guarantee the human rights of lesbian, gay, bisexual, transgender and intersex people. In September, Sierra Leone was reviewed by the Committee on the Rights of the Child, which made various recommendations regarding addressing sexual exploitation and FGM.
FREEDOMS OF EXPRESSION, ASSEMBLY AND ASSOCIATION
Unwarranted restrictions on freedom of expression, assembly and association continued to be imposed.

On 27 April, Independence Day, 29 people were arrested and detained for over a week following a parade organized by the opposition Sierra Leone People's Party (SLPP). Police said the parade was unauthorized and used tear gas to stop it. Several people were injured, including the women's leader Lulu Sheriff. In August, six of the 29 were sentenced to six months' imprisonment, and one to nine months' imprisonment, on charges including unlawful procession and riotous conduct. They appealed against their conviction. The trial of the others continued.

The trial of 15 members of the SLPP and a senior officer from the Human Rights Commission arrested in the town of Kenema on Independence Day in 2015 following a protest had not concluded by the end of 2016.

In July, police refused permission for women's groups to assemble outside a conference centre in the capital, Freetown, during the Constitutional Review process to request greater protection of gender rights in the draft Constitution.

On 24 July, journalist Sam Lahai was detained for two days by police after raising questions on social media about the role of the Deputy Internal Affairs Minister. He was released on police bail after intervention by the Sierra Leone Association of Journalists, which had been calling for reform of restrictive criminal libel laws for many years.

In August, two people were shot dead and several injured by police in Kabala during a protest against the loss of a planned youth training centre. A curfew was imposed after several buildings were burned down. Seventeen people were sent to trial for offences such as arson and riotous conduct. The recently formed Independent Police Complaints Board launched an investigation into allegations that police used excessive force. Its recommendations to the Director of Public Prosecutions and the Inspector General of Police were not made public.

NGO Policy Regulations were proposed containing provisions which human rights defenders said would restrict their activities.

WOMEN'S RIGHTS
The incidence of violence against women and girls remained high. Specialist organizations providing support to women and girls risked closure due to funding constraints.

In March, President Koroma refused to sign a bill legalizing abortion in certain situations, despite the fact that it had been adopted by Parliament twice. Sierra Leone had a very high rate of FGM. During the Ebola crisis, FGM was banned and this ban was not officially lifted during 2016. However, FGM of young girls and women remained common.

In September, a woman in her late 20s was subjected to FGM and locked in a house for four days in Kenema. She was rescued by the police and went into hiding. The woman accused of cutting her was detained by police but released after several cutters mounted a protest outside the police station.

RIGHT TO EDUCATION
Pregnant girls were banned from attending mainstream school and sitting exams, in violation of their rights to education and non-discrimination. Pregnant girls could only participate in a part-time “temporary alternative education scheme” offering a reduced curriculum. This temporary scheme ended in August but was expected to continue under a new scheme. Many girls who had given birth were unable to pay school fees to return to school.

In September, the UN Committee on the Rights of the Child urged Sierra Leone to immediately lift the discriminatory ban on pregnant girls attending mainstream schools and sitting exams, and ensure that they and adolescent mothers are supported to continue their education in mainstream schools.
LAND DISPUTES
There were growing tensions over land-related issues. In February, six people were sentenced to six months’ imprisonment or fines for destroying palm oil trees during protests in the Pujehun District in 2013 against a palm oil project operated by Socfin. Landowners claimed that they had not given consent to the acquisition of their land.

In February, the High Court ordered a Chinese company, Orient Agriculture Limited, to restore 1,486 acres of land to about 70 families in Nimiyama Chiefdom, Kono District. The company had signed a deal in 2013 with the Paramount Chief and local leaders to purchase land cheaply without the knowledge of the landowners.

1. Sierra Leone: Amnesty International Submission to the UN Universal Periodic Review (AFR 51/2905/2015)
2. Sierra Leone must protect and promote women’s and girls’ human rights, including to education and physical integrity (AFR 51/4353/2016)
3. Sierra Leone: Sign bill allowing safe abortions (News story, 4 February)
4. Sierra Leone: Continued pregnancy ban in schools and failure to protect rights is threatening teenage girls’ futures (News story, 8 November)
5. Sierra Leone: Submission to the Committee on the Rights of the Child (AFR 51/4583/2016)

SINGAPORE
Republic of Singapore
Head of state: Tony Tan Keng Yam
Head of government: Lee Hsien Loong

The authorities continued to harass and prosecute bloggers and dissidents. Media remained heavily regulated through the Newspaper and Printing Presses Act. Judicial caning and the death penalty continued to be applied.

FREEDOMS OF EXPRESSION AND ASSEMBLY
Political activists, bloggers and government critics faced prosecution and other reprisals for the peaceful exercise of their rights to freedom of expression and of peaceful assembly.

There were concerns that the Administration of Justice (Protection) Act, passed in August, could target human rights defenders for criticizing the courts or the administration of justice. Punishments for contempt of court offences included up to three years’ imprisonment and fines of up to SG$100,000 (US$70,000).

In June, blogger and political activist Han Hui was convicted of illegal assembly and “causing a public nuisance”; this prevented her from running in parliamentary elections. She was fined SG$3,100 (US$2,281), for leading a peaceful protest in 2014 in Hong Lim Park, the only space where people were permitted to demonstrate without a police permit. She appealed the decision.1

Also in June, political activists Roy Ngerng and Teo Soh Lung were subjected to hours of investigation for Facebook postings on a by-election “cooling off” day, which prohibits campaigning on the eve of elections.2

In September, Amos Yee, a teenage blogger, was sentenced to six weeks’ imprisonment for uploading videos in which he allegedly “wounded the religious feelings of others”.3

There were concerns that a decision by the Court of Appeal to prohibit human rights lawyer M. Ravi from practising law for a further two years, may have been politically motivated.

DEATH PENALTY
Death sentences continued to be imposed and carried out. In June, Kho Jabing, a Malaysian national convicted of murder, was executed hours after his final appeal was rejected. The mandatory death penalty remained applicable for a range of offences, some of which did not meet the threshold of “most serious crimes” under international law.

COUNTER-TERROR AND SECURITY
Concerns remained about the Internal Security Act (ISA) which allows the detention...
of suspects without trial for indefinitely renewable two-year periods. Fifty-eight people were said to have been detained under the ISA since January 2015.

**RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE**

Section 377A of the Penal Code, which criminalizes consensual sexual relations between men, remained. In June, the Home Affairs Ministry called on corporate sponsors to rescind sponsorship of the Pink Dot festival, an annual LGBTI gathering.

1. Singapore: End harassment of peaceful protesters (ASA 36/4342/2016)
2. Singapore: Government critics, bloggers and human rights defenders penalized for speaking out (ASA 36/4216/2016)
3. Singapore: Blogger faces up to three years in prison (ASA 36/4685/2016)

**SLOVAKIA**

**Slovak Republic**

Head of state: **Andréj Kiska**

Head of government: **Robert Fico**

Discrimination against Roma continued and little progress was made towards realizing Roma pupils’ right to education. Slovakia continued to be the subject of a race equality infringement procedure by the European Commission.

**BACKGROUND**

In March, Prime Minister Fico’s party, Direction-Social Democracy, won the parliamentary elections, while losing its overall majority, and formed a four-party coalition government. The far-right party, People’s Party – Our Slovakia, entered Parliament for the first time with 14 seats. On 1 July, Slovakia assumed the rotating six-month Presidency of the Council of the EU.

**DISCRIMINATION – ROMA**

Police and security forces

There was concern over the continued lack of effective investigation and lengthy proceedings in several cases of excessive use of force by police against Roma. In July, the European Court of Human Rights (ECtHR) found that Slovakia had failed to adequately investigate allegations of police ill-treatment of a Roma man in detention in 2010.

In August, the government announced that the Law on Police would be amended to move the Department of Control and Inspection Service (SKIS) under the Prosecutor General’s office – rather than it being under the Ministry of Interior – in order to increase SKIS’ independence. However, a fully independent and transparent police accountability mechanism was not in place at the end of the year.

Several investigations into police ill-treatment of Roma were pending at the end of the year. In November, the investigation by the SKIS into the alleged excessive use of force by police during an operation in the Roma settlement of Vrbnica in April 2015 resulted in criminal charges being brought against the police officer who led the raid. However, the SKIS found that there was insufficient evidence to charge other police officers involved; the decision was appealed by the Roma families in December.

SKIS’ investigation into police officers’ conduct during an operation in the Roma settlement at Moldava nad Bodvou in June 2013 was discontinued in March 2016. The victims, supported by the European Roma Rights Centre and the Centre for Civil and Human Rights, appealed against this decision; the case was pending before the Constitutional Court at the end of the year.

Following the Public Prosecutor’s appeal, the acquittal of 10 police officers accused of ill-treatment of six Roma boys at a police station in Košice in 2009 was quashed in April and the case sent back to the District Court.

**Right to education**

An amendment to the Schools Act prohibiting the placement of children from socially disadvantaged backgrounds in “special"
schools solely based on their socioeconomic background came into force in January.

However, Roma children continued to be over-represented in “special” schools and classes for children with “mild mental disabilities” and were placed in ethnically segregated mainstream schools and classes. Despite ongoing infringement proceedings, initiated by the European Commission in 2015 against Slovakia for breaching the prohibition of discrimination set out in the EU Racial Equality Directive in relation to the access to education of Roma, there was no evidence of the government taking any effective measures to prevent or tackle the issue. This was highlighted by the European Commission in its annual assessment of Roma integration plans, as well as by the UN Committee on the Rights of the Child.

A public interest case, initiated in 2015 by the Centre for Civil and Human Rights against the Ministry of Education and the municipality of Stará Ľubovňa for the segregation of Roma children at a primary school, was dismissed by the District Court in Bratislava on 6 October 2016. The Centre appealed against the decision; the case was pending at the end of the year.

Forced sterilization
In February, the Košice II District Court ruled that the Louis Pasteur University Hospital in Košice unlawfully subjected a Roma woman to a forced sterilization in 1999. The woman had been subjected to the procedure without her informed consent after giving birth through a caesarean section. It took Slovak courts over 10 years to conclude the case and award the victim €17,000 in compensation. An appeal by the hospital was pending at the end of the year.

COUNTER-TERROR AND SECURITY
Anti-terrorism provisions introduced into the Constitution, the Criminal Code and the Criminal Procedure Code, as well as several other laws, came into force in January. They include the extension of the maximum period of pre-charge detention to 96 hours for individuals suspected of terrorism-related offences.

REFUGEES AND ASYLUM-SEEKERS
Despite placing “sustainable migration” high on its agenda during its EU presidency, Slovakia continued to oppose mandatory relocation quotas for refugees from other EU member states but expressed a willingness to accept 100 refugees from Greece and Italy by the end of 2017 on a voluntary basis. Only three families were relocated from Greece by the end of the year.

DISCRIMINATION
In August, the Slovak National Centre for Human Rights and the State Trade Inspectorate concluded that the owners of a guesthouse in Bratislava discriminated against three Turkish students. The owners had rejected their booking request based on a policy of “not accepting people from Turkey or Arab countries due to security reasons”.

Prime Minister Fico continued to publicly associate Muslims and refugees with terrorism and used anti-migrant rhetoric. The People’s Party – Our Slovakia organized anti-Roma and anti-immigration marches in January, March, June, July and October.

SLOVENIA

Republic of Slovenia
Head of state: Borut Pahor
Head of government: Miro Cerar

Asylum procedures were slow. The International Protection Act was amended to introduce expedited border procedures. Discrimination against Roma continued.

REFUGEES AND ASYLUM-SEEKERS
Before the closure of the Western Balkans route in March, 99,187 refugees and migrants entered Slovenia; the vast majority of them passed through on their way to Austria. 1,308 people – most of them Syrian, Afghan and Iraqi nationals – applied for asylum. After the closure of the Western
Balkans route, those who entered Slovenia and did not apply for asylum, including minors, were detained in the Centre for Foreigners in Postojna. In July, the authorities offered alternative accommodation for unaccompanied minors.

The asylum procedures were slow, partly as a result of the authorities' limited capacity to process applications. Throughout the year, more than 100 asylum-seekers, including unaccompanied minors, waited for first instance decisions for more than six months.

In March, the National Assembly amended the International Protection Act, introducing expedited asylum procedures for those who expressed the intention to apply for asylum at Slovenia’s border or in transit areas at airports or ports. The law also removed the right to financial assistance of €288 in the first month after international protection has been granted.

Slovenia received 124 asylum-seekers relocated from Greece and Italy under the EU relocation scheme by the end of the year, out of a total of 567 asylum-seekers it had committed to accept by the end of 2017.

DISCRIMINATION

In April, the National Assembly passed the Protection against Discrimination Act, harmonizing legislation with EU anti-discrimination law. The law represented a milestone in combating discrimination based on gender identity, gender expression, social status or health, among other things. The law strengthened the mandate and autonomy of the Advocate of the Principle of Equality – a special post designed to prevent and eliminate discrimination including by hearing cases and offering assistance to victims of discrimination – as an independent anti-discrimination body.

The “erased”

Long-standing human rights violations against the “erased” – former permanent residents of Slovenia originating from other former Yugoslav republics – persisted. No new options were offered to the remaining “erased” to restore their legal status and related rights since the expiry of the Legal Status Act in 2013.

In November, the European Court of Human Rights (ECtHR) dismissed the complaint against Slovenia of some of the “erased” whose legal status had already been regulated. However, additional human rights issues of the “erased” remained pending before the ECtHR at the end of the year.

Roma

Discrimination against and social exclusion of the majority of Roma continued. Many were living in segregated settlements in inadequate housing, lacking security of tenure and access to water, electricity, sanitation and public transport. After the expiry of the National Action Programme for Roma inclusion in 2015, the government started a process of adopting a new set of measures. The government had yet to adopt a comprehensive national Roma Strategy as recommended by the parliamentary commission for human rights.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

In April, Parliament adopted the Law on Partnerships. The new law offers same-sex couples the same rights as those originating from marriage, but fails to guarantee the right to adopt and to access assisted reproductive services procedures.

LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS

In November, the Constitution was amended to include the right to drinking water. According to the amendment, water resources are to be used primarily to supply the population with drinking water and households with water. The Constitution stated that those water resources could not be transformed from a public good into a tradeable commodity.
Armed conflict continued in central and southern Somalia between Somali Federal Government (SFG) forces, African Union Mission in Somalia (AMISOM) peacekeepers, and the armed group al-Shabaab. The areas controlled by SFG and AMISOM forces in the south-central regions remained in their hands. More than 50,000 civilians were killed, injured or displaced as a result of the armed conflict and generalized violence. All parties to the conflict were responsible for violations of human rights and international humanitarian law, some amounting to war crimes. There was no accountability for these violations. Armed groups continued to conscript children, and abduct, torture and unlawfully kill civilians. Rape and other crimes of sexual violence were widespread. The continuing conflict, insecurity and restrictions imposed by the warring parties hampered aid agencies’ access to some regions. About 4.7 million people needed humanitarian assistance; 950,000 suffered from food insecurity. Tens of thousands of people were forcibly evicted from their homes. Freedom of expression was curtailed: two journalists were killed and others were attacked, harassed or fined.

BACKGROUND
The SFG and AMISOM remained in control of the capital, Mogadishu. They also retained areas taken from al-Shabaab in 2015 and consolidated their control through the federal administrations in Galmudug, Jubbaland and South-West states. AMISOM and the Somali National Armed Forces (SNAF) fought intermittent battles with al-Shabaab but control of territory did not change. By the end of 2016, al-Shabaab still controlled many rural areas, especially in Bay, Gedo, Lower Shabelle and Middle Juba regions. The fighting displaced more people. Inter-clan clashes and al-Shabaab attacks against civilians continued, particularly in districts where control repeatedly shifted between AMISOM and al-Shabaab. Civilians were killed and wounded in crossfire and targeted attacks, and as a result of grenades, improvised explosive devices (IEDs), suicide attacks and complex assaults. All parties to the conflict committed war crimes. UN Security Council Resolution 2275, passed in March, extended the mandate of the UN Assistance Mission in Somalia (UNSOM) until 31 March 2017, while Resolution 2297, passed in July, extended the mandate of AMISOM until 31 May 2017. International support for government security forces, allied militias and AMISOM continued. As a result of pressure for accountability, nine Ugandan soldiers serving under AMISOM were sentenced to imprisonment for violating the rules and regulations of peacekeeping.

An acute humanitarian situation persisted and it was feared that the return of Somalis from neighbouring countries would exacerbate the crisis. At least 4.7 million people (40% of the population) needed support; most vulnerable were the more than 1.1 million internally displaced persons (IDPs).

A political crisis emerged over the electoral colleges for parliamentary and presidential elections due in September and October respectively. A forum set up by political leaders eventually agreed that 275 electoral colleges, each comprising 51 delegates selected by clan elders, would each elect an MP. Elections were scheduled for the lower and upper houses of Parliament in September and October respectively, but were twice postponed. Meanwhile, al-Shabaab rejected all forms of election, intensified attacks and called on followers to attack polling venues and kill clan elders, government officials and MPs taking part in the elections.
ABUSES BY ARMED GROUPS

Indiscriminate attacks
Al-Shabaab carried out indiscriminate and lethal attacks in heavily guarded areas of Mogadishu and other towns, killing or injuring hundreds of civilians. High-profile targets remained vulnerable to such attacks. It was difficult to establish the total number of civilians killed because there was no reliable casualty tracking system.

An al-Shabaab attack on Beach View Hotel and Lido Seafood restaurant at Lido beach in Mogadishu on 21 January killed at least 20 people. A suicide car bomb attack at a police station in Mogadishu on 9 March killed at least three people. A suicide bomb attack on a restaurant near a local government building in Mogadishu on 9 April killed at least four people and wounded seven. A suicide car bomb attack at Mogadishu’s traffic police headquarters on 9 May killed at least five people. An al-Shabaab attack on Nasa Hablod Hotel in Mogadishu on 26 June killed at least 15 people and injured more than 20. Clashes between al-Shabaab fighters and SNAF in Bay region on 18 July killed 14 civilians caught in the crossfire. Two car explosions on 26 July outside a UN office in Mogadishu killed at least 10 people, both civilians and security officers. Two suicide attacks on the local government headquarters in Galkayo in Puntland (a semi-autonomous region in the northeast) on 21 August killed at least 20 civilians. An al-Shabaab attack on Banadir Beach Restaurant at Lido beach in Mogadishu on 26 August killed at least 10 civilians. A truck explosion outside SYL Hotel in Mogadishu near the presidential palace on 30 August killed at least 15 people and injured 45.

Targeting of civilians
Civilians were also directly targeted in attacks, especially by al-Shabaab fighters and clan militias. On 15 June, al-Shabaab fighters fired mortars into densely populated areas of Mogadishu; five loud explosions were heard but no deaths were reported. On 6 August, al-Shabaab fired mortar shells into a neighbourhood near the general hospital in Baidoa, killing one man and injuring six others.

In addition, al-Shabaab continued to torture and extrajudicially kill people they accused of spying or not conforming to its interpretation of Islamic law. The group killed people in public, including by beheading and stoning, and carried out amputations and floggings, especially in areas from which AMISOM had withdrawn. On 19 January, al-Shabaab killed a man in Kurtuwayri district after accusing him of witchcraft. On 20 May, al-Shabaab beheaded three men in Buur Hakaba district in Bay region after accusing them of spying for the federal government. On 17 August, al-Shabaab publicly killed a man by firing squad in Biyoley settlement, near Baidoa, after accusing him of spying for the federal government.

Clan and government-aligned militias continued to carry out extrajudicial killings, extortion, arbitrary arrests and rape. On 7 August, a clan militia in Qansax Dheere district in Bay region fired mortar shells at civilians, killing three. In August, several civilians were killed during clan clashes in Bay region.

CHILD SOLDIERS
Children continued to suffer grave abuses by all parties to the armed conflict. Somalia is a party to the UN Convention on the Rights of the Child but the federal government had yet to implement the two action plans it signed in 2012 to end the recruitment and use of child soldiers, as well as the killing and maiming of children.

In June, UNICEF stated that it believed there were up to 5,000 child soldiers in Somalia, mostly recruited by al-Shabaab and clan militias.

INTERNALLY DISPLACED PEOPLE, REFUGEES AND ASYLUM-SEEKERS
More than 1.1 million Somalis remained internally displaced. Most continued to settle along the Afgooye corridor between Mogadishu and Afgooye town. Intermittent clashes between SNAF and its AMISOM allies
and al-Shabaab disrupted trade in various regions. While SNAF and AMISOM forces controlled major towns, al-Shabaab blocked supply routes and taxed the civilian population in districts that it controlled. Continued conflict threatened to exacerbate the dire humanitarian situation.

In January, the federal parliament passed a law to protect and rehabilitate IDPs and Somali refugees, but implementation of it was slow. Over 1.1 million Somali refugees remained in neighbouring countries and the wider diaspora. As violence intensified in Yemen, Somalis who had fled there continued to return to Somalia. By the end of the year, over 30,500 Somalis had done so. Meanwhile, other host states, including Denmark and the Netherlands, put pressure on Somali asylum-seekers and refugees to return to Somalia on the grounds that security had improved in the country.

**HOUSING RIGHTS – FORCED EVICTION**

Forced evictions of IDPs and the urban poor remained a major problem, especially in Mogadishu. The government and private landowners forcibly evicted nearly 31,000 people in Deynile, Dharkeinly, Hamar Weyne, Heliwa, Hodan, Kaxda and Wardhigley districts of Mogadishu in the first half of the year. Over 14,000 people were forcibly evicted in January alone. The majority of those evicted moved to insecure and isolated locations on the outskirts of the capital, where social services were limited or non-existent and living conditions were deplorable.

**FREEDOM OF EXPRESSION**

Journalists and media workers continued to be intimidated, harassed and attacked. Two journalists were killed. On 4 June, unidentified gunmen shot dead Sagal Salad Osman, a journalist for state-run radio and television. On 27 September in Mogadishu, two assailants shot dead Abdisis Mohamed Ali of Radio Shabelle. Several media houses were closed. On 9 July, police raided the premises of City FM, shut down the radio station and arrested the editor-in-chief, Abdishakur Abdullahi Ahmed, and deputy editor-in-chief, Abdirahman Hussein Omar Wadani. They also confiscated radio equipment. On 13 August, police in Beledweyn region detained a freelance journalist, Ali Dahir Herow. Al-Shabaab continued to suppress the media and retained a ban on the internet in areas under its control.

In Somaliland, which lacks a functioning media law to protect journalists, media freedom was also restricted. The government curtailed freedom of expression of those who criticized its policies. By October, nine journalists had been arrested in relation to their work, seven of whom faced criminal cases in courts. On 25 May, Ahmed Mouse Sakaaro, a journalist based in Burao, was arrested and charged with inciting violence. In June, police officers arrested the publisher of the independent *Foore* newspaper, Abdirashid Abdiwahaab Ibraahim, and the editor-in-chief, Mohamed Mahamoud Yousuf, for covering an agreement on the management of Berbera port between the Somaliland government and a private company based abroad. Also in May, two journalists – Cabdirashid Nuur Wacays and Siciid Khadar, publisher and editor-in-chief of *Hubsad* newspaper respectively – were arrested and the newspaper was closed down. In addition, the government suspended publication of *Haartif* newspaper, a court revoked its licence and the police occupied its premises.

**DEATH PENALTY**

Somalia continued to use the death penalty despite its support for the UN General Assembly resolution on a moratorium on the death penalty. Few executions were reported, but the Military Court did sentence people to death in proceedings that fell short of international fair trial standards. Among those sentenced to death was a former journalist accused of helping al-Shabaab to kill five fellow reporters. On 14 August, a military court in Puntland ordered the execution of an army officer by firing squad in Garowe city.
was not known whether the execution was carried out.

In Somaliland, six prisoners at the Manderer maximum security complex were executed in January. On 25 July, a civilian court in Berbera sentenced eight men to death. Civilian courts continued to impose death sentences and at least 50 people were on death row at the end of the year.

SOUTH AFRICA

Republic of South Africa
Head of state and government: Jacob G. Zuma

Police used excessive force against protesters. Torture, including rape, and other ill-treatment of people in police custody continued to be reported.

Xenophobia and violence against refugees, asylum-seekers and migrants resulted in deaths, injuries and displacement. Women and girls, particularly those in marginalized communities, continued to face gender inequality and discrimination. Lesbian, gay, bisexual, transgender and intersex (LGBTI) people were subjected to discrimination and hate crimes, including killings. Human rights defenders were attacked.

BACKGROUND
Political violence erupted in KwaZulu-Natal Province in the run-up to local elections held on 3 August. Between January and July, 25 violent incidents were reported, including 14 murders of local councillors, election candidates or members of political parties. The Police Minister set up a task force to investigate and prosecute incidents of politically motivated crime in the province.

From July, widespread and often violent student protests demanded free tertiary education. The protests followed the government’s announcement of fee increases of up to 8% for the 2017 academic year.

Courts affirmed the independence of state oversight institutions. On 31 March, the Constitutional Court backed the findings of the Office of the Public Protector’s inquiry into non-security upgrades at the President’s personal residence, requiring him to pay back the public funds used. On 6 September, the Constitutional Court ruled that the Police Minister’s decision to suspend Robert McBride, Executive Director of the Independent Police Investigative Directorate (IPID), under the IPID Act was unconstitutional. In November, charges of fraud against Robert McBride were withdrawn.

EXCESSIVE USE OF FORCE
In response to the student protests, police sometimes used excessive force, including firing rubber bullets at close range at students and supporters when the use of force was neither necessary nor proportionate.

On 11 December, President Zuma announced steps taken by departments to implement the recommendations of the Farlam Commission of Inquiry into the police killings of striking miners in Marikana in 2012. These included revising the protocols governing the use of force, the launch on 15 April of a ministerial task force to ensure the psychological and physical fitness of police officers, and the setting up on 29 April of a panel of experts to revise public order policing processes. The Board of Inquiry into the fitness of national Police Commissioner Riah Phiyega to hold office concluded and was due to submit its final report to the President.

POLICE
The IPID reported 366 deaths as a result of police action and 216 deaths in police custody in 2015/2016, both figures lower than for the previous year. It also reported 145 cases of torture, including 51 cases of rape, by police officers on duty, and 3,509 cases of assault by police. Legal proceedings relating to unlawful killings by police remained slow.

In Durban High Court, the trial of 27 police officers, most of them members of the now disbanded Cato Manor Organized Crime Unit,
on charges including 28 counts of murder, was further delayed until 31 January 2017.

In October, the Public Protector issued a report into violence at Durban’s Glebelands hostel complex between March 2014 and November 2016 during which over 60 people died in targeted killings. The report found that the conflict was a result of the municipality’s failure to assume responsibility for rental accommodation at the hostel. The report highlighted the detention and torture by police of at least three Glebelands residents in 2014, with no action taken against those suspected of criminal responsibility. The IPID investigation into the March 2014 death in custody of Zinakile Fica, a Glebelands resident, was not completed.

The Public Protector’s report also found that the police failed in its duty to prevent and investigate crime and to protect hostel residents, highlighting the low ratio of arrests and lack of successful prosecution of murder suspects. The Public Protector promised to monitor investigations of allegations of police torture and killings of Glebelands residents.

In April, Glebelands residents submitted an urgent appeal to the UN High Commissioner for Human Rights, calling for the UN Human Rights Council to intervene regarding the targeted killings. On 7 November, a Glebelands peace committee leader was shot dead after leaving Umlazi Magistrate’s Court. No arrests have been made.

INTERNATIONAL JUSTICE

In October, the government submitted an instrument of withdrawal from the Rome Statute of the International Criminal Court (ICC) without consulting Parliament. The withdrawal takes effect after one year. The move followed non-co-operation procedures by the ICC against South Africa after the authorities failed to execute warrants of arrest for genocide, crimes against humanity and war crimes against Sudanese President Omar al-Bashir when he visited South Africa in June 2015 to attend the African Union (AU) summit. The move also followed the dismissal by South Africa’s Supreme Court of Appeal on 15 March of an appeal against the 2015 North Gauteng High Court judgment that the failure to arrest President al-Bashir violated South Africa’s Constitution. State authorities had allowed President al-Bashir to leave South Africa in contravention of an interim order by North Gauteng High Court that he must remain.

CORPORATE ACCOUNTABILITY

New research concluded that the failure of mining company Lonmin to address housing conditions at Marikana contributed to the events of August 2012, when police shot dead 34 striking mineworkers. Under its legally binding 2006 Social and Labour Plan, Lonmin had promised to construct 5,500 houses for mineworkers by 2011. It had built only three by 2012. In August 2016, Lonmin said that approximately 13,500 of its 20,000 permanent employees still needed formal accommodation. Many mineworkers continued to live in informal settlements such as Nkaneng within Lonmin’s mine lease area. The shack dwellings in Nkaneng do not meet the most basic international requirements for adequate housing. As a result, Lonmin’s operations were inconsistent with the right to an adequate standard of living, including adequate housing.

REFUGEES’ AND MIGRANTS’ RIGHTS

Xenophobia and violence against refugees, asylum-seekers and migrants continued, resulting in deaths, injuries and displacement. Many incidents involved the targeted looting of foreign-owned small businesses in townships.

In June, shops in Pretoria townships were looted and at least 12 refugees and migrants were seriously injured and hundreds displaced. Earlier in the year, residents of Dunoon in the Western Cape looted foreign-owned businesses.

In April, findings were released of an inquiry into the 2015 violence against refugees, migrants and asylum-seekers in KwaZulu-Natal Province. The inquiry found the tensions were due to competition for
scarce employment opportunities in the context of poverty and socioeconomic inequality. Its recommendations included educating civil servants on the rights and documentation of foreign nationals; strengthening the capacities of institutions managing migrants, refugees and asylum-seekers; ensuring leaders make responsible public statements; and education campaigns in schools to promote cohesion.

The previous closure of three of six refugee reception offices continued to put severe pressure on refugees who must consequently travel long distances to renew asylum permits.

Draft legislation on international immigration put forward in June includes a security-based approach to asylum-seekers, restricting their rights. It proposes asylum processing and administrative detention centres at South Africa’s borders. These would house asylum-seekers while their applications are processed and limit their rights to work and movement while awaiting a decision on their application.

**WOMEN’S RIGHTS**

Gender inequality and discrimination continued to exacerbate the detrimental impact of racial, social and economic inequalities, especially for marginalized groups of women and girls.

Nearly a third of pregnant women were living with HIV, but improved access to free anti-retroviral treatment for pregnant women continued to reduce maternal mortality. Department of Health figures showed that the maternal mortality ratio continued to fall, from 197 for every 100,000 live births in 2011 to 155 in 2016. Problems persisted in rural communities relating to the availability and cost of transport for pregnant women and girls needing to access health services. The lives of pregnant women and girls continued to be put at unnecessary risk due to barriers to abortion services.

In June, the government launched a campaign, She Conquers, to address the disproportionately high rates of HIV infection among girls and young women and to reduce high levels of adolescent pregnancy. Although focused on improving access to health, education and employment opportunities for girls, campaign messaging was criticized for perpetuating negative stereotypes of girls’ sexuality.

Also in June, the Commission for Gender Equality found the requirement that girls undergo virginity testing (*ukuhlolwa*) to access tertiary education bursaries, as imposed by a municipality in KwaZulu-Natal Province, violated constitutional rights to equality, dignity and privacy and would perpetuate patriarchy and inequality in South Africa. The *ukuhlolwa* requirement was removed.

A report by the UN Special Rapporteur on violence against women, its causes and consequences issued in June called on South Africa to implement a co-ordinated approach to end the pandemic of gender-based violence and discrimination, and recommended the decriminalization of sex work.

In March, the South African National AIDS Council (SANAC) launched a plan to address high rates of HIV among sex workers, including access to pre-exposure prophylaxis and anti-retroviral medicine. SANAC and sex worker activists warned that South Africa’s laws relating to “prostitution” risked undermining the plan.

**RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE**

Hate crimes, hate speech and discrimination against LGBTI people, including killings and assaults, continued. Such attacks were believed to be grossly under-reported to police.

In March, Lucia Naido was stabbed to death in Katlehong, Ekurhuleni. Katlehong police opened a murder investigation, which was ongoing.

In April, a young, openly gay man, Tshifhiwa Ramurunzi, was attacked and seriously injured in Thohoyandou, Limpopo Province. His attacker was charged with attempted murder.
On 6 August, the body of Lesley Makousaan, an openly gay 17-year-old student, was found in Potchefstroom, North West Province; he had been strangled. A suspect was arrested shortly afterwards and was awaiting trial.

The body of Noluvo Swelindawo, an openly lesbian woman, was found in Khayelitsha, Western Cape Province, on 4 December, the day after she was kidnapped. A suspect was arrested on charges including housebreaking, kidnapping and murder, and appeared in court on 7 December. On 21 December, the suspect withdrew his bail application.

HUMAN RIGHTS DEFENDERS

Human rights defenders were attacked for carrying out their work, and justice for such crimes was slow.

In March, land rights activist Sikhosiphi “Bazooka” Rhadebe was shot dead at his home in Lurholweni, Eastern Cape Province, by two men claiming to be police officers. He was Chairperson of the community-led Amadiba Crisis Committee and opposed the opencast mining of titanium and other heavy minerals on communal land in Xolobeni by a local subsidiary of Australia-based Mineral Commodities Limited.

The trial of a police officer charged with the October 2013 shooting and killing of 17-year-old housing rights activist Nqobile Nzuza during a protest in Cato Crest informal settlement in Durban was scheduled to begin in February 2017.

On 20 May, Durban High Court found two councillors representing the ruling African National Congress (ANC) and a co-accused hit man guilty of murdering housing rights activist Thulisile Ndllovu in September 2014. The three were sentenced to life imprisonment.

In a landmark judgment on 17 November, Bloemfontein High Court upheld the appeal by 94 community health workers and Treatment Action Campaign activists who had successfully challenged the constitutionality of the use of apartheid-era legislation, the 1993 Regulation of Gatherings Act. The Act criminalizes the gathering of more than 15 people in a public space without notifying the police in advance. The judgment affirmed that participating in a gathering without prior notice is not an offence.

FREEDOM OF EXPRESSION

In June, three senior journalists of the South African Broadcasting Corporation (SABC) were summarily suspended, allegedly for disagreeing with the decision not to cover a peaceful protest against censorship and abuse of power by the SABC, organized by the advocacy organization Right2Know. When five other SABC journalists objected to the suspensions they were accused of misconduct. All eight SABC employees were then fired. The group filed a case with the Constitutional Court in July, arguing that their right to freedom of expression had been violated; the case was pending. Four of the journalists won a case at the Labour Court in July that SABC had violated labour procedures. The eight subsequently returned to work but continued to face threats. On 12 December, four of the eight testified on behalf of the group at Parliament’s inquiry into the fitness of the SABC board. Right2Know testified on 14 December.

DISCRIMINATION

People with albinism

Attacks against and the abduction of people with albinism were reported.

Four-year-old Maneliswa Ntombel was abducted by two men near his home on 21 June in KwaZulu-Natal Province. He remained missing at the end of the year.

In February, Mtubatuba Regional Court sentenced a 17-year-old youth to 18 years' imprisonment for the murder of Thandazile Mpunzi, who was killed in August 2015 in KwaZulu-Natal Province. Her remains were discovered in a shallow grave. Parts of her body had been sold to traditional healers. Two other men who pleaded guilty to the murder had each been sentenced in September 2015 to 20 years’ imprisonment.
Hate crime legislation
In October, the draft Hate Crimes Bill was introduced. It aims to address racism, racial discrimination, xenophobia and discrimination based on gender, sex, sexual orientation and other issues, by providing an offence of hate crime. It includes controversial provisions that criminalize hate speech in ways that could be used to impermissibly restrict the right to freedom of expression.

RIGHT TO EDUCATION
Children with disabilities
Children with disabilities continued to face multiple challenges of discrimination, exclusion and marginalization which, among other things, denied them equal access to education despite legal and policy frameworks guaranteeing inclusive education. On 27 October, the UN Committee on the Rights of the Child recommended a review of Education White Paper No.6 to develop a framework for inclusive education that would see expansion of full-service schools and the inclusion of children with disabilities in mainstream education.

1. South Africa: Decision to leave International Criminal Court a “deep betrayal of millions of victims worldwide” (News story, 21 October)
2. South Africa: Smoke and mirrors – Lonmin’s failure to address housing conditions at Marikana (AFR 53/4552/2016)

SOUTH SUDAN

Republic of South Sudan
Head of state and government: Salva Kiir Mayardit

Despite the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS), fighting continued between government and opposition forces, along with violations and abuses of international human rights and humanitarian law. A Transitional Government of National Unity (TGoNU) was formed in April, but it fell apart following heavy fighting between government and opposition forces in Juba in July. The reconstituted government in Juba was accepted by the international community but rejected by opposition leader Riek Machar and his allies. The ongoing fighting continued with devastating humanitarian consequences for civilian populations. Government security services actively suppressed independent and critical voices from the opposition, media and human rights defenders.

BACKGROUND
Implementation of the ARCSS, the peace agreement, was slow and faced numerous hurdles including disagreement over the number of states, the cantonment of opposition fighters and security arrangements in the capital Juba.

On 26 April, opposition leader Riek Machar returned to Juba to be sworn in as First Vice-President of the TGoNU, as provided for in the ARCSS. Ministers of the TGoNU were sworn in the following week.

In early July, a series of violent clashes between government and opposition forces in Juba heightened tensions and led to a deadly shoot-out on 8 July between bodyguards of President Salva Kiir and then First Vice-President Riek Machar outside the Presidential Palace, where the two were meeting. On 10 and 11 July, there were heavy clashes between government and opposition forces in Juba.

The fighting in Juba forced Riek Machar and opposition forces to flee southward, where they evaded active pursuit by government forces over the next month. Meanwhile President Salva Kiir dismissed Riek Machar as First Vice-President and replaced him on 25 July with opposition politician Taban Deng Gai. Riek Machar rejected and denounced the dismissal which resulted in a split in the Sudan People’s Liberation Army/Movement in Opposition (SPLM/A-IO). The international community
eventually accepted the new government and urged it to resume implementation of the ARCSS.

Relative calm was restored in Juba following the flight of Riek Machar and opposition forces but the fighting in Juba triggered a surge of violence in the southern Equatoria region, resulting in killings of civilians, looting, and arbitrary detentions. Lainya, Yeи, Kajoieji, Morobo and Maridi counties were particularly affected. Between July and December, more than 394,500 South Sudanese arrived in northern Uganda as refugees as a result of the insecurity.

In September, the UN Security Council (UNSC) adopted resolution 2304 authorizing the establishment of a 4,000-member Regional Protection Force (RPF), as an addition to the existing 12,000 members of the UN Mission in South Sudan (UNMISS) peacekeeping force. The RPF mandate would be to facilitate safe movement in and out of Juba; protect the airport and key facilities in Juba; and engage any actor preparing for or engaging in attacks against civilians, humanitarian actors, or UN personnel and premises. However, the RPF was not in place by the end of the year.

The same resolution provided that the UNSC would consider the imposition of an arms embargo should South Sudan create political or operational impediments to operationalizing the RPF or obstruct UNMISS in the performance of its mandate. Despite reports of attacks on and obstruction of UNMISS staff and the government’s averseness to the RPF’s mandate and establishment, in December the UN Security Council failed to approve a resolution that would have imposed an arms embargo.

INTERNAL ARMED CONFLICT

Despite the ARCSS, there was fighting in many areas of the country throughout the year. The fighting was continuously accompanied by violations and abuses of international human rights and humanitarian law by parties to the conflict, including killings, looting and destruction of civilian property, abductions and sexual violence.

On 17 and 18 February, fighting took place in the UN Protection of Civilians site in Malakal, which housed around 45,000 people. Government soldiers entered the site and participated in the fighting. Around one third of the camp was burned to the ground, and at least 29 internally displaced people were killed.

In Western Bahr el Ghazal in early 2016, government soldiers carried out attacks against civilians: killings, torture including rape, looting and burning down of civilian homes. Clashes between government and opposition allied forces in Wau town on 24-25 June displaced an estimated 70,000 people and killed dozens.

During the July fighting in Juba, armed actors, particularly government soldiers, committed violations and abuses of international human rights and humanitarian law, including killings, sexual violence, and looting of civilian property and humanitarian assets. Government soldiers also fired indiscriminately near Protection of Civilians sites and, in some cases, deliberately targeted them. Fifty-four displaced people were killed in the sites during the fighting, according to the UN.

In September, the number of refugees who had arrived in neighbouring countries since the start of the conflict in December 2013, reached 1 million. The number of internally displaced people seeking protection in Protection of Civilians sites rose over the course of the year to 204,918 in October. A total of 1.83 million people continued to be displaced within the country and 4.8 million people were affected by food insecurity.

ARBITRARY DETENTIONS AND TORTURE AND OTHER ILL-TREATMENT

South Sudan’s National Security Service (NSS) and the national army’s Military Intelligence Directorate continued to conduct arbitrary arrests, prolonged and – in some cases – incommunicado detentions, and enforced disappearances of perceived government opponents. Detainees were subjected to torture and other ill-treatment in multiple detention facilities.
Over 30 men were detained by the NSS at a two-storey detention facility within its headquarters in the Jebel neighbourhood of Juba. They were detained on accusations of supporting the SPLM/A-IO, but were not charged or presented in court. None of them had had access to legal counsel by the end of the year. The NSS restricted access to family members and failed to provide adequate medical care. Some were subjected to beatings and other forms of physical assault, especially during interrogation or as punishment for breaking internal detention rules. Some had been in detention for over two years.

The NSS continued to arbitrarily detain George Livio, a journalist with the UN’s Radio Miraya, without charge or trial, in Juba. The NSS arrested George Livio in Wau on 22 August 2014. The NSS has denied requests from his lawyer to meet him and has restricted his access to family members.

Loreom Joseph Logie, who had been arbitrarily detained by the NSS since September 2014, died on 17 July. Prior to his death he had suffered from a tapeworm infection that was untreated and caused liver damage.

A detention facility at a military base in Gorom, about 20km south of Juba, was used, at least between November 2015 and May 2016, to detain soldiers and civilians allegedly affiliated with the opposition. Detainees were held without charge or trial. They were held in poorly ventilated metal shipping containers, fed only once or twice a week and given insufficient drinking water. Many detainees died at this facility due to harsh conditions; others were victims of extrajudicial executions.

The Giyada military barracks in Juba remained a site where arbitrary and incommunicado detentions, torture and disappearances continued to be carried out. Conditions were particularly harsh in an underground military intelligence cell, where detainees were held without access to natural light or sanitary facilities.

Elias Waya Nyipouch, former Governor of Wau state, was arrested at his home on 26 June. He was detained in Juba at the Giyada military barracks and moved on 21 October to the Bilpam barracks, also in Juba. He was held without charge or trial at the end of the year.

**LACK OF ACCOUNTABILITY**

There were no credible investigations and prosecutions of violations and abuses of international human rights and humanitarian law conducted in fair trials by civilian courts. Some crimes committed against civilians by government soldiers were reportedly prosecuted before military courts, despite the provision under South Sudan’s SPLA Act providing that if military personnel commit an offence against a civilian, the civil court should assume jurisdiction over the offence.

Although the ARCSS provided for the establishment of a Hybrid Court for South Sudan by the African Union Commission, little progress was made towards its establishment. There was also little progress towards the establishment of a Commission on Truth Reconciliation and Healing or a Compensation and Reparations Authority. These two bodies were also provided for in the ARCSS.

**FREEDOM OF EXPRESSION**

The space for journalists and human rights defenders to work freely continued to shrink, as it had since the start of the conflict. The authorities, especially the NSS, continued to harass and intimidate journalists, summoning them for questioning and arbitrarily arresting and detaining them. Numerous journalists and human rights defenders have fled South Sudan due to perceived security risks.

Joseph Afandi, a journalist in Juba with the daily *El Tabeer*, was arrested by the NSS on 23 December 2015 for criticizing in an article the human rights record of the Sudan People’s Liberation Movement (SPLM). He was held in incommunicado detention at the NSS headquarters in Juba until his release in February. While in detention, he was subjected to torture and other ill-treatment.

Alfred Taban, a journalist and chief editor of the daily *Juba Monitor*, published an
Amnesty International Report 2016/17

opinion piece on 15 July in which he said that both Machar and Kiir had “completely failed” and “should not remain in their seats”. Alfred Taban was arrested the following day by NSS agents and detained at their headquarters in Juba for one week. He was then transferred to police custody and charged with “publishing or communicating false statements prejudicial to South Sudan” and with “undermining the authority of or insulting the president.” He was released on bail on 29 July. No court date had been set for a trial by the end of the year.

On 12 September, staff of the newspaper Nation Mirror were summoned by the NSS and shown a letter ordering the paper to “close down because they had indulged in activities incompatible with their status.” The order followed the publication of an opinion article condemning corruption within the armed forces and an article about corruption allegations against government officials.

FREEDOM OF ASSOCIATION

In February, two laws regulating NGOs activities were enacted. The laws restricted the right to freedom of association by mandating that all NGOs needed to register; non-registered NGOs were prohibited from operating. The Relief and Rehabilitation Commission held sweeping powers to register and monitor NGOs and to revoke registration of NGOs that were judged not to be in conformity with the NGO Act. The acceptable “objectives of NGOs” listed in the Act did not include human rights work or policy advocacy.

RIGHT TO HEALTH – MENTAL HEALTH

Although levels of post-traumatic stress disorder and depression among the population remained high, the availability and accessibility of mental health and psychosocial support services remained limited. Juba Teaching Hospital – the only public medical facility that provided psychiatric care – still only had 12 beds in its psychiatric ward. The availability of psychotropic drugs was inconsistent and limited. There were only two practising psychiatrists in the country, both of whom were in Juba. Neither of them saw patients on a full-time basis. Due to the lack of appropriate services and facilities, people with mental health conditions continued to be routinely housed in prisons, even if they had not committed any crime. In prison, mental health patients continued to receive insufficient medical care and were sometimes chained or held in solitary confinement for long periods.

LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS


SPAIN

Kingdom of Spain
Head of state: King Felipe VI de Borbón
Head of government: Mariano Rajoy

The offence of “glorifying terrorism” continued to be used to prosecute people peacefully exercising their right to freedom of expression. New cases of torture and other ill-treatment, excessive use of force and collective expulsions by police officials were reported, including against individuals who attempted to enter irregularly from Morocco into the Spanish enclaves of Ceuta and Melilla. Investigations into allegations of torture and other ill-treatment were sometimes not effectively conducted. Authorities accepted the resettlement and relocation of only a few hundred refugees, far below the commitments undertaken. Spanish authorities continued to refuse to co-operate with the Argentine judiciary to investigate crimes committed during the Civil War and by the Franco regime.
FREEDOMS OF EXPRESSION AND ASSEMBLY
Throughout the year, unwarranted restrictions on the rights to freedom of expression, information and assembly were imposed, on the basis of the 2015 legislative amendments to the Law on Public Security and the Criminal Code.

On 5 February, Alfonso Lázaro de la Fuente and Raúl García Pérez, professional puppeteers, were imprisoned for five days after performing a play which included scenes in which a nun was stabbed, a judge hanged and police and pregnant women were subjected to beatings. During the show, one of the puppets displayed a banner bearing the sign “Gora ALKA-ETA” (“Up with ALKA-ETA”). The puppeteers were charged with glorifying terrorism and incitement to hatred. Their arrest took place after several individuals said they were offended by the play. In September, the National Court dismissed charges of glorifying terrorism. However, at the end of the year, the prosecution continued on charges of incitement to hatred.

In April, the Minister of Interior urged the General Council of the Judiciary to take measures against José Ricardo de Prada, a National High Court judge. He had participated in a round table organized by the City Council of Tolosa, Guipúzcoa, where he expressed agreement with the concerns of international human rights organizations regarding the barriers to effective investigations of cases of torture in Spain. In addition, the Prosecutor’s Office supported a request by the Association of Victims of Terrorism that he should be removed as member of a court in two criminal trials because of his alleged bias. In June, the National High Court dismissed both requests to take action against the judge.

During the year, the National High Court delivered 22 guilty verdicts against 25 people for glorifying terrorism offences. Most rulings came as a result of “Operation Spider”, involving the interception of messages published on social media. Between April 2014 and April 2016, 69 individuals were arrested as part of the operation.

TORTURE AND OTHER ILL-TREATMENT
New cases of torture and other ill-treatment, including excessive use of force by law enforcement officers, were reported throughout the year. Investigations into allegations of torture and other ill-treatment were sometimes not effectively and thoroughly conducted.

In January, the judge investigating the death in Cadiz on 4 April 2015 of Juan Antonio Martínez González, as a result of the injuries sustained while he was being restrained by law enforcement officers, made his ruling. He found that there was no evidence to support charges that the officers used banned methods of restraint or that they exceeded their powers in their intervention. At the end of the year, an appeal against the ruling before the Provincial Court of Cádiz was upheld.

In May, in the case of Beortegui Martinez v Spain the European Court of Human Rights once again found that Spain violated the prohibition of torture and other ill-treatment by failing to conduct an effective and thorough investigation into allegations of torture of individuals under incommunicado detention. This was the seventh ruling of this kind against Spain.

In May, the Audiencia Provincial of Barcelona heard the trial against two officers regarding the case of Ester Quintana, who lost an eye in November 2012 as a result of being hit by a rubber bullet shot by the Mossos d’Esquadra during a protest in Barcelona. The trial ended with the acquittal of both officers, as the court was unable to establish which officer had fired the bullet.

In July, the Supreme Court partially annulled the conviction by the High Court of Sáioa Sánchez for an act of terrorism in December 2015.

The High Court had convicted Sáioa Sánchez and two others of terrorism-related offences. Her appeal to the Supreme Court claimed that the High Court refused to investigate whether the statement of one of
the defendants, Iñigo Zapirain, implicating her in the offence, had been made under duress. The Supreme Court ordered a new hearing, asking that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) be followed to assess the veracity of the statement of Iñigo Zapirain. The ruling took account of the concerns expressed by international human rights bodies about impunity and lack of thorough and effective investigations, as well as about shortcomings in the quality and accuracy of forensic investigations.

REFUGEES’ AND MIGRANTS’ RIGHTS
The number of irregular arrivals of refugees and migrants, crossing from Morocco into the Spanish enclaves of Ceuta and Melilla through the fence separating the two countries, decreased on the previous year. However, the overall number of arrivals including those passing through regular border crossings increased. There continued to be collective expulsions by Spanish law enforcement officers in Ceuta and Melilla towards Morocco. The Spanish reception system for asylum-seekers remained inadequate, with too few places in official reception centres and too little assistance for those housed outside them. Spain failed to implement European Directives on stateless persons, asylum procedures and reception conditions. There continued to be no implementation of the Asylum Act, six years after its entry into force. As a result, asylum-seekers across the country experienced uneven access to the assistance they are entitled to. Between January and October, 12,525 asylum applications were submitted in Spain, according to Eurostat data, compared with 4,513 in 2013. By August, the growing backlog of unprocessed asylum applications had reached 29,845 cases.

On 9 September, at least 60 people from sub-Saharan Africa who had gained access to Spanish territory by climbing the fences separating Ceuta from Morocco were collectively expelled. Before being expelled some of them were beaten by Moroccan officers who entered the area between the fences, which is Spanish territory. Some of those returned to Morocco were injured while scaling the fences and as a result of the beatings.

Although Spain agreed to receive 1,449 people from the Middle East and North Africa under resettlement schemes, only 289 people, all Syrian nationals, had reached Spanish territory by December. Likewise, in contrast to the commitment made to receive 15,888 people in need of international protection from Italy and Greece under the EU internal relocation programme, only 609 were relocated to Spain by December.

IMPUNITY
Spanish authorities continued to refuse to cooperate with the Argentine judiciary to investigate crimes under international law committed during the Civil War and by the Franco regime. Spanish authorities obstructed Argentine prosecuting authorities in the class action known as “Querella Argentina” from taking statements from some of the victims and the 19 defendants. By means of a circular dated 30 September, the Spanish Prosecutor’s Office instructed territorial prosecutor offices to refuse to conduct any of the judicial inquiries requested by the Argentine prosecuting authorities, arguing that it would not be possible to investigate the crimes reported, such as enforced disappearances and torture, under the Amnesty Act (among other acts) and because of the statute of limitations.

DISCRIMINATION – MIGRANTS’ HEALTH
Austerity measures continued to have a detrimental effect on human rights, especially with regard to access to health and social protection for some of the most vulnerable groups. The Constitutional Court declared that legislation approved in 2012, restricting access to free health care for undocumented migrants including primary health care, was constitutional. This reform has taken away the health care cards from 748,835 migrants,
removing or seriously limiting their access to the health system and in some situations putting their lives at risk. There has been a particular impact on women, in terms of barriers to information on, and services related to, sexual and reproductive health.

RIGHT TO HOUSING
Public spending on housing was cut by over 50% between 2008 and 2015, while mortgage foreclosures continued unabated. According to statistics from the General Council of the Judiciary, up to September 2016 there were 19,714 forced mortgage evictions and 25,688 evictions for non-payment of rent. However, there were no official figures showing the number of people affected by foreclosures in Spain, nor disaggregated data by sex or age, which prevented the adoption of measures to protect the most vulnerable. Householders facing repossession claims continued to lack adequate legal remedies to enforce the protection of their right to housing before courts.

VIOLENCE AGAINST WOMEN
According to figures from the Ministry of Health, Social Services and Equality, 44 women were killed by their partners or ex-partners as of December. The Act on Comprehensive Protection Measures Against Gender-Based Violence and the establishment of Courts on Violence Against Women came into force in 2004. However, there has not been a participatory and transparent review of the impact of the law since then, despite concerns about the effectiveness of prosecutions and the adequacy of victim protection measures.

SRI LANKA
Democratic Socialist Republic of Sri Lanka
Head of state and government: Maithripala Sirisena

Sri Lanka continued to pursue commitments to deliver accountability for alleged crimes under international law, although the process was slow. Many human rights challenges remained, including the authorities’ reliance on the Prevention of Terrorism Act (PTA) to arrest and detain suspects; torture and other ill-treatment in police custody, and impunity for enforced disappearance and other violations. Victims of violations during the armed conflict faced challenges in rebuilding lives and livelihoods as coherent relief and reparation plans had yet to be implemented.

BACKGROUND
Sri Lanka initiated a constitutional reform process, began to design truth, justice and reparation mechanisms, and began to institute legal and procedural reforms to address, and ensure, non-repetition of the serious human rights violations and abuses that plagued the country for decades. It initiated public consultations on these mechanisms, but failed to adequately support implementation of the process.

ARBITRARY ARRESTS AND DETENTIONS
Tamils suspected of links to the Liberation Tigers of Tamil Eelam (LTTE) continued to be detained under the PTA, which permits extended administrative detention and shifts the burden of proof onto the detainee alleging torture or other ill-treatment. In 2015 the government pledged to repeal the PTA and replace it with legislation that complied with international standards, but had not implemented this commitment by the end of 2016. A draft policy and legal framework for replacement legislation submitted for cabinet approval in October retained many of the PTA’s most problematic elements although it did introduce safeguards against torture.

In June, President Sirisena instructed the police and armed forces to abide by Human Rights Commission of Sri Lanka directives, that were designed to protect those arrested under the PTA and other emergency measures and to end practices that can lead to abuse. Such abuses include the failure of arresting officials to identify themselves, the
transport of suspects in unmarked vehicles, and the use of unofficial places of detention. The directives also guaranteed detainees’ access to a lawyer, including during interrogation, but these were not fully respected.

In late August, human rights lawyer Lakshan Dias petitioned the Supreme Court accusing the Terrorist Investigation Division of the police of violating the directives by refusing to allow him to meet with his client. An amendment to the Code of Criminal Procedure that would have deprived those arrested of access to legal counsel until the police recorded their statements was withdrawn in October after lawyers protested.

**TORTURE AND OTHER ILL-TREATMENT**
The UN Special Rapporteur on torture visited Sri Lanka in May. He found that severe forms of torture by police continued, although probably at lower levels than during the armed conflict, and that impunity persisted for both old and new cases. He noted that procedural norms such as prolonged arbitrary detention without trial under the PTA “almost invite torture and ill-treatment as a routine method of work.” In August, Sri Lanka made a declaration under the UN Convention against Torture recognizing the competence of the UN Committee against Torture to receive and consider communications from individuals alleging violations of their rights under the Convention.

**EXCESSIVE USE OF FORCE**
Reports continued of excessive use of force in the context of policing. Impunity continued to persist for past incidents. The killings by the army of unarmed demonstrators demanding clean water in August 2013 had yet to be prosecuted. In October a magistrate ruled that the killings were crimes, and ordered further hearings in 2017 to determine whether there was sufficient evidence to refer the case for prosecution.

**ENFORCED DISAPPEARANCES**
In May, Sri Lanka ratified the International Convention against Enforced Disappearance, but by the end of the year had not passed legislation criminalizing enforced disappearance in domestic law. The Presidential Commission to Investigate into Complaints Regarding Missing Persons concluded in July, having received over 19,000 civilian complaints. However, little progress was made in clarifying the fate of the missing or bringing perpetrators of enforced disappearance to justice. In August, Parliament bypassed public consultation when it adopted an Act establishing the Office on Missing Persons to assist families to trace missing relatives and take on the case load left by the Commission.

**IMPUNITY**
Impunity persisted for alleged crimes under international law committed during the armed conflict. Impunity also remained for many other human rights violations. These included the January 2006 extrajudicial executions of five students in Trincomalee by security personnel and the killing of 17 aid workers with the NGO Action Against Hunger in Muttur in August 2006.

In May, the former Media Minister, testifying in a habeas corpus case into the December 2011 disappearances of political activists Lalith Weeraraj and Kugan Muruganandam, stated that his claim at the time that the two activists were in government custody and that their whereabouts could not be revealed was based on information from the Defence Ministry. The investigation into the involvement of army intelligence officers in the 2010 disappearance of dissident cartoonist Prageeth Eknaligoda was ongoing.

In August a court in the capital, Colombo, ordered a new autopsy of the remains of newspaper editor Lasantha Wickrematunge, who was murdered in 2009.

**HUMAN RIGHTS DEFENDERS**
In August, Balendran Jeyakumari, an activist against enforced disappearances, who had
previously been detained without charge for a year under the PTA, was once again summoned for questioning. Human rights defender Ruki Fernando remained barred by court order from speaking about an ongoing police investigation into his advocacy on her case; his confiscated electronic equipment was not returned.

Sandhya Eknaligoda, the wife of disappeared dissident cartoonist Prageeth Eknaligoda, faced repeated threats and acts of intimidation. These included protests outside the court where her husband’s habeas corpus case was being heard, and a poster campaign that accused her of supporting the LTTE after the police identified seven army intelligence officers suspected of involvement in his disappearance.

FREEDOMS OF EXPRESSION, ASSEMBLY AND ASSOCIATION

In June, journalist Freddy Gamage was beaten by men he identified as supporters of a politician in the town of Negombo. Freddy Gamage had been threatened previously over articles he wrote exposing the politician’s alleged corruption and links to organized crime. He was further threatened by one of his attackers when they met in court after he pointed him out in an identification parade. Impunity persisted for past attacks on media workers; according to media NGOs, attacks included some 44 killings since 2004.

People engaged in activism in the north and east continued to report harassment and surveillance by security forces.

LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS

Sri Lanka initiated a Constitutional reform process aimed at ensuring checks on executive power and more equitable ethnic power sharing. The results of public consultations on the content of a new Constitution were published in May. Parliament was expected to debate a proposed draft Constitution in early 2017.

In July, Sri Lanka passed the Right to Information Act. In August, the cabinet approved a National Policy on Durable Solutions for Conflict-Affected Displacement. This aimed to protect human rights by guiding the return of private lands seized by the military, creation of livelihood and income generating opportunities for the displaced, and assistance for returning refugees. The policy emphasized non-discrimination, access to justice and reparations. Implementation was expected to begin in February 2017.

DISCRIMINATION

Tamils continued to complain of ethnic profiling, surveillance and harassment by police who suspected them of LTTE links. In August, the UN Committee on the Elimination of Racial Discrimination found that the PTA was disproportionately used against Tamils and was discriminatory in effect.

Christians and Muslims reported incidents of harassment, threats and physical violence by members of the public and supporters of hardline Sinhala Buddhist political groups. Police failed to take action against attackers or in some cases blamed religious minorities for inciting opponents. In June, a group calling itself Sinha Le (Lion’s Blood) was linked to protests against a mosque construction in the city of Kandy. In June, its supporters waged a social media campaign of threats and intimidation against Equal Ground, an organization seeking human and political rights for the lesbian, gay, bisexual, transgender, intersex and questioning (LGBTIQ) community of Sri Lanka.

In June, the Health Ministry noted that “transgender people are often socially, economically, politically and legally marginalized… and vulnerable to harassment violence and sexual assault and discrimination in access to public spaces.” It ordered health services for transgender individuals, including physician-certified Gender Recognition Certificates to assist in the amendment of birth certificates to accurately reflect the sex with which the individual identified.
VIOLENCE AGAINST WOMEN AND GIRLS

Impunity persisted for violence against women and girls, including rape by military personnel and civilians, and also in situations of domestic violence such as marital rape. Women human rights defenders supporting constitutional reforms advocated repeal of Article 16(1), which upheld laws existing prior to the current Constitution, even when they were inconsistent with the Constitution. This included tenets of Muslim personal law that permitted child marriage and failed to recognize marital rape.

DEATH PENALTY

Death sentences continued to be imposed; no executions were carried out. In September, a former MP was sentenced to death for the murder of a political rival.

SUDAN

Republic of the Sudan
Head of state and government: Omar Hassan Ahmed al-Bashir

The authorities refused to execute arrest warrants issued by the International Criminal Court (ICC). The security and humanitarian situation in Darfur, Blue Nile and South Kordofan states remained dire, with widespread violations of international humanitarian and human rights law. Evidence pointed to the use of chemical weapons by government forces in Darfur. The rights to freedom of expression, association and peaceful assembly were arbitrarily restricted and critics and suspected opponents of the government were subjected to arbitrary arrest, detention and other violations. Excessive use of force by the authorities in dispersing gatherings led to numerous casualties.

BACKGROUND

Armed conflicts persisted in Darfur, Blue Nile and South Kordofan, leading to civilian casualties and widespread disruption and hardship.

In March, the African Union High-Level Implementation Panel (AUHIP) proposed a Roadmap Agreement for peace and dialogue to end the conflicts. The Agreement commits parties to end conflicts in Darfur, Blue Nile and South Kordofan and ensure humanitarian access to all populations in these areas. It also commits parties to engage in an inclusive national dialogue process. The government signed the Agreement in March but opposition groups refused at first to sign.

On 8 August, the agreement was signed by four opposition groups: the National Umma Party; the Sudan People’s Liberation Movement-North (SPLM-N); the Justice and Equality Movement (JEM); and the Sudan Liberation Movement (SLM-MM) led by Minni Minnawi. The following day, negotiations resumed in Addis Ababa, Ethiopia, along two tracks: between the SPLM-N and the government; and on Darfur around cessation of hostilities and humanitarian access. However, on 14 August, the talks collapsed between the government and the armed opposition groups, the SPLM-N, JEM and SLM-MM. The AUHIP announced an indefinite suspension of the peace talks. Both sides blamed each other for the collapse of the talks.

When Sudan’s human rights record was examined under the UN Universal Periodic Review (UPR) process in May, Sudan accepted a number of recommendations including ratification of the UN Convention against Torture and efforts to prevent torture and inhuman treatment. However, Sudan rejected recommendations to remove impunity provisions from the National Security Act 2010 and ensure independent investigation and prosecution of crimes under international law and human rights violations committed by the National Intelligence and Security Service (NISS), the armed forces and the police.¹

In January, Parliament passed an amendment that increased the maximum penalty for rioting from two to five years’ imprisonment.
INTERNATIONAL CRIMINAL COURT
The authorities continued to refuse to execute five arrest warrants issued by the ICC for Sudanese nationals, including two warrants for President al-Bashir on charges of genocide, crimes against humanity and war crimes allegedly committed in Darfur.

ARMED CONFLICT

Darfur
The security and humanitarian situation in Darfur remained dire, as the armed conflict entered its thirteenth year in 2016.

In January, government forces launched a large-scale military campaign in the Jebel Marra area of Darfur. Co-ordinated ground and air attacks targeted locations throughout Jebel Marra until May. After that, the seasonal rains intensified, making ground attacks impractical throughout most of the area; air operations continued, however, through to mid-September.

A large number of crimes under international law and human rights violations committed by Sudanese government forces were documented, including the bombing of civilians and civilian property, the unlawful killing of men, women and children, the abduction and rape of women, the forced displacement of civilians and the looting and destruction of civilian property, including the destruction of entire villages.

Evidence was also documented that suggested the Sudanese government forces repeatedly used chemical weapons during attacks in Jebel Marra. Satellite imagery, more than 200 in-depth interviews with survivors and expert analysis of dozens of images of injuries indicated that at least 30 probable chemical attacks took place in Jebel Marra between January and September 2016. An estimated 200 to 250 people may have died as a result of exposure to chemical weapons agents, with many – or most – being children. Most survivors of the suspected chemical weapons attacks had no access to adequate medical care.

South Kordofan and Blue Nile
On 24 April, the Sudan Revolutionary Front, a coalition of four armed opposition groups, announced a unilateral ceasefire of six months, extending a previous ceasefire announced in October 2015. On 17 June, President al-Bashir declared a four-month unilateral cessation of hostilities in Blue Nile and South Kordofan. In October, he extended the cessation of hostilities in these areas to the end of year.

Despite the declared cessation of hostilities, government forces and the SPLM-N engaged in sporadic military attacks in Sudan People’s Liberation Army-North (SPLA-N) controlled areas. The armed conflict was characterized by aerial and ground attacks by government forces, many directed at civilian objects – that is, objects which are not military objectives – as well as denial of humanitarian access to civilians.

FREEDOM OF ASSOCIATION
Civil society activists were subjected to arbitrary arrests and arbitrary restrictions on their activities.

On 28 January, the NISS stopped a seminar organized at Al Mahas Club in the capital Khartoum by a committee opposed to the building of the Kajbar and Dal dams in Northern Sudan state. The committee claimed the dams would have a damaging social and environmental impact. The NISS detained 12 people before releasing them later that day.

The NISS raided the office of the NGO TRACKS (Khartoum Centre for Training and Human Development) on 29 February and confiscated mobile phones and laptops, as well as documents, the passports of those present and two vehicles. They detained the Director of TRACKS, Khalafalla Mukhtar, for six hours, along with another TRACKS employee and Mustafa Adam, a visitor and Director of Al Zarqaa, another civil society organization. On 22 May, the NISS arrested eight TRACKS employees and affiliates. Five were released on bail in June, but three were detained without charge for nearly three
months by the Office of the Prosecutor for State Security before being transferred to Al Huda Prison to await trial. In August, a total of six TRACKS employees and affiliates were charged with various offences including crimes against the state that carry the death penalty. The trial had not concluded by the end of the year.

Between 23 and 28 March, four civil society representatives were intercepted by security officials at Khartoum International Airport while on their way to a high-level meeting with diplomats in Geneva, Switzerland, in preparation for Sudan’s examination under the UPR process.

The authorities continued to prevent opposition political parties from organizing peaceful public activities. The NISS prevented the Republican Party from marking the anniversary of the execution of its founder, Mahmoud Mohamed Taha, on 18 January. In February, NISS agents prevented two opposition political parties – the Sudanese Communist Party and Sudanese Congress Party – from holding a public event in Khartoum.

FREEDOM OF EXPRESSION

Arbitrary restrictions on freedom of expression continued. The authorities regularly confiscated newspaper print runs. During 2016, 12 newspapers had their issues confiscated on 44 different occasions. Dozens of journalists were arrested and interrogated by the NISS Media Office and the Press and the Publications Prosecution Office in Khartoum.

In April, the NISS confiscated the daily newspapers Akhir Lahzah, Al Sihaa and Al-Tagheer, without giving reasons. In May, Alwan, Al-Mustagilla and Al-Jareeda newspapers were confiscated by the NISS from the printers. In October, Al Sihaa and Al-Jareeda newspapers were confiscated.

On 14 August, the National Council for Press and Publications suspended indefinitely the publication of four newspapers: Elaf, Al-Mustagilla, Al Watan and Awal Al Nahar. The Council said it had suspended the newspapers because of their continued violation of the regulations in the Press and Publications Act.

ARBITRARY ARRESTS AND DETENTIONS

Across Sudan, NISS officials and members of other security forces targeted opposition political party members, human rights defenders, students and political activists for arbitrary arrest, detention and other violations.

On 1 February, NISS officials arrested four students from Darfur in Khartoum after a protest organized by the United Popular Front, affiliated with the Sudan Liberation Movement-Abdul Wahid Al Nour, against the conflict in Jebel Marra.

In April, violent confrontations between students and security agents went on for three weeks at the University of Khartoum. The protests erupted because of reports that the government was planning to sell some of the university’s buildings. Dozens of students were arrested during these protests, including five who were detained without charge in Khartoum. They were released in late April, but some were rearrested in May.

NISS agents raided the office of a prominent human rights lawyer, Nabil Adib, in Khartoum on 5 May and arrested 11 people, including eight students who had been expelled or suspended from the University of Khartoum. All were released by late June.

In Central Darfur state, on 31 July, NISS agents arrested 10 people who had attended a meeting with the US Special Envoy for Sudan and South Sudan during his visit to the region. Of the 10, seven were internally displaced persons. They were all released in September.

EXCESSIVE USE OF FORCE

The authorities arbitrarily restricted freedom of assembly and, on many occasions, used excessive force to disperse gatherings, resulting in several deaths and numerous injuries. No investigations were conducted into the deaths.

In February, NISS officials and students affiliated to the ruling National Congress Party
violently disrupted a public seminar organized by a political opposition party at the University of El Geneina. A number of students were seriously injured, and one, Salah al Din Qamar Ibrahim, died as a result of his injuries.

On 19 April, Abubakar Hassan Mohamed Taha, an 18-year-old student at the University of Kordofan, was shot in the head by NISS agents in Al Obied, capital of North Kordofan state. The students had been marching peacefully when heavily armed NISS agents intercepted them, reportedly shooting into the crowd, in an attempt to prevent them from taking part in student union elections. Another 27 students were injured, five of them seriously. The killing of Abubakar Hassan Mohamed Taha provoked nationwide student protests.10

On 27 April, 20-year-old Mohamad Al Sadiq Yoyo, a second-year student at the Omdurman Al Ahlia University in Khartoum state, was shot dead by NISS agents.

On 8 May, police forces in Kosti city in White Nile state violently dispersed a peaceful sit-in organized by the Faculty of Engineering Students’ Association of the University of Al-Imam Al-Mahdi. The police reportedly used tear gas and batons, injuring about seven students, four of them seriously.

1. Sudan: Amnesty International public statement at the 33rd session of the UN Human Rights Council (AFR 54/4875/2016)
2. Sudan: Scorched earth, poisoned air – Sudanese government forces ravage Jebel Marra, Darfur (AFR 54/4877/2016)
3. Sudan: Five years and counting – Intensified aerial bombardment, ground offensive and humanitarian crisis in South Kordofan state (AFR 54/4913/2016)
4. Sudan: Ten civil society activists harassed by NISS (AFR 54/3634/2016)
5. Sudan: Further information – three human rights defenders still detained (AFR 54/4267/2016)
6. Sudan: Drop all charges and release activists detained for exercising their rights (News story, 29 August)
7. Sudan blocks civil society participation in UN-led human rights review (AFR 54/4310/2016)
8. Sudan: Student activists detained without charge (AFR 54/3861/2016)
9. Sudan: Eight arrested, whereabouts unknown (AFR 54/4617/2016)

10. Sudan: Government must investigate brutal killing of 18-year-old university student by intelligence agents (News story, 20 April)

**SWAZILAND**

**Kingdom of Swaziland**
Head of state: King Mswati III
Head of government: Barnabas Sibusiso Dlamini

Legislation continued to be used to repress dissent. The High Court ruled that security legislation violated the rights to freedom of expression, of association and of assembly, which were protected under the Constitution. The findings of an inquest into a death in police custody were not disclosed. There was insufficient protection against torture and other ill-treatment. Legislation gave the police wide-ranging powers to use lethal force, contrary to international human rights law and standards.

**BACKGROUND**

Two thirds of the population continued to live below the poverty line. In October, the Afrobarometer research network reported that around half the population said they often went without food and water, and over a third said that medical care was inadequate.

**LEGAL DEVELOPMENTS**

In May, the King appointed seven senior lawyers to act as Supreme Court judges. The appointments were made in contravention of Article 153 of the Constitution, which stipulates that judges be appointed in an open, transparent and competitive process. As a result, the Law Society of Swaziland boycotted the November Supreme Court session and demanded the appointment of permanent judges in line with the Constitution.

In September, the High Court ruled that sections of the 1938 Sedition and Subversive Activities Act (SSA) and the 2008 Suppression of Terrorism Act (STA) were invalid as they infringed on constitutionally protected rights to freedom of expression,
association and assembly. The judgment came after provisions in the laws were challenged in the applications filed in 2009 by human rights lawyer Thulani Maseko. Thulani Maseko was charged under the SSA in 2009. Another application was filed in 2014 by Mario Masuku and Maxwell Dlamini, leaders of the banned opposition People’s United Democratic Movement (PUDEMO), who were charged under both Acts in 2014; and by Mlungisi Makhanya and seven others, who were also charged under the Acts in 2014. The government appealed against the High Court’s decision in September. The appeal was due to be heard in early 2017.

FREEDOMS OF ASSEMBLY AND ASSOCIATION
The Public Order Bill, if passed, would undermine rights to freedom of peaceful assembly and of association. Among other things, it would criminalize the act of organizing a public gathering without prior notification to the authorities. The bill, which was expected to be passed by the Senate, before being ratified by the King, remained in draft form at the end of the year.

FREEDOM OF EXPRESSION
In June 2016, The Nation Magazine published an article by Thulani Maseko in which he questioned the independence of the judiciary. Following this, he and the magazine’s editor, Bheki Makhubu, were served with summonses for defamation by an acting judge of the Supreme Court who had been appointed in May.

William Mkhaliphi, an elderly sugar cane farmer from Vuvulane, in northeastern Swaziland, was arrested by police in August after he voiced concerns about alleged royal investments and land grabbing. He had raised concerns at the traditional Sibaya meeting convened by the King in Ludzidzini Royal Village where the community were invited to give their views on national issues. William Mkhaliphi was charged following spurious allegations of theft and released on bail by the Magistrates’ Court in Simunye the same month. He was awaiting trial at the end of the year.

DEATHS IN CUSTODY
The authorities had still not made public any findings of an inquest into the death in police custody of Luciano Reginaldo Zavale, a Mozambican national, in June 2015. Independent forensic evidence indicated that he did not die of natural causes and the inquest began in August 2015. According to reports, it reached a conclusion the same year. Luciano Reginaldo Zavale died on the day he was arrested on allegations that he was in possession of a stolen laptop.

TORTURE AND OTHER ILL-TREATMENT
The authorities failed to address inadequate legislative protection against torture and other ill-treatment. Swaziland took no steps to enact national legislation to give effect to its obligations under the UN Convention against Torture to which it acceded in 2004, nor to ratify the Optional Protocol to the UN Convention against Torture.

The Constitution (under Section 15(4)) allowed for the use of lethal force by police in a range of circumstances, including to defend property; to make a lawful arrest or to prevent the escape of a lawfully detained person; to suppress a riot; or to prevent the commission of a serious criminal offence. These grounds remained inconsistent with international human rights law and standards.

There was no independent mechanism for investigating abuses committed by the police. By the end of the year, no investigations had been undertaken into an incident in February when Ayanda Mkhabela, a student at the University of Swaziland (UNISWA), was run over by an armoured police vehicle during a student protest, and left paralysed.

WOMEN’S RIGHTS
Despite high levels of gender-based violence, the Sexual Offences and Domestic Violence Bill, introduced in Parliament in 2009, had not been enacted. Women and girls experiencing gender-based violence had few
remedies available to them under domestic law. Nor were they sufficiently protected in law from forced or early marriages.

**RIGHT TO AN ADEQUATE STANDARD OF LIVING**

In May, Swaziland’s human rights record was examined under the UN Universal Periodic (UPR) review process during which a number of concerns were raised. They included the need to address barriers in access to primary education; the reintegration of girls into the education system after giving birth; non-discriminatory access to health and education services irrespective of perceived or actual sexual orientation or gender identity; and the need for measures to be taken to combat and eradicate forced labour.

**DEATH PENALTY**

No death sentences were imposed during the year. Despite recommendations for a moratorium on the death penalty during the UPR, the death penalty was maintained by Swaziland.

---

**SWEDEN**

Kingdom of Sweden

Head of state: **King Carl XVI Gustaf**

Head of government: **Stefan Löfven**

New restrictions on residence permits and family reunification for refugees and others granted protection came into force. Roma and Sami peoples faced ongoing discrimination. A parliamentary committee published recommendations to reform inadequate laws on rape.

**REFUGEES AND ASYLUM-SEEKERS**

In June, Parliament passed a temporary law affecting people entitled to international protection that would apply for three years after coming into force in July. The law limits the length of the residence permits given to persons granted protection, from permanent residence permits to temporary permits of three years for persons granted refugee status and of 13 months for persons granted subsidiary protection. The law also withdrew the possibility of family reunification for those granted subsidiary protection.

**DISCRIMINATION – ROMA AND SAMI PEOPLES**

Two UN Committees expressed serious concerns about Sweden’s treatment of Roma citizens of other European countries. In April, the UN Human Rights Committee called on Sweden to ensure that Roma had equal access to opportunities and services, citing concerns about their limited access to education, employment, housing and health care. In July, the UN ICESCR Committee raised similar concerns, including the resulting vulnerability to forced eviction of many Roma living in informal settlements. Romani people remained at risk of hate crimes based on their ethnicity.

In July, the District Court of Stockholm found that the Skåne police database of nearly 5,000 Swedish-Roma people constituted ethnic discrimination and breached Swedish law. The Court awarded compensation to the complainants for the harm suffered; an appeal by the state was pending at the end of the year.

The UN Human Rights Committee and the ICESCR Committee, in April and July respectively, raised continuing concerns about the ability of Sami people to enjoy the rights of Indigenous Peoples, notably their land rights.

**RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE**

In April, the government announced a scheme to provide financial compensation to transgender people who had been required to undergo forced sterilization to legally change their gender.

**VIOLENCE AGAINST WOMEN AND GIRLS**

In October, the 2014 Sexual Offences Committee inquiry into sexual offences presented its proposals to the government. They included the introduction of a consent-
based definition of rape, and liability for negligence for sexual offences.1

ARMS TRADE
The Inspectorate of Strategic Products (ISP) – the national authority charged with the control and compliance of defence material and dual-use products – cleared the sale by the Saab Group of the advanced air radar system GlobalEye to the United Arab Emirates. Concerns raised by journalists alleging a lack of due diligence prior to the 2010 sale of the Saab 2000 airborne early warning and Erieye control system to Saudi Arabia, were left unanswered as the ISP’s records remained classified. Concerns remained regarding the possible use of these technologies by the Saudi Arabia-led coalition in the conflict in Yemen to commit or facilitate serious violations of international human rights and humanitarian law.

1. Sweden: Submission to the UN Committee on the Elimination of Discrimination against Women (EUR 42/3305/2016)

SWITZERLAND

Swiss Confederation
Head of state and government: Johann Schneider-Ammann (replaced Simonetta Sommaruga in January)

A new law on asylum introduced free legal counselling for asylum-seekers. However, concerns remained regarding the respect of the rights of refugees and migrants. Authorities pushed back thousands of asylum-seekers to Italy. In September, the new surveillance law was accepted in a referendum.

REFUGEES’ AND MIGRANTS’ RIGHTS
In June, a new law on asylum, which had been adopted in September 2015, was accepted by referendum and partly entered into force. The law introduced some positive measures, including free legal counselling for asylum-seekers as of 2019, and the legal duty to take into account the needs of vulnerable asylum-seekers.

In the second half of the year, civil society organizations reported that authorities had pushed back to Italy several thousand asylum-seekers, including several hundred unaccompanied minors; some of them had close family members living in Switzerland.

In July, the Federal Administrative Court concluded that the State Secretariat for Migration had not effectively investigated the case of an asylum-seeking Nigerian woman who was allegedly trafficked into Switzerland.

Asylum-seeking children in reception centres continued to be denied access to education. On 1 October, a new law imposing a duty on cantonal authorities to ensure their right to education entered into force.

Concerns remained regarding the restrictions imposed on the right of freedom of movement of asylum-seekers in most federal reception centres.

POLICE AND SECURITY FORCES
In July, the National Commission for the Prevention of Torture raised concerns about police using disproportionate force in some cantons during operations to deport migrants.

Concerns remained regarding the attempted deportations of asylum-seekers with severe mental illnesses. In June, authorities in Neuchâtel unsuccessfully tried to deport a Kurdish asylum-seeker to Bulgaria despite his earlier attempt to commit suicide. In September, two Syrian women asylum-seekers, who had been admitted to a psychiatric hospital in Schaffhausen, attempted suicide shortly after police had removed them from the hospital to deport them. The Zurich Public Prosecutor Office opened an investigation into the events shortly after.

DISCRIMINATION
In May, the Lower Chamber of the Federal Parliament (National Council) voted in favour of a bill allowing second-parent adoption for same-sex couples.

In July, the prohibition of full-face veils entered into force in the Ticino canton. In
September, the Lower Chamber of the Federal Parliament (National Council) adopted a bill to ban full-face veils at the national level. The bill was pending before the Upper Chamber (Council of States) at the end of the year.

In November, the Zurich District Court rejected the appeal introduced by Mohamed Wa Baile, a Swiss citizen of Kenyan origin, who in February 2015 alleged that the police identity check he was subjected to at the Zurich train station was based on racial discrimination.

On 2 December, the government submitted to Parliament the bill authorizing the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

COUNTER-TERROR AND SECURITY

In May, the Secretary of State for Migration launched a procedure to strip a 19-year-old bi-national of his Swiss nationality for having allegedly joined the armed group Islamic State without him being charged with any criminal offence.

In September, the surveillance law, which had been adopted in September 2015, was accepted in a referendum. The law grants far-reaching powers to the Federal Intelligence Service to access personal information from a variety of sources and for vaguely defined aims, including counteracting terrorist threats.

SYRIA

Syrian Arab Republic
Head of state: Bashar al-Assad
Head of government: Imad Khamis (replaced Wael Nader al-Halqi in June)

Parties to the armed conflicts in Syria committed war crimes, other serious violations of international humanitarian law and gross human rights abuses with impunity. Government and allied Russian forces carried out indiscriminate attacks and direct attacks on civilians and civilian objects using aerial bombing and artillery, causing thousands of civilian casualties. There were reports that government forces also used chemical agents. Government forces maintained lengthy sieges that trapped civilians and cut their access to essential goods and services. The authorities arbitrarily arrested and detained thousands, subjecting many to enforced disappearance, prolonged detention and unfair trials, and continued to systematically torture and otherwise ill-treat detainees causing deaths in detention. They also committed unlawful killings, including extrajudicial executions. The armed group Islamic State (IS) besieged civilians, carried out direct attacks on civilians and indiscriminate attacks, sometimes reportedly using chemical agents, perpetrated numerous unlawful killings, and subjected thousands of women and girls to sexual slavery and other abuses. Other non-state armed groups indiscriminately shelled and besieged predominantly civilian areas. US-led forces carried out air strikes on IS and other targets, in which hundreds of civilians were killed. By the end of the year, the conflict had caused the deaths of more than 300,000 people, displaced 6.6 million people within Syria and forced 4.8 million people to seek refuge abroad.

BACKGROUND

The armed conflicts in Syria continued throughout the year with ongoing international participation. Syrian government and allied forces, including Lebanese Hizbullah and other non-Syrian armed groups and militias, controlled much of western Syria and made advances in other contested areas. They were supported by Russian armed forces, which carried out large-scale aerial attacks across Syria, killing and injuring thousands of civilians according to human rights organizations. Some Russian air strikes appeared to be indiscriminate or to amount to direct attacks on civilians and civilian objects, which would constitute war crimes.
Non-state armed groups primarily fighting government forces controlled northwestern and other areas, while forces of the Autonomous Administration controlled most of the predominantly Kurdish northern border regions. IS held parts of eastern and central Syria but lost ground during the year.

The UN Security Council remained divided on Syria and unable to secure a path to peace. Efforts made by the UN Special Envoy for Syria to promote peace talks were largely unsuccessful. In February, a Security Council resolution endorsed a cessation of hostilities agreed by Russia and the USA, but it was short-lived. In October, Russia vetoed a draft Security Council resolution calling for an end to aerial attacks on Aleppo city and for unimpeded humanitarian access. After government forces gained control of Aleppo in December, however, Russian President Vladimir Putin announced that a ceasefire backed by both Russia and Turkey had been agreed between the government and some opposition forces, to be followed by new peace negotiations that would commence in January 2017. On 31 December, the UN Security Council unanimously adopted a resolution welcoming the new peace effort while also calling for the “rapid, safe and unhindered” delivery of humanitarian aid across Syria.

The Independent International Commission of Inquiry on the Syrian Arab Republic, established by the UN Human Rights Council in 2011, monitored and reported on violations of international law committed in Syria although the Syrian government continued to deny it entry to the country.

In December, the UN General Assembly agreed to establish an independent international mechanism to ensure accountability for war crimes and crimes against humanity committed in Syria since March 2011.

ARMED CONFLICT – VIOLATIONS BY SYRIAN GOVERNMENT FORCES AND ALLIES, INCLUDING RUSSIA

Indiscriminate attacks and direct attacks on civilians

Government and allied forces continued to commit war crimes and other serious violations of international law, including direct attacks on civilians and indiscriminate attacks. Government forces repeatedly attacked areas controlled or contested by armed opposition groups, killing and injuring civilians and damaging civilian objects in unlawful attacks. They regularly bombarded civilian areas using explosive weapons with wide-area effects, including artillery shelling and unguided, high-explosive barrel bombs dropped from helicopters. The attacks caused numerous civilian deaths and injuries, including of children.

Government and allied Russian aircraft carried out several apparently deliberate attacks on hospitals, medical centres and clinics and aid convoys, killing and injuring civilians, including medical workers.

As the year progressed, government forces with Russian support increased attacks on eastern Aleppo, hitting residential homes, medical facilities, schools, markets and mosques, killing hundreds of civilians. Russian-made cluster munitions were also scattered across the area, with unexploded munitions posing an ongoing risk to civilians.

Two barrel bombs allegedly containing chlorine gas were dropped by suspected government aircraft on 1 August on two residential neighbourhoods controlled by non-state armed groups in Saraqeb city, Idleb province, reportedly injuring at least 28 civilians.

On 26 October, suspected government or Russian aircraft bombed a school compound in Haas, Idleb governorate, killing at least 35 civilians including 22 children and six teachers.

Sieges and denial of humanitarian access

Government forces maintained prolonged sieges of predominantly civilian areas
controlled or contested by armed groups, including in Eastern Ghouta, Moadhamiyah al-Sham, Madaya, Daraya and, from September, eastern Aleppo. The government sieges exposed civilian residents to starvation and deprived them of access to medical care and other basic services, while subjecting them to repeated air strikes, artillery shelling and other attacks.

The sieges prevented civilians leaving the area to seek medical care. For example, on 19 March a three-year-old boy reportedly died in al-Waer, in Homs city, after government forces prevented him from leaving the area to receive medical care for a head injury.

On 12 May, government forces prevented a UN humanitarian aid delivery, due to be the first since 2012, from entering Daraya. Government forces fired mortars into a residential area of the town, killing two civilians. In June, government forces allowed two limited convoys to enter Daraya but simultaneously intensified their indiscriminate attacks using barrel bombs, a napalm-like incendiary substance and other munitions, forcing the town’s remaining inhabitants to submit to being evacuated in late August.

From July, government forces trapped some 275,000 people in eastern Aleppo, subjecting them to intensified air strikes, including bombing by Russian forces. Suspected government and Russian aircraft bombed a UN/Syrian Arab Red Crescent aid convoy destined for eastern Aleppo on 19 September at Urum al-Kubra, killing at least 18 civilians including aid workers, and destroying aid lorries.

Attacks on medical facilities and workers
Government forces continued to target health facilities and medical workers in areas controlled by armed opposition groups. They repeatedly bombed hospitals and other medical facilities, barred or restricted the inclusion of medical supplies in humanitarian aid deliveries to besieged and hard-to-reach areas, and disrupted or prevented health care provision in these areas by detaining medical workers and volunteers. In June, the NGO Physicians for Human Rights accused government forces and their allies of responsibility for more than 90% of 400 attacks against medical facilities and 768 deaths of medical personnel since March 2011.

The UN reported that 44 health facilities were attacked in July alone. Four hospitals and a blood bank in eastern Aleppo city were struck in aerial attacks on 23 and 24 July. One, a children’s hospital, was hit twice in less than 12 hours.

ARMED CONFLICT – ABUSES BY ARMED GROUPS
Non-state armed groups committed war crimes, other violations of international humanitarian law and serious human rights abuses.

Indiscriminate attacks and direct attacks on civilians
IS forces carried out direct attacks on civilians as well as indiscriminate attacks in which there were civilian casualties. IS claimed responsibility for a series of suicide and other bomb attacks in the Sayida Zaynab district of southern Damascus, including one on 21 February in which 83 civilians were killed.

IS forces also carried out suspected chemical weapons attacks, including in August and September in northern Syria. Munitions fired by IS at Um Hawsh, near Marea, Aleppo governorate, on 16 September caused blistering and other symptoms common with exposure to mustard agent. Some of those affected were civilians.

The Fatah Halab (Aleppo Conquest) coalition of opposition armed groups repeatedly carried out indiscriminate artillery, rocket and mortar attacks on the Sheikh Maqsoud district of Aleppo city, controlled by Kurdish People’s Protection Units known as the YPG, killing at least 83 civilians and injuring more than 700 civilians between February and April. In May, at least four civilians in the area required medical treatment for symptoms that suggested they had been exposed to a chlorine attack.
Armed opposition groups fired imprecise mortars and missiles into government-held western Aleppo, killing at least 14 civilians on 3 November, according to the independent monitoring group Syrian Network for Human Rights.

**Unlawful killings**
IS forces committed war crimes by summarily killing civilians as well as members of rival armed groups and government forces whom they held prisoner. In areas of al-Raqqa, Deyr al-Zur and eastern Aleppo that it controlled, IS carried out frequent public execution-style killings, including of people they accused of spying, smuggling, adultery and blasphemy.

On 28 July, IS members were reported to have summarily killed at least 25 civilian women, men and children, at Buwayr village near Manbij.

On 19 July, a video published on the internet showed members of the Nour al-Dine al-Zinki Movement ill-treating and then beheading a young male.

**Sieges and denial of humanitarian assistance**
IS forces besieged and at times indiscriminately shelled government-held neighbourhoods of Deyr al-Zur city. UN agencies and Russian forces repeatedly air-dropped aid into the besieged areas; however, local human rights activists reported that government forces within the besieged areas seized much of the aid intended for civilians.

**Abductions**
Both IS and other non-state armed groups abducted civilians and held them hostage.

In January, Jabhat al-Nusra abducted at least 11 civilians from their homes in the city of Idleb. Their fate and whereabouts remained undisclosed at the end of the year.

The fate and whereabouts of human rights defender Razan Zaitouneh, her husband Wa’el Hamada, and Nazem Hamadi and Samira Khalil also remained undisclosed following their abduction on 9 December 2013 by unidentified armed men in Duma, an area controlled by Jaysh al-Islam and other armed groups.

There was no news of the fate or whereabouts of human rights defender Abdullah al-Khalil since his abduction by suspected IS members in al-Raqqa city on the night of 18 May 2013.

**ARMED CONFLICT – AIR STRIKES BY US-LED FORCES**
The US-led international coalition continued its campaign of air strikes begun in September 2014, predominantly against IS but also certain other armed groups in northern and eastern Syria, including Jabhat Fatah al-Sham (previously known as Jabhat al-Nusra). The air strikes, some of which appeared to be indiscriminate and others disproportionate, killed and injured hundreds of civilians. They included suspected coalition air strikes near Manbij that killed at least 73 civilians at al-Tukhar on 19 July, and up to 28 civilians at al-Ghandoura on 28 July. On 1 December, the US-led coalition was reported to have admitted causing the deaths of 24 civilians near Manbij in July while asserting that its attack had “complied with the law of armed conflict”.

**ARMED CONFLICT – ATTACKS BY TURKISH FORCES**
Turkish forces also carried out air and ground attacks in northern Syria targeting IS and Kurdish armed groups. A Turkish air strike reportedly killed 24 civilians near Suraysat, a village south of Jarablus, on 28 August.

**ARMED CONFLICT – ABUSES BY THE PYD-LED AUTONOMOUS ADMINISTRATION**
Forces of the Autonomous Administration, which was led by the Democratic Union Party (PYD), controlled most of the predominantly Kurdish northern border regions. In February, YPG forces demolished the houses of dozens of Arab civilians in Tal Tamer, al-Hassakeh governorate, accusing the owners of being IS supporters, according to the UN Office of the High Commissioner for Human Rights. The High Commissioner also reported the forced
recruitment of 12 children by the Asayish, Kurdish security forces and the YPG.

According to the Syrian Network for Human Rights, YPG shelling and sniper attacks killed at least 23 civilians in opposition-held areas of Aleppo city between February and April.

**REFUGEES AND INTERNALLY DISPLACED PEOPLE**

Millions of people continued to be displaced by the conflicts. Some 4.8 million people fled Syria between 2011 and the end of 2016, including 200,000 who became refugees during 2016, according to UNHCR, the UN refugee agency. In the same six-year period, around 6.6 million others were internally displaced within Syria, half of them children, according to the UN Office for the Coordination of Humanitarian Affairs. The authorities in the neighbouring states of Turkey, Lebanon and Jordan, which hosted nearly all of the refugees (including Palestinians displaced from Syria), restricted the entry of new refugees, exposing them to further attacks and deprivation in Syria. More than 75,000 refugees from Syria crossed by sea or land to Europe; many European and other states failed to accept a fair share of refugees from Syria through resettlement or other safe and legal routes.

**ENFORCED DISAPPEARANCES**

Government forces held thousands of detainees without trial, often in conditions that amounted to enforced disappearance, adding to the tens of thousands whose fate and whereabouts remained undisclosed following their enforced disappearance by government forces since 2011. They included peaceful critics and opponents of the government as well as family members detained in place of relatives whom the authorities sought.

Those who remained forcibly disappeared included human rights lawyer Khalil Ma’touq and his friend Mohamed Thatha, missing since October 2012. Released detainees said they had seen Khalil Ma’touq in government detention but the authorities denied holding the men. Thousands of people, mostly Islamists, remained disappeared since they were detained by Syrian government forces in the late 1970s and early 1980s.

**TORTURE AND OTHER ILL-TREATMENT**

Torture and other ill-treatment of detainees by government security and intelligence agencies and in state prisons remained systematic and widespread. Torture and other ill-treatment continued to result in a high incidence of detainee deaths, adding to the thousands of deaths in custody since 2011.¹

In August the Human Rights Data Analysis Group, an NGO that uses scientific approaches to analyze human rights violations, estimated that there were at least 17,723 deaths in government custody between March 2011 and December 2015, resulting from torture and other ill-treatment.

**UNFAIR TRIALS**

The authorities prosecuted some perceived opponents before the Anti-Terrorism Court and the Military Field Court, both of whose proceedings were flagrantly unfair. Judges failed to order investigations into allegations by defendants that they had been tortured or otherwise ill-treated or coerced into making “confessions” that were used as evidence against them at trial.

**UNLAWFUL KILLINGS**

Government and allied forces committed unlawful killings, including extrajudicial executions. On 13 December, the UN High Commissioner for Human Rights said that government and allied forces had entered civilian homes and committed summary killings as they advanced through east Aleppo and that, according to “multiple sources”, they had killed at least 82 civilians, including 13 children, on 12 December.

**WOMEN’S RIGHTS**

On 15 June the independent Commission of Inquiry determined that thousands of Yazidi women and girls were forcibly transferred by IS forces into Syria from Sinjar, Iraq, sold in markets and held in slavery, including sexual
slavery. Many women and girls were subjected to sexual violence, rape and other torture. Women and girls caught trying to escape were gang-raped or otherwise tortured or harshly punished; one woman said that the fighter who had bought her killed several of her children and repeatedly raped her after she had tried to flee.

**DEATH PENALTY**
The death penalty remained in force for many offences. The authorities disclosed little information about death sentences and no information on executions.

**TAIWAN**

**Taiwan**

Head of state: Tsai Ing-wen (replaced Ma Ying-jeou in May)

Head of government: Lin Chuan (replaced Mao Chi-kuo in May)

Elections in January resulted in Tsai Ing-wen of the Democratic Progressive Party (DPP) becoming the country’s first woman President. There were some positive developments in three longstanding death penalty cases but several violent incidents sparked public calls for retaining the punishment. The new government decided to drop charges against more than 100 protesters from the 2014 “Sunflower Movement”. The same-sex couple relationship register was extended to 10 municipalities and counties. The Legislative Yuan’s judicial committee passed amendments to the Civil Code proposed by two DPP legislators, a step towards legalizing same-sex marriage.

**FREEDOM OF ASSEMBLY**

On 23 May, Prime Minister Lin Chuan announced that the new cabinet was dropping criminal charges against 126 protesters. He stated that the previous government’s decision to charge the protesters was a “political reaction” to the demonstration instead of merely a “legal case”. In March 2014, student-led protests against the Cross-Strait Services Trade Agreement between Taiwan and China, referred to as the “Sunflower Movement”, had led to 24 days of demonstrations, the occupation of the Legislative Yuan (Taiwan’s parliament), and a 10-hour occupation of the Executive Yuan, the government offices.

**DEATH PENALTY**

Two weeks before the previous government ended its term in May, the Taichung Branch of the Taiwan High Court released Cheng Hsing-tse on bail pending a retrial. He had served 14 years in prison after he was convicted of the murder of a police officer during an exchange of gunfire at a karaoke parlour in Taichung in 2002. The Prosecutor-General’s office applied for a retrial in March, citing new evidence which raised doubts about his conviction. This was the first retrial sought in a case where the final Supreme Court’s ruling upheld the death sentence.

In July 2016, the Prosecutor-General applied for an extraordinary appeal for Chiou Ho-shun. He had been imprisoned since 1989, the longest-serving death row inmate in modern Taiwan history. The application cited the failure of previous courts to omit evidence from a coerced “confession”. Chiou Ho-shun was tortured in custody and forced to “confess” before being found guilty of robbery, kidnapping and murder.

On 13 October, the Supreme Court upheld the High Court’s decision to acquit Hsu Tzi-chiang, who had repeatedly appealed against his convictions for kidnapping, extortion and murder.

**REFUGEES AND ASYLUM-SEEKERS**

The Legislative Yuan’s Internal Administration Committee passed a second reading of a refugee bill on 14 July. It would be the first such law in Taiwan if passed, and may allow asylum-seekers from mainland China to apply for political asylum in Taiwan.

1. “It breaks the human”: Torture, disease and death in Syria’s prisons (MDE 24/4508/2016)
TAJIKISTAN

Republic of Tajikistan
Head of state: Emomali Rahmon
Head of government: Qokhir Rasulzoda

The space for peaceful dissent continued to shrink drastically. The authorities invoked national security concerns and the fight against terrorism to justify increasingly harsh restrictions on freedoms of expression and association. Members of the banned opposition Islamic Renaissance Party of Tajikistan (IRPT) were sentenced to life and long-term imprisonment on terrorism charges in blatantly unfair secret trials. Allegations that they were tortured to obtain confessions were not effectively and impartially investigated. Lawyers representing IRPT members faced harassment, arbitrary detention, prosecution and long prison terms on politically motivated charges.

BACKGROUND
In May a national referendum approved wide-ranging amendments to the Constitution. These included removing the limit on presidential terms in office, effectively enabling President Rahmon to retain the presidency beyond the next elections, and banning religion- and nationality-based political parties. In November “insulting the leader of the nation” was made a criminal offence.

At least 170 individuals were prosecuted, convicted and sentenced to prison for their alleged involvement in the armed clashes between government forces and armed groups in the capital, Dushanbe, in September 2015, which the authorities described as an attempt to seize power by a former deputy defence minister, Abdukhalim Nazarzoda. Due to the authorities’ near-total control of news reporting there was little independent public scrutiny of the official account which, in turn, cast doubt on the prosecutions.

Exiled members of the banned opposition party, Islamic Renaissance Party of Tajikistan (IRPT) and opposition “Group 24” activists attended and picketed the annual Human Dimension Implementation Meeting of the OSCE in Warsaw, Poland, in September. Some reported that police and security services threatened, arbitrarily detained, questioned and in some cases physically assaulted their family members in Tajikistan in retaliation for their peaceful protest in Warsaw. The government delegation left the event early in protest against a “terrorist organisation banned in Tajikistan” being admitted among other civil society participants.

UNFAIR TRIALS
The authorities continued to emphatically reject allegations of the politically motivated criminal prosecution, unfair trial and torture and other ill-treatment of 14 IRPT leaders for their alleged role in the September 2015 clashes. The trial at the Supreme Court began in February and was conducted in secrecy, inside the pre-trial detention centre of the State Committee for National Security. In June, all the defendants were convicted. Two deputy IRPT leaders, Umarali Khisainov (also known as Saidumur Khusaini) and Makhmadali Khaitov (Mukhammadalii Hait), were given life sentences. Zarafo Khujaeva (Rakhmoni) was sentenced to two years in prison; she was released on 5 September under a presidential pardon. Other sentences ranged from 14 to 28 years.

The sparse initial official information relating to the prosecution of the IRPT leaders, including the charges they faced, had already been removed from official sources (including the Prosecutor General’s Office website and the official news agency Khovar) in 2015, and any further information suppressed. The defence lawyers were compelled to sign non-disclosure agreements regarding all details of the case and the legal proceedings. The verdict and official records of the court proceedings were not officially released. In August, a leaked copy of the verdict was published online. The Prosecutor

Amnesty International Report 2016/17
General's Office refused to comment on its authenticity but its suspected source was nevertheless prosecuted (see below).

In March the UN Special Rapporteur on freedom of expression expressed concern that “the drastic measures taken against IRPT represent a serious setback for an open political environment. The government accuses the IRPT and its members of serious crimes but it has refused to give public access to the trial and evidence”.  

**Persecution of defence lawyers**

Lawyers who worked on the case of the 14 IRPT leaders faced harassment, intimidation and, in some cases, arbitrary detention and prosecution. In October, the Dushanbe City Court sentenced Buzurgmekhr Yorov and Nuriddin Makhkamov, two lawyers representing several co-defendants in the IRPT case, to 23 and 21 years in prison respectively following an unfair trial. Apart from the first court hearing in May, all sessions were closed to the media and the public. Both lawyers were found guilty of “arousing national, racial, local or religious hostility”, fraud, “public calls for violent change of the constitutional order of the Republic of Tajikistan”, and “public calls for undertaking extremist activities”. Buzurgmekhr Yorov was also found guilty of forgery. Both denied any wrongdoing and an appeal was pending at the end of the year. Neither will be able to practise law upon release unless their convictions are fully overturned.  

On 22 August, Jamshed Yorov, also a defence lawyer in the IRPT case and the brother of Buzurgmekhr Yorov, was detained on charges of “divulging state secrets”. He was accused of leaking the text of the Supreme Court’s decision in the IRPT case. He was released on 30 September.

A second trial against Buzurgmekhr Yorov opened on 12 December at pre-trial detention centre number 1 in Dushanbe. He was accused of disrespecting the court and insulting government officials in his final statement to Dushanbe City Court.

**TORTURE AND OTHER ILL-TREATMENT**

In May, legal safeguards against torture and other ill-treatment of detainees were strengthened. These included: reducing the maximum length of time a person can be held in detention without charge to three days; defining detention as starting from the moment of de facto deprivation of liberty; giving detainees the right to confidential access to a lawyer from the moment of deprivation of liberty; and making medical examinations of suspects obligatory prior to placing them in temporary detention.

There were still no independent mechanisms for the investigation of torture or other ill-treatment. The NGO Coalition against Torture registered 60 complaints of torture but believed the real figure to be much higher.

In September, the UN Human Rights Council adopted the outcomes of the Universal Periodic Review (UPR) of Tajikistan. The government rejected recommendations to ratify the Optional Protocol to the Convention against Torture and set up a National Preventive Mechanism. It did, however, accept recommendations to ratify the Second Optional Protocol to the ICCPR and to fully abolish the death penalty.

**FREEDOM OF ASSOCIATION**

The Ministry of Justice provided draft regulations for the implementation of the amended Law on Public Associations. However, it failed to specify time limits for decisions on the compulsory registration of foreign funding for NGOs, or to clarify whether a grant could be used before the official registration. The draft regulations limited inspections of NGOs to once every two years, but left this rule and the grounds for inspections open to wide interpretation.

In January a district court dismissed the Tax Committee’s liquidation proceedings against the established human rights and democracy think tank, Nota Bene.
FREEDOM OF EXPRESSION
The authorities continued to impose further restrictions on the media and reduced access to independent information. In August the government issued a five-year decree giving it the right to “regulate and control” the content of all television and radio networks through the State Broadcasting Committee.

Independent media outlets and individual journalists faced intimidation and harassment by police and the security services for covering the IRPT case and other politically sensitive issues. Some were forced to leave the country. In November, independent newspaper *Nigoh* and independent website Tojnews announced their closure because “conditions no longer exist for independent media and free journalism”. *Nigoh* had reported on the trial of lawyer Buzurgmekhr Yorov.

The authorities continued to order internet service providers to block access to certain news or social media sites, but without acknowledging this publicly. Individuals and groups affected by the measures were not able to effectively challenge them in court. A government decree also required internet providers and telecommunications operators to channel their services through a new single communications centre under the state-owned company Tajiktelecom. In March, the UN Special Rapporteur on freedom of expression expressed concern that “the widespread blocking of websites and networks, including mobile services… was disproportionate and incompatible with international standards”.

RIGHTS TO WATER AND SANITATION
In July the UN Special Rapporteur on the human right to safe drinking water and sanitation published his report on Tajikistan. The report found that approximately 40% of the population, and nearly half of the rural population, relied on water supply sources which were often insufficient or did not meet water quality standards. This put a significant burden on women and children, some of whom spent on average four to six hours each day fetching water. The Special Rapporteur noted that the lack of water and sanitation in public institutions in particular had a direct negative impact on other rights, such as the rights to health, education, work and life. He urged the government to eliminate disparities in access to water and sanitation and to address the needs of the most vulnerable groups, including women and girls in rural areas, resettled people, refugees, asylum-seekers and stateless persons.

The government accepted recommendations from the UPR process to improve access to safe drinking water but rejected recommendations to ratify the Optional Protocol to the ICESCR.

1. Tajikistan: A year of secrecy, growing fears and deepening injustice (EUR 60/4855/2016)
2. Tajikistan: A year of secrecy, growing fears and deepening injustice (EUR 60/4855/2016)

TANZANIA

United Republic of Tanzania
Head of state: John Magufuli
Head of government: Kassim Majaliwa
Head of Zanzibar government: Ali Mohamed Shein

The rights to freedom of expression and of peaceful assembly were restricted. The authorities failed to address discrimination on grounds of gender identity and sexual orientation.

FREEDOM OF ASSEMBLY
The months leading up to elections in Zanzibar in March were marked by violence. At least 200 people were injured, 12 women sexually assaulted and one woman was raped. More than 100 members of the opposition Civic United Front (CUF), including the Director of Publicity, were arrested for protesting against the election re-run, after the 2015 general elections were nullified following claims of irregularities. There were reports of excessive use of force against CUF supporters by the police, and an
unidentified armed group of masked men using government registered vehicles. Despite many complaints to the authorities, no prosecutions were brought against the police.

In June, all political rallies were banned by the President until 2020. In response, opposition parties called for peaceful protests under the banner UKUTA (Alliance against Dictatorship in Tanzania), which resulted in the police extending the ban to include internal party meetings. Two opposition leaders and 35 supporters from both the mainland and Zanzibar were arrested and charged with various offences including incitement to protest.

FREEDOM OF EXPRESSION – JOURNALISTS
Four media houses were closed and journalists arrested and charged with various offences under the Penal Code, the Cybercrimes Act and the Newspapers Act. The weekly *Mawio* was permanently closed and three journalists were charged with sedition for reporting on the elections in Zanzibar and the ensuing political crisis. The weekly *Mseto* was banned for three years for breach of the Newspapers Act after it published an article implicating a senior government official in corruption. Radio stations Radio Five and Magic FM were also closed for allegedly airing seditious material.

Two women and six men were charged under the Cybercrimes Act for posting information about the elections and the President on Facebook.

WOMEN’S RIGHTS
Tanzania failed to implement the recommendations of the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) in the 2015 case *E.S. and S.C. v the United Republic of Tanzania*. The case, submitted before the Committee in 2012, concerned two Tanzanian widows who, under Tanzania’s customary inheritance law, were denied the right to inherit or administer the estates of their late husbands. In 2016, the Committee recommended reform of the Local Customary Law (Declaration No.4) which discriminated against women in relation to property administration and inheritance rights.

A landmark court decision in September declared unconstitutional Sections 13 and 17 of the Law of Marriage Act, which allowed child marriage of girls aged under 18. Tanzania has one of the highest child marriage rates in the world, with 37% of girls under 18 already married. The Attorney General appealed against the ruling.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE
The authorities began a crackdown on LGBTI people, threatening to suspend organizations that supported them. Staff were arrested and documents confiscated during a raid of the offices of the Community Health Education Services and Advocacy in August.

Police arrested 20 LGBTI people in Dar es Salaam in August. Most were held for more than 48 hours before being released without charge. In November, the authorities suspended community-based HIV/AIDS prevention programmes for gay men.

THAILAND

Kingdom of Thailand
Head of State: King Maha Vajiralongkorn Bodindradebayavarangkun (replaced King Bhumibol Adulyadej in December)
Head of Government: Prayut Chan-o-cha

The military authorities further restricted human rights. Peaceful political dissent, whether through speech or protests, and acts perceived as critical of the monarchy were punished or banned. Politicians, activists and human rights defenders faced criminal investigations and prosecutions for, among other things, campaigning against a proposed Constitution and reporting on state abuses. Many civilians were tried in military courts. Torture and other ill-treatment was widespread. Community land rights activists faced arrest, prosecution.
and violence for opposing development projects and advocating for the rights of communities.

BACKGROUND
Thailand remained under the authority of the National Council for Peace and Order (NCPO), a group of military authorities which have held power since a 2014 coup. The August referendum approved a draft Constitution that would allow the army to retain considerable power. Elections were set to follow in late 2017 at the earliest.

The prosecution of former Prime Minister Yingluck Shinawatra for alleged criminal negligence in the management of a government rice subsidy scheme continued. In October, the government ordered her to pay a 35.7 billion baht (US$1 billion) fine over the government losses from the scheme.

The EU remained unsatisfied with the authorities’ progress to end illegal and unregulated fishing and abusive labour practices.

JUSTICE SYSTEM
The Head of the NCPO continued to use extraordinary powers under Article 44 of the interim Constitution to issue orders, some of which arbitrarily restricted the exercise of human rights, including peaceful political activities. In March he issued an order expanding the law enforcement powers of military officers, which allowed officers to detain individuals without court approval for a broad range of criminal activities.1

Civilians were tried before military courts for violations of NCPO orders, crimes against national security and insulting the monarchy. In September, the Head of the NCPO issued an order rescinding the military courts’ jurisdiction over cases involving civilians, which was not retroactive. Trials continued in military courts.

FREEDOMS OF EXPRESSION, ASSOCIATION AND ASSEMBLY
Peaceful critics were penalized for exercising their rights to freedom of expression, of peaceful assembly and of association. Individuals perceived as supporting government critics – including relatives, members of the public, lawyers and journalists – also faced harassment and prosecution.

The Constitutional Referendum Act, which governed the August referendum, provided for up to 10 years’ imprisonment for activities and statements “causing confusion to affect orderliness of voting”, including by using “offensive” or “rude” language to influence votes. The law was used to target those who opposed the draft Constitution. More than 100 people were reportedly charged with offences related to the referendum.2

Amendments to the Computer Crimes Act allowed for continued surveillance without prior judicial authorization and failed to bring the law in line with international law and standards on the rights to privacy and freedom of expression. The authorities also considered increased online surveillance and greater control of internet traffic.

Individuals were charged with or convicted of offences under Article 112 of the Penal Code for criticizing the monarchy. The Article carried a prison sentence of up to 15 years. Military courts interpreted the provisions broadly and imposed sentences of up to 60 years’ imprisonment for convictions on multiple counts of the offence, including against people with mental illnesses. Bail was routinely denied to those arrested under Article 112.

Individuals were charged or convicted under a ban on political gatherings of five or more people imposed by a 2015 order from the NCPO Head. It was used especially against opposition political groups and pro-democracy activists. In June, the authorities initiated criminal proceedings against 19 members of the United Front for Democracy against Dictatorship for holding a press conference to celebrate the opening of a centre to monitor the constitutional referendum. Pro-democracy student activists faced charges in multiple criminal cases for peaceful protests and other public activities opposing military rule and Thailand’s draft Constitution.
The authorities sought to silence those raising concerns about torture and other ill-treatment. In September, Amnesty International was forced to cancel a press conference in the capital Bangkok to launch a report on torture, after officials threatened to arrest the scheduled speakers.\(^3\)

Somchai Homla-or, Anchana Heemmina and Pornpen Khongkachonkiet were charged with criminal defamation and violations of the Computer Crime Act for reporting on torture by soldiers in southern Thailand.\(^4\) A 25-year-old woman faced similar charges after campaigning to hold accountable military officers responsible for the torture and killing of her uncle, a military trainee.

Authorities cancelled many events involving discussions about human rights or political events. In October, immigration officials detained and forcibly returned to Hong Kong pro-democracy activist Joshua Wong, who was invited to speak at a commemoration of the 1976 massacre of student protesters by Thai authorities.\(^5\)

ARBITRARY ARRESTS AND DETENTION

The authorities continued to use Head of NCPO Order 3/2015 to arbitrarily detain individuals incommunicado for up to seven days without charge for what became known as “attitude adjustment” sessions.\(^6\)

Journalist Pravit Rojanaphruk, like many others previously arbitrarily detained, remained bound by restrictive conditions of release. He was prevented from travelling to Helsinki for a UNESCO World Press Freedom Day event.

HUMAN RIGHTS DEFENDERS

Human rights defenders faced prosecution, imprisonment, harassment and physical violence for their peaceful work. Sirikan Charoensiri, a leading human rights lawyer, was charged with multiple offences, including sedition, for her legal work. She faced up to 15 years’ imprisonment.

Economic, social and cultural rights activists were subject to prosecutions and lawsuits initiated by private corporations, often for alleged defamation or violations of the Computer Crimes Act. A gold mining company had initiated criminal and civil proceedings against at least 33 people who opposed its operations. Andy Hall, a migrants’ rights activist, was convicted in September for his contribution to a report on labour rights violations by a fruit company.\(^7\)

Human rights defenders, especially those working on land issues or with community-based organizations, faced harassment, threats and physical violence. In April, unidentified assailants shot and injured Supoj Kansong, a land rights activist from the Khlong Sai Pattana community in southern Thailand. Four activists from that community had previously been killed; by the end of the year no one had been held accountable for the killings.\(^8\) In October, the Department of Special Investigations informed human rights lawyer Somchai Neelapajjit’s family that it was closing its investigation into his enforced disappearance in 2004, due to lack of evidence.

ARMED CONFLICT

There was little progress in government negotiations to resolve a decades-long conflict with ethnic-Malay separatists in southern Thailand. Insurgents carried out numerous attacks on military and civilian targets in the region and both sides of the conflict were accused of grave human rights abuses. Insurgent groups targeted civilians with bombings and, in March, attacked a hospital in Narathiwat province.

TORTURE AND OTHER ILL-TREATMENT

Members of the military continued to torture individuals suspected of links to insurgents in the south and political and security detainees elsewhere, facilitated by laws and orders allowing soldiers to detain individuals in unofficial places of detention without judicial oversight for up to seven days.\(^9\) Two military recruits reportedly died after alleged torture in military camps. Torture and other ill-treatment by the security forces in the context of routine law enforcement operations were also reported. Police officers and soldiers were also responsible for human
rights violations against members of vulnerable communities, including migrant workers, ethnic minorities, and suspected drug users at police stations, roadblocks, and various unofficial places of detention.

Thailand considered new legislation criminalizing torture and enforced disappearances.

**REFUGEES AND ASYLUM-SEEKERS**
The legal system did not provide formal recognition for refugees and asylum-seekers, leaving many vulnerable to abuse. Asylum-seekers, including children, faced months or years of indefinite detention in crowded immigration detention centres. Scores of Rohingya people had remained in these centres since they arrived by boat during a regional migration crisis in 2015. The authorities did not adequately address their protection needs as asylum-seekers and potential victims of human trafficking.

1. Thailand: Human rights groups condemn NCPO Order 13/2016 and urge for it to be revoked immediately (ASA 39/3783/2016)
2. Thailand: Open letter on human rights concerns in the run-up to the constitutional referendum (ASA 39/4548/2016)
3. Thailand: Torture victims must be heard (News story, 28 September)
4. Amnesty International Thailand’s Chair and other activists face jail for exposing torture (News story, 25 July)
5. Thailand: Denial of entry to Hong Kong student activist a new blow to freedom of expression (News story, 5 October)
6. Thailand: Prisoner of conscience must be released: Watana Muangsook (ASA 39/3866/2016)
7. Thailand: Another human rights activist is unjustly targeted (News story, 20 September)
8. Thailand: Authorities must protect human rights defenders in the line of fire (ASA 39/3805/2016)

**TIMOR-LESTE**

Democratic Republic of Timor-Leste
Head of state: Taur Matan Ruak
Head of government: Rui Maria de Araújo

Victims of serious human rights violations committed during the Indonesian occupation (1975-1999) continued to demand justice and reparations. Security forces were accused of unlawful killings, torture and other ill-treatment, arbitrary arrests, and arbitrarily restricting the rights to freedom of expression and of peaceful assembly.

**BACKGROUND**
In August, hundreds of civil society activists gathered in the capital, Dili, at a parallel conference to an ASEAN summit to discuss human rights and other regional issues. In November, Timor-Leste’s human rights record was examined under the UN Universal Periodic Review (UPR) process.

**IMPUNITY**
A working group was established by the Prime Minister in May to advise the government on implementation of the recommendations of the Commission for Reception, Truth and Reconciliation (CAVR), issued in 2005. Many recommendations related to impunity had not been implemented by the end of 2016. The expulsion of non-Timorense judges in 2014 continued to hamper the trials of individuals indicted for serious crimes.

**POLICE AND SECURITY FORCES**
Concerns remained about allegations of unnecessary or excessive use of force, torture and other ill-treatment by security forces, and a lack of accountability. In August a member of the Border Control Unit shot and killed a man with mental illness in Suai. In the same month a police officer hit a journalist in Dili. By the end of the year, no one had been held to account for the torture and other ill-treatment of dozens of individuals detained during joint security operations in Baucau district in 2015. These were launched in response to attacks allegedly carried out by Mauk Moruk (Paulino Gama) and his banned Maubere Revolutionary Council against police in Laga and Baguia subdistricts.¹
FREEDOM OF EXPRESSION
In January, security forces ordered an activist from the NGO Yayasan HAK to remove his T-shirt saying “Free West Papua”. They also threatened to arrest other human rights activists for their role in organizing a peaceful protest during a visit by the Indonesian President and signing a joint statement calling for accountability for crimes against humanity during the Indonesian occupation.  
On 11 April, two journalists were charged in relation to a defamation lawsuit.

VIOLENCE AGAINST WOMEN AND GIRLS
Gender-based violence remained a significant issue. A survey revealed that three in five women between the ages of 15 and 49, who had ever been in a relationship, had suffered sexual or other physical violence by a husband or male partner in their lifetime. In April, Timor-Leste became the third southeast Asian state to adopt a National Action Plan for Women, Peace and Security for 2016-2020.

BACKGROUND
In September, Togo ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.
Togo was examined under the UN Universal Periodic Review (UPR) process in October.  
Concerns by UN member states included impunity and restrictions on freedom of expression and freedom of peaceful assembly. States also raised concerns about the failure of the authorities to guarantee free birth registration, which can undermine children’s access to education, health care and other social services.

TOGO
Togolese Republic
Head of state: Faure Gnassingbé  
Head of government: Komi Sélom Klassou

Security forces continued to use excessive force against demonstrators. Arbitrary arrests and detentions, torture and other ill-treatment, and impunity for human rights violations persisted. A law revising the Criminal Code was adopted to make torture not subject to prescription under Togolese law. Other legislative developments undermined the independence of the National Human Rights Commission and the right to freedom of association.

EXCESSIVE USE OF FORCE
In January, police and gendarmerie officers threw tear gas canisters at the University of Lomé during a protest in which five students and three members of the security forces were injured.
In August, the security forces injured at least 10 people during a protest in Abobo-Zéglé. People were protesting against evictions from their land to make room for phosphate extraction. During the protest, security forces charged them with tear gas, batons and live ammunition. The community considered they had not received adequate compensation for their eviction.

TORTURE AND OTHER ILL-TREATMENT
In October, the National Assembly adopted a revision of the Criminal Code which defined torture in line with the UN Convention against Torture and made it an imprescriptible crime.
Cases of torture and other ill-treatment continued to be reported throughout the year.
In June, three police officers arrested Ibrahim Agriga at his home in Guerin Kouka. He was taken to a police station and beaten with batons on his buttocks and the soles of his feet to make him “confess” to a motorbike theft. He was released without charge after three days and filed a complaint with the tribunal of Guerin Kouka. No investigation was known to have been initiated at the end of the year.
**ARBITRARY ARRESTS AND DETENTIONS**

The authorities continued to subject people to arbitrary detention, in particular those who expressed dissent.

On 1 April, Adamou Moussa and Zékeria Namoro were arbitrarily detained in Dapaong after they had called for justice for people killed during protests in Mango in November 2015; seven civilians and one police officer were killed. During their interrogation, the gendarmes accused Zékeria Namoro of sharing information on the human rights situation in Mango with journalists, diaspora groups and human rights organizations. The men were charged with “incitement to commit a crime” and released on bail on 6 September.

Five men remained in detention without trial in relation to the November 2015 demonstrations in Mango. There were concerns that they may be held solely because they were the organizers of the protest.

Seven out of 10 men convicted in September 2011 for participating in a 2009 coup plot, including Kpatcha Gnassingbé, half-brother of the President, remained in detention at the end of 2016.

**FREEDOM OF ASSOCIATION**

In April, the Council of Ministers adopted a bill on freedom of association which failed to meet international standards. It stated that “foreign or international associations” required prior authorization to operate in Togo. The law also provided that associations must respect national laws and morals. This could be used to discriminate against lesbian, gay, bisexual, transgender and intersex people, as sexual relations between consenting adults of the same sex remained a crime. The bill also provided that associations may be dissolved on the basis of a decision of the Council of Ministers or the Minister of Territorial Administration in the case of “foreign and international associations”. Finally, it granted tax incentives to associations which accepted increased government control over their objectives and activities.

**IMPUNITY**

The climate of impunity for human rights violations persisted.

In March, a law was adopted on freedom to access to information and public documentation to facilitate greater transparency and accountability. However, in April, the National Assembly adopted a new Code of Military Justice which will fuel impunity as it gives military courts the power to investigate and judge ordinary criminal offences committed by military personnel, including rape and torture. The courts’ jurisdiction extended to civilians.

In March, the National Human Rights Commission published its report on the November 2015 demonstrations in Mango. Despite its conclusion that “a lack of professionalism of certain elements of the security and law enforcement forces and the insufficiency of the elements deployed” led to “an excessive use of force”, no member of the security forces had been brought to trial and none of the victims had received compensation at the end of 2016.

More than 11 years have passed since the deaths of nearly 500 people during the violence surrounding the presidential election of 24 April 2005, the authorities have taken no steps to identify those responsible for the deaths. Of the 72 complaints filed by the victims’ families with the Atakpamé, Amlamé and Lomé courts, none are known to have been fully investigated.

**LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS**

In March, the National Assembly adopted a law enabling the President to appoint members of the National Human Rights Commission without parliamentary oversight. The law also established the National Preventive Mechanism – aimed at preventing and investigating cases of torture – within the National Human Rights Commission, raising concerns about its ability to function independently.
1. Togo: The participating states to the UPR review must call for the protection of the rights to freedom of association, peaceful assembly and expression in Togo (AFR 03/5064/2016)

TUNISIA

Republic of Tunisia
Head of state: Beji Caid Essebsi
Head of government: Youssef Chahed (replaced Habib Essid in August)

The authorities continued to restrict the rights to freedom of expression and of assembly, and used emergency powers and anti-terrorism laws to impose arbitrary restrictions on liberty and freedom of movement. There were new reports of torture and other ill-treatment of detainees. Women remained subject to discrimination in law and practice and were inadequately protected against gender-based violence. Same-sex sexual relations remained criminalized, and lesbian, gay, bisexual, transgender and intersex (LGBTI) people faced arrest and imprisonment. Courts continued to impose death sentences; there were no executions.

BACKGROUND
The authorities renewed the nationwide state of emergency in force since November 2015 and announced in February that they had completed the construction of a security wall along Tunisia’s border with Libya. Despite this, armed clashes between government forces and Libya-based members of the armed group Islamic State (IS) continued in border areas. On 7 March, at least 68 people were killed, including seven civilians, in clashes that ensued when government forces repulsed an IS attack on military bases and a police station in Ben Guerdane, a southern border town. Clashes between armed groups and the security forces continued on the border with Algeria with fatalities on both sides.

New members of the Supreme Judicial Council, which is responsible for the selection, appointment, transfer, removal, discipline and training of judges and prosecutors, were announced in October. The establishment of the Supreme Judicial Council finally allowed for the creation of the Constitutional Court, as it is responsible for appointing a third of the Court’s members.

Parliament approved a proposed law criminalizing racial and other discrimination; it had still to be enacted at the end of the year.

The UN Committee against Torture and the UN Committee on Economic, Social and Cultural Rights reviewed Tunisia’s human rights record in May and September respectively. The UN Subcommittee on Prevention of Torture visited Tunisia in April.

TRANSITIONAL JUSTICE
The Truth and Dignity Commission, created to address political, social and economic crimes and investigate human rights violations committed between 1 July 1955 and December 2013, reported in June that it had received more than 62,000 complaints concerning a wide range of human rights violations, including arbitrary detentions, torture, unfair trials, sexual violence and religious and ethnic discrimination. The Commission’s first public hearings were held on 17 November.

Parliament resumed consideration of a controversial draft law in June that would offer immunity for some financial crimes. Discussion of the proposed law, first proposed by President Essebsi, was suspended in 2015 following protests led by the popular movement Manich Msameh (“I will not forgive”). If adopted, the proposed law would offer officials and business executives accused of corruption and embezzlement under the administration of former President Zine El ‘Abidine Ben ‘Ali an amnesty and immunity from further prosecution if they return the proceeds of their crimes. Its immunity provisions would also undermine investigations under the transitional justice process. The draft law had not been enacted at the end of the year.
ARBITRARY ARRESTS AND DETENTIONS, AND FREEDOM OF MOVEMENT

The authorities used their powers under the state of emergency to conduct thousands of arrests and house searches, in many cases without judicial warrants. The authorities subjected hundreds of people to administrative house arrest, assigned places of residence, travel bans or restrictions on movement – measures that curtailed their social and economic rights, including the right to work.

COUNTER-TERROR AND SECURITY

Security officials harassed and intimidated many families of people they suspected of joining or supporting armed groups, repeatedly raiding and searching their homes, threatening and interrogating them, harassing them at their places of work and restricting their freedom of movement. Security officials also harassed and intimidated dozens of former prisoners sentenced under repressive laws during the former Ben ’Ali administration and other people on account of their appearance, including men with beards and men and women dressed in what officials deemed to be religious clothing.

TORTURE AND OTHER ILL-TREATMENT

There were new reports of torture and other ill-treatment of detainees, mostly during arrest and in pre-charge detention. Several of those detained following the attack in Ben Guerdane in March alleged that police and counter-terrorism officers tortured them during interrogation in both Ben Guerdane and the capital, Tunis. They said officers subjected them to the “roast chicken” method of torture – rotating them on a pole inserted between their handcuffed wrists and feet – as well as beatings, sexual assault and prolonged solitary confinement. While some were released, others remained in detention at the end of the year.

Parliament approved changes to the Code of Criminal Procedures in February, strengthening safeguards against torture and other ill-treatment, which took effect in June. The reforms cut the maximum period that a detainee can be held without charge from six to four days and gave those detained the rights of immediate access to a lawyer and their family and to have their lawyer present at their interrogation. The new provisions also required that detentions be authorized by prosecutors and that prosecutors and judicial police must allow detainees access to medical care and doctors if they or their lawyers or families request it. The reforms did not, however, affect the authorities’ powers to detain without charge suspects arrested for terrorism-related offences for up to 15 days, and allowed authorities to deny them access to a lawyer for 48 hours and interrogate them without the presence of their lawyer. In March, the government appointed the 16 members of the National Body for the Prevention of Torture, which was created under a 2013 law and was a requirement for Tunisia as a party to the Optional Protocol to the UN Convention against Torture. A lack of clarity regarding its function and financing hampered its ability to operate fully.

FREEDOMS OF EXPRESSION AND ASSEMBLY

The authorities used their powers under the state of emergency to ban strikes and demonstrations, forcibly disperse gatherings deemed to threaten public order, and control and censor print, broadcast and other media and publications. Despite this, there were new protests against unemployment, underdevelopment particularly in Tunisia’s interior regions, and poor living conditions. The police dispersed such protests, reportedly using excessive force in some cases.

In January, protests against unemployment erupted in Kasserine after an unemployed graduate was electrocuted while climbing a utility pole in protest at being rejected for a government job. The protests quickly spread to other cities. The authorities arrested hundreds of protesters and bystanders, some of whom were prosecuted and sentenced to prison terms. They included 37 men who
were arrested in Gabès on 22 January and sentenced to prison terms of between one and three years on charges of “breaking the curfew”.

In April, demonstrators in El Kef protesting against unemployment said the police used excessive force to disperse them.

The authorities continued to restrict freedom of expression under criminal defamation laws enacted by the Ben ‘Ali administration. In August, police arrested blogger Salwa Ayyari, her husband and four of her children outside the Presidential Palace in Tunis. They were held without food or water and denied access to a lawyer for several hours during which police officers insulted and ill-treated Salwa Ayyari, beating her and fracturing her arm. They were then moved to another police station where she was accused of attacking the officer who fractured her arm. Salwa Ayyari and her family were released after 13 hours’ detention, but she was charged with insulting the President, which carries a penalty of imprisonment for up to two years, and assaulting a police officer. In December, she was acquitted of insulting the President and fined 200 Tunisian Dinar (US$86) for the charge of assaulting an officer.

WOMEN’S RIGHTS
Women continued to face discrimination in law and in practice and were inadequately protected against sexual and gender-based violence. The Penal Code failed to explicitly criminalize marital rape and allowed men who raped women aged 15 to 20, or who abducted girls under the age of 18, to escape prosecution if their victim consented to marry them.

Existing social and health services for survivors of sexual and gender-based violence were limited and inadequate. Among other necessary aspects of care, survivors of rape faced particular difficulties in accessing pregnancy prevention and psychological support. In addition, lack of protection mechanisms, including shelters for women and girl survivors of violence, left survivors vulnerable to further abuse.

In July the Council of Ministers approved a draft law to combat violence against women and girls, and submitted it for parliamentary consideration. The draft law focused on addressing shortcomings in existing law and practice and improving access to protection and services for survivors. It had not been enacted at the end of the year.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE
LGBTI people continued to face arrest under Article 230 of the Penal Code, which criminalized consensual same-sex sexual relations. They also faced violence, exploitation and sexual and other abuse by police. Transgender people faced arrest and prosecution under laws that criminalize “indecency” and acts deemed offensive to public morals.

The authorities subjected men accused of same-sex sexual relations to forced anal examinations, in violation of the prohibition of torture.

In March, the Sousse Court of Appeal confirmed the guilty verdict of six men on sodomy charges under Article 230 but reduced their three-year prison sentence to time already served and overturned their five-year banishment order from Kairouan. The men had been arrested and sentenced in December 2015 by the Kairouan Court of First Instance. In April, a court in Tunis acquitted eight men who were arrested in March and charged under Article 230. They were acquitted due to lack of evidence as they had not been subjected to forced anal examinations.

LGBTI rights activists also faced harassment and abuse. In January, the Court of First Instance in Tunis ordered the suspension of the LGBTI rights group Shams for 30 days in response to a government allegation that Shams had breached the law on associations by stating that it aimed to “defend homosexuals”. Shams won an appeal against the Court’s ruling in February.

In April, a televised verbal attack against LGBTI people by a leading Tunisian actor sparked an outbreak of homophobia that saw
restaurants, internet cafés, grocery stores and taxis display posters barring LGBTI people. In May, the UN Committee against Torture criticized the criminalization of consensual same-sex sexual relations, urged the authorities to repeal Article 230 of the Penal Code, and condemned forced anal examinations.

DEATH PENALTY
Courts continued to hand down death sentences; no executions have been carried out since 1991.

TURKEY
Republic of Turkey
Head of state: Recep Tayyip Erdoğan
Head of government: Binali Yıldırım (replaced Ahmet Davutoğlu in May)

An attempted coup prompted a massive government crackdown on civil servants and civil society. Those accused of links to the Fethullah Gülen movement were the main target. Over 40,000 people were remanded in pre-trial detention during six months of emergency rule. There was evidence of torture of detainees in the wake of the coup attempt. Nearly 90,000 civil servants were dismissed; hundreds of media outlets and NGOs were closed down and journalists, activists and MPs were detained. Violations of human rights by security forces continued with impunity, especially in the predominantly Kurdish southeast of the country, where urban populations were held under 24-hour curfew. Up to half a million people were displaced in the country. The EU and Turkey agreed a “migration deal” aimed at preventing irregular migration from Turkey to the EU; this led to the return of hundreds of refugees and asylum-seekers and less criticism by EU bodies of Turkey’s human rights record.

BACKGROUND
President Erdoğan consolidated power throughout the year. Constitutional amendments aimed at granting the President executive powers were submitted to the Parliament in December.

Armed clashes between the Kurdistan Workers’ Party (PKK) and state forces continued, mainly in the majority Kurdish east and southeast of the country. The government replaced elected mayors from 53 municipalities with government trustees; 49 mayors were from the Kurdish, opposition Democratic Regions Party (DBP). Along with many elected local officials, nine MPs from the Kurdish-rooted left-wing Peoples’ Democracy Party (HDP) were remanded in pre-trial detention in November. A UN fact-finding mission to the south-east was blocked by the authorities who also obstructed national and international NGOs, including Amnesty International, from documenting human rights abuses in the region.

In March, the EU and Turkey agreed a “migration deal” aimed at preventing irregular migration from Turkey to the EU. It also resulted in muting EU criticism of human rights abuses in Turkey.

On 15 July, factions within the armed forces launched a violent coup attempt. It was quickly suppressed in part by ordinary people taking to the streets to face down tanks. The authorities announced the death toll to be 237 people including 34 coup plotters and 2,191 people injured, during a night of violence that saw the Parliament bombed and other state and civilian infrastructure attacked.

Following the coup attempt the government announced a three-month state of emergency, extended for a further three months in October, derogating from a list of articles in the International Covenant on Civil and Political Rights and the European Convention on Human Rights. The government passed a series of executive decrees that failed to uphold even these reduced standards. Nearly 90,000 civil servants including teachers, police and military officials, doctors, judges and prosecutors were dismissed from their positions on the grounds of links to a terrorist organization or threat to national security. Most were presumed to be based on
allegations of links to Fethullah Gülen, a former government ally whom the government accused of masterminding the coup. There was no clear route in law to appeal these decisions. At least 40,000 people were remanded in pre-trial detention accused of links to the coup or the Gülen movement, classified by the authorities as the Fethullah Gülen Terrorist Organisation (FETÖ).

In August, Turkey launched a military intervention in northern Syria, targeting the armed group Islamic State (IS) and the Peoples’ Defence Forces, the PKK-affiliated Kurdish armed group. In October Parliament extended a mandate for Turkey to conduct military interventions in Iraq and Syria for another year.

FREEDOM OF EXPRESSION
Freedom of expression deteriorated sharply during the year. After the declaration of a state of emergency, 118 journalists were remanded in pre-trial detention and 184 media outlets were arbitrarily and permanently closed down under executive decrees, leaving opposition media severely restricted. People expressing dissent, especially in relation to the Kurdish issue, were subjected to threats of violence and criminal prosecution. Internet censorship increased. At least 375 NGOs, including women’s rights groups, lawyers’ associations and humanitarian organizations, were shut by executive decree in November.

In March, a court in the capital Ankara appointed a trustee to the opposition Zaman media group in relation to an ongoing terrorism-related investigation. After police stormed Zaman offices, a pro-government editorial was imposed on the group’s newspapers and television channels. In July, Zaman group media outlets were permanently closed down along with other Gülen-linked media. New titles, set up after the government take over of the Zaman group, were also shut down.

In May, Cumhuriyet editor-in-chief Can Dündar and the daily’s Ankara representative Erdem Gül were convicted of “revealing state secrets” and sentenced to five years and ten months’ imprisonment and five years’ imprisonment respectively, for publishing articles alleging that Turkey’s authorities had attempted to covertly ship weapons to armed opposition groups in Syria. The government claimed the trucks were sending humanitarian supplies to Turkmens. The case remained pending on appeal at the end of the year. In October, a further 10 journalists were remanded in pre-trial detention for committing crimes on behalf of both FETÖ and the PKK.

In August, police closed the offices of the main Kurdish daily Özgür Gündem on the basis of a court order for its closure due to ongoing terrorism investigations, a sanction not provided for in law. Two editors and two journalists were detained pending trial and prosecuted for terrorism offences. Three were released in December while editor Inan Kızıkaya remained in detention. In October under an executive decree, Özgür Gündem was permanently closed down along with all the major Kurdish-orientated national media.

Signatories to a January petition by Academics for Peace calling for a return to peace negotiations and recognition of the demands of the Kurdish political movement were subjected to threats of violence, administrative investigation and criminal prosecution. Four signatories were detained until a court hearing in April; they were released but not acquitted. By the end of the year, 490 of the academics were under administrative investigation and 142 had been dismissed. Since the coup, more than 1,100 of the signatories were formally under criminal investigation.

Internet censorship increased, with the authorities issuing orders rubber-stamped by the judiciary to withdraw or block content including websites and social media accounts, to which there was no effective appeal. In October, the authorities cut internet services across southeast Turkey and engaged in throttling of various social media services.
FREEDOM OF ASSEMBLY
The authorities banned the annual May Day marches in Istanbul for the fourth year running, and the annual Pride march in Istanbul for a second year running, on spurious grounds. Police used excessive force against people peacefully attempting to go ahead with these marches. After July, the authorities used state of emergency laws to issue blanket bans preventing demonstrations in cities across Turkey. And again, the police used excessive force against people attempting to exercise the right to freedom of peaceful assembly regardless of the bans.

TORTURE AND OTHER ILL-TREATMENT
There was an increase in cases of torture and other ill-treatment reported in police detention, from curfew areas in southeast Turkey and then more markedly in Ankara and Istanbul in the immediate aftermath of the coup attempt. Investigations into abuses were ineffective.

The state of emergency removed protections for detainees and allowed previously banned practices, which helped facilitate torture and other ill-treatment: the maximum pre-charge detention period was increased from four to 30 days; and facilities to block detainees’ access to lawyers in pre-charge detention for five days, and to record conversations between client and lawyer in pre-trial detention and pass them to prosecutors were introduced. Detainees’ access to lawyers and the right to consult with their choice of lawyers – rather than state-provided lawyers – was further restricted. Medical examinations were carried out in the presence of police officers and the reports arbitrarily denied to detainees’ lawyers.

No national mechanism for the independent monitoring of places of detention existed following the abolition of the Human Rights Institution in April, and the non-functioning of its successor body. The Council of Europe Committee for the Prevention of Torture visited detention facilities in August and reported to the Turkish authorities in November. However, the government did not publish the report by the end of the year. The UN Special Rapporteur on torture visited in November, after his visit was delayed on the request of the Turkish authorities.

The authorities professed their adherence to “zero tolerance for torture” policies but on occasion, spokespeople summarily dismissed reports against them, stating that coup plotters deserved abuse and that allegations would not be investigated. The authorities accused Amnesty International and Human Rights Watch of being tools for the “FETÖ terrorist organization” following the NGOs’ joint publication on torture and ill-treatment. Three lawyers’ associations that worked on police violence and torture were shut down in November under an executive decree.

Lawyers said that 42 people, detained in Nusaybin in May after clashes between PKK-affiliated individuals and state forces were beaten and subjected to other ill-treatment in police detention. They said that the group, which included adults and children, were hooded, beaten during police interrogation and not able to access appropriate medical care for their injuries.

Widespread torture and other ill-treatment of suspects accused of taking part in the coup attempt was reported in its immediate aftermath. In July, severe beatings, sexual assault, threats of rape and cases of rape were reported, as thousands were detained in official and unofficial police detention. Military officers appeared to be targeted for the worst physical abuse but holding detainees in stress positions and keeping them handcuffed behind their backs, and denying them adequate food and water or toilet breaks were reported to have taken place on a far wider scale. Lawyers and detainees’ relatives were often not informed that individuals had been detained until they were brought for charge.

EXCESSIVE USE OF FORCE
Until June, the security forces conducted security operations against armed individuals
affiliated to the PKK, who had dug trenches and erected barricades in urban areas in the southeast of Turkey. The authorities’ use of extended round-the-clock curfews, a total ban on people leaving their homes, combined with the presence of heavy weaponry including tanks in populated areas, was a disproportionate and abusive response to a serious security concern and may have amounted to collective punishment. Evidence suggests that the security forces’ operated a shoot-to-kill policy against armed individuals that also caused deaths and injuries to unarmed residents and widespread forced displacement.

In January, IMC TV journalist Refik Tekin was shot while bringing injured people to receive medical treatment in Cizre, a city under curfew. He continued recording after being shot, apparently from an armoured police vehicle. He was later detained and investigated under terrorism laws.

**IMPUINITY**

The entrenched culture of impunity for abuses committed by the security forces remained. The authorities failed to investigate allegations of widespread human rights violations in the southeast, where few or none of the basic steps were taken to process cases, including deaths, and in some instances witnesses were subjected to threats. In June, legislative amendments required the investigation of military officials for conduct during security operations to be subject to government permission and for any resulting trial to take place in military courts, which have proved especially weak in prosecuting officials for human rights abuses.

Government statements dismissing allegations of torture and ill-treatment in police detention after the coup attempt were a worrying departure.

Despite the ratification of the Council of Europe Convention on preventing and combating violence against women (Istanbul Convention), the authorities made little or no progress in halting pervasive domestic violence against women nor did they adopt procedures to investigate the hate motive in cases of people perceived to have been killed due to their sexual orientation or gender identity.

No progress was made in investigations into the deaths of some 130 people who died while sheltering from clashes in three basements during the curfew in Cizre in February. The authorities alleged that access for ambulances was blocked by the PKK when local sources reported that people in the basements were injured and needed emergency medical care, and died of their injuries or were killed when security forces stormed the buildings.

The Governor of Ağrı province in eastern Turkey denied permission for an investigation against police officers to proceed into the deaths of two youths, aged 16 and 19 in Diyadin. The authorities claimed that police shot the youths in self-defence but a ballistics report showed that a gun found at the scene had not been fired and did not have either of the youths’ fingerprints on it.

The authorities failed to make progress in investigation of the November 2015 killing of Tahir Elci, Head of the Diyarbakir Bar Association and a prominent human rights defender. It was hampered by an incomplete crime scene investigation and missing CCTV footage.

More than three years on, investigations into use of force by police at Gezi Park protests had failed and resulted in only a handful of unsatisfactory prosecutions. The court issued a 10,100 liras (€3,000) fine to the police officer in his retrial for the fatal shooting of Ankara protester Ethem Sarısülük. A court reduced the compensation awarded to Dilan Dursun by 75% – she had been left with permanent injuries after being hit in the head by a tear gas canister fired by police during protests in Ankara on the day of Ethem Sarısülük’s funeral. The court ruled that she had culpability given that it was an “illegal demonstration”.

**ABUSES BY ARMED GROUPS**

There was a sharp increase in indiscriminate attacks and attacks directly targeting civilians, showing contempt for the right to
life and the principle of humanity. IS, PKK, its offshoot Kurdistan Freedom Falcons (TAK) and Revolutionary People’s Liberation Party-Front were blamed or claimed responsibility for the attacks.

REFUGEES AND ASYLUM-SEEKERS
Turkey was the world’s biggest host of refugees and asylum-seekers with an estimated 3 million refugees and asylum-seekers residing in the country with significant populations of Afghans and Iraqis alongside 2.75 million registered Syrians, who were provided with temporary protection status. The EU concluded a migration deal with Turkey in March aimed at preventing irregular migration to the EU. It provided for the return of refugees and asylum-seekers to Turkey, ignoring many gaps in protection there.7 Turkey’s border with Syria remained effectively closed. Despite improvements, the majority of Syrian refugee children had no access to education and most adult Syrian refugees had no access to lawful employment. Many refugee families, without adequate subsistence, lived in destitution.

There were mass forced returns of Syrians by the Turkish security forces in the early months of the year, as well as instances of unlawful push-backs to Syria and cases of fatal and non-fatal shootings of people in need of protection by Turkish border guards.

INTERNALLY DISPLACED PEOPLE
Hundreds of thousands of people were displaced from the areas under curfew in the southeast of Turkey. The imposition of curfews with only hours’ warning forced people to leave with few, if any, possessions. In many cases, displaced people were not able to access their social and economic rights such as adequate housing and education. They were offered inadequate compensation for loss of possessions and livelihoods. Their right to return was severely compromised by the high levels of destruction and the announcement of redevelopment projects likely to exclude former residents.8

---

1. Turkey: HDP deputies detained amid growing onslaught on Kurdish opposition voices (News story, 4 November)
2. Turkey: Massive crackdown on media in Turkey (EUR 44/5112/2016)
3. Turkey: End pre-trial detention of Özgür Gündem guest editors (EUR 44/4303/2016)
5. Joint Statement: Turkey – state of emergency provisions violate human rights and should be revoked (EUR 44/5012/2016)
6. Turkey: Security operations in southeast Turkey risk return to widespread human rights violations seen in the 1990s (EUR 44/4366/2016)
7. Turkey: No safe refuge – asylum-seekers and refugees denied effective protection in Turkey (EUR 44/3825/2016)
8. Turkey: Displaced and dispossessed – Sur residents’ right to return home (EUR 44/5213/2016)

---

TURKMENISTAN

Turkmenistan
Head of state and government:
Gurbanguly Berdymukhamedov

Human rights did not improve, despite a National Human Rights Action Plan for 2016-2020 launched in April. Independent civil society organizations could not operate freely. Turkmenistan remained closed to independent human rights monitors. Freedoms of expression, association and religion were heavily restricted and limits on freedom of movement were retained. Sex between men remained a criminal offence.

FREEDOM OF EXPRESSION

Media remained subject to state control and no independent media outlets were able to operate. The authorities continued to harass and intimidate journalists, including those based outside Turkmenistan.

Freelance journalist Saparmamed Nepeskuliev remained in prison. He had reported on corruption and was convicted in August 2015 on drug-related offences. Access to the internet was monitored and restricted; social networking sites were frequently blocked.
FORCED LABOUR
The government continued to use forced labour in the cotton-picking industry, one of the largest in the world. To harvest the cotton, local authorities compel public sector workers, including teachers, medical staff and civil servants, to pick and to meet individual government-set quotas or risk losing their jobs. Children often help their parents meeting the quotas. The ILO Committee of Experts on the Application of Conventions and Recommendations urged Turkmenistan to end practices that give rise to forced labour in the cotton industry.

LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS
A law to establish a Human Rights Commissioner (Ombudsman) was still under development.

A new Constitution was adopted on 16 September. It extended the presidential tenure to seven years and removed a previous presidential age limit.

ENFORCED DISAPPEARANCES
The whereabouts of prisoners who were subjected to enforced disappearance after an alleged assassination attempt on then President Saparmurat Niyazov in 2002 remained unknown.

FREEDOM OF RELIGION AND BELIEF
In the town of Dashoguz, bearded men under 50 years were detained and questioned about their religious beliefs and practices, and some were forcibly shaved, according to the Alternative Turkmenistan News service.

The new Law on Freedom of Conscience and Religious Organizations was signed into law in March. It retained an earlier ban on exercising freedom of religion and belief with others without state permission. Under the new law, religious groups need to have 50 founding members to register, rather than five, as stipulated in the previous law.

Conscientious objectors faced criminal prosecution. Forum 18, a human rights organization promoting religious freedom, reported that a young Jehovah’s Witness was sentenced to corrective labour for refusing to perform his military service.

TORTURE AND OTHER ILL-TREATMENT
Former prisoners told Alternative Turkmenistan News about poor prison conditions and treatment in detention amounting to torture and other ill-treatment. According to these accounts, prison officers beat prisoners and forced them to stand outside for long periods in high temperatures. Prison officers also practised extortion. Prisons were overcrowded and prisoners not provided with adequate food. Some prisoners had to sleep on the floor or in the prison yard. Tuberculosis rates were high and infected prisoners did not always receive appropriate treatment.

Reports continued to be received on the use of torture or ill-treatment by law enforcement officers to force detainees to “confess” and incriminate others. Activist Mansur Mingelov remained in prison. He was convicted in 2012 after an unfair trial for drug offences after publicizing information on torture and other ill-treatment of Baloch ethnic community members in Mary province.

INTERNATIONAL SCRUTINY
Turkmenistan remained closed to international scrutiny and rejected or failed to respond to requests from the UN Special Rapporteurs to visit the country.

FREEDOM OF MOVEMENT
Citizens have not needed “exit visas” to leave the country since 2006. But arbitrary restrictions on the right to travel abroad remained in practice: they targeted, among others, relatives of people accused of involvement in the alleged attempt to assassinate President Niyazov in 2002, relatives of members of the opposition resident abroad, as well as civil society activists, students, journalists and former migrant workers.
UGANDA

Republic of Uganda
Head of state and government: Yoweri Kaguta Museveni

The rights to freedom of expression, association and assembly were severely restricted in the context of general elections marred by irregularities. Human rights defenders faced new restrictions on their activities and some organizations were harassed. The rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people continued to be violated.

BACKGROUND
Uganda held its fifth presidential and parliamentary elections on 18 February. The Commonwealth election observation mission said the election fell short of key democratic benchmarks. The EU’s election observation mission said the election took place in an “intimidating atmosphere”, with the police using excessive force against opposition politicians, media workers and the general public. President Museveni was declared the winner on 20 February. He had already been in power for 30 years.

On 1 March, Amama Mbabazi, an opposition presidential candidate, filed a petition in the Supreme Court contesting the election result on the grounds that the incumbent party bribed voters, used public servants and state resources in political activities, and interfered with opposition activities. On 9 March, when affidavits were due to be submitted in court, files and computers were stolen from the offices of two of his lawyers. On 31 March, the Supreme Court ruled that there was not enough evidence of irregularities that would have affected the election result.

FREEDOMS OF ASSOCIATION AND ASSEMBLY
Police severely restricted the rights of political opposition parties to freedom of association and peaceful assembly before, during and after the elections.

Three days before the elections, Kizza Besigye, presidential candidate for the opposition Forum for Democratic Change (FDC), was arrested as he headed towards a campaign rally. The police subsequently barricaded the road leading to his house, effectively placing him under house arrest, on the grounds that they had intelligence that he intended to cause unrest. On 20 February he was arrested again when he tried to leave his house to obtain detailed copies of the results from the Electoral Commission in order to contest them. On 12 May, the day before Yoweri Museveni was to be sworn in as President, a video appeared online showing Kizza Besigye being sworn in, claiming to be the people’s President. The police immediately arrested him and charged him with treason. The case was continuing at the end of the year.

FREEDOM OF EXPRESSION
In the run-up to the elections, security officials attacked media outlets they deemed critical of government policies and actions.

On 20 January, Endigyito FM, a privately owned radio station, was closed down after opposition candidate Amama Mbabazi was a guest on a show.

On 13 February, police entered Radio North FM in Lira, northern Uganda, and arrested journalist Richard Mungu and a guest. The police accused Richard Mungu of defacing President Museveni’s election posters and charged him with malicious damage to property. The charges were later amended to aiding and abetting a crime, an apparent reference to the damaged posters. He was released on bail on 17 February.

On election day, the official Uganda Communications Commission (UCC) blocked access to Facebook, Twitter and WhatsApp between 6am and 9.30am, citing an unspecified threat to national security. The Mobile Telecommunications Network (MTN), a leading provider of mobile phone and internet services in Uganda, said on its Twitter handle that the UCC had ordered it to
disable all social media and mobile money-transferring services “due to a threat to public order and safety”. Such actions violated the right to seek and receive information.

The Deputy Chief Justice stopped a peaceful demonstration organized by the FDC and Kizza Besigye planned for 5 May. His order followed an application by the Deputy Attorney General for interim orders to prevent FDC’s “defiance campaign”. The FDC’s campaign sought, among other things, an international audit to review the presidential election results. However, the Court of Appeal ruled on 30 April that the campaign breached several articles of the Constitution.

On 14 September, 25 women were arrested and detained for four hours, before being released without charge, shortly before they were to present a petition to Parliament. The petition opposed proposed amendments to mandatory retirement ages for judicial officers and electoral commissioners set out in the Constitution. The Speaker of the Parliament rejected the bill and asked the government to table comprehensive constitutional amendments instead.

UNLAWFUL KILLINGS
On 28 November, at least 100 people were killed and 139 others arrested in clashes between security agencies and palace guards in the western town of Kasese, according to police. In some cases, security forces summarily shot people dead and then dumped the bodies on river banks and in bushes. The clashes followed attacks by the local king’s guards on several police stations on 26 November, during which at least 14 police officers were killed. Charles Wesley Mumbere, King of the Rwenzururu kingdom, was arrested and transferred to the capital, Kampala, where he was charged with murder.

HUMAN RIGHTS DEFENDERS
On 14 March, the Non-Governmental Organisations Act (NGO Act) came into force. Some of its provisions were vaguely worded and could be used to clampdown on civil society organizations. For example, it restricted organizations from engaging in activities that are “prejudicial to the security, interests or dignity of the people of Uganda”, without defining these terms.

Between April and May, offices of the Forum for African Women Educationalists (FAWE), the Human Rights Awareness and Promotion Forum (HRAPF), and the Human Rights Network for Journalists-Uganda (HRNJ-Uganda) were broken into by unidentified people and items stolen. At FAWE, the intruders stole an internet server, computers, cameras and projectors. At HRNJ-Uganda, CCTV footage shows a visitor giving security guards food apparently containing sedatives, allowing four intruders to search the premises as the guards slept. The Inspector General of Police formed a committee in July to investigate the break-ins, but the affected organizations were concerned that investigations were not carried out. No one was arrested, charged or prosecuted in connection with the break-ins.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE
On 4 August, police broke up an LGBTI beauty pageant in Kampala, part of Uganda Pride. They arrested 16 people – most of them Ugandan LGBTI rights activists – who were released after about an hour. A man was seriously injured after he jumped from a sixth-floor window fearing police abuse.

On 24 September, the police prevented more than 100 people from joining a Pride parade on a beach in Entebbe. They ordered people back onto minibuses and told them to leave the area. The participants tried to go to another beach, but police prevented them from holding the parade there too.

The HRAPF and the Civil Society Coalition on Human Rights and Constitutional Law (CSCHRCL), a coalition of 50 organizations, filed a petition in the East African Court of Justice, arguing that Uganda’s Anti-Homosexuality Act was contrary to the rule of law and the good governance principles of the East African Community Treaty.

Amnesty International Report 2016/17
September, the Court refused to consider the petition on the basis that the Anti-Homosexuality Act had been declared null and void by Uganda’s Constitutional Court in August 2014.

CRIMES UNDER INTERNATIONAL LAW

The pre-trial hearing of former Lord’s Resistance Army (LRA) commander Colonel Thomas Kwoyelo, charged with war crimes and crimes against humanity in northern Uganda, began on 15 August in the International Crime Division of Uganda’s High Court. The hearing was adjourned because Thomas Kwoyelo’s lawyers were not notified in time. The prosecution also introduced new charges relating to sexual and gender-based violence. In September, a court in Gulu, northern Uganda, ruled that victims could participate in the proceedings in line with their right to participate before the International Criminal Court (ICC). Thomas Kwoyelo, who was captured by the Ugandan army in 2008, remained in detention.

On 23 March, the ICC Pre-Trial Chamber confirmed 70 charges against Dominic Ongwen, a former LRA commander who had been abducted as a child and forcibly recruited into the LRA. The charges included crimes against humanity and war crimes, sexual and gender-based crimes, and conscription and use of child soldiers in northern Uganda.

COUNTER-TERROR AND SECURITY

On 26 May, the High Court convicted seven of 13 people charged in relation to the 2010 World Cup bombing in Kampala. The Somali-based armed group al-Shabaab claimed responsibility for the attack, which killed 76 people. The Court said the prosecution had failed to link five of the defendants to the bombing. The five were immediately rearrested and charged with new offences of creating documents and materials while in Luzira Prison connected with “preparations to facilitate, assist or engage co-conspirators to undertake terrorist acts in Uganda”.

1. Uganda: Violations against opposition party impeding its efforts to contest election outcome (News story, 26 February)
2. Uganda: Denounce unlawful killings and ensure accountability in aftermath of deadly clashes (News story, 28 November)
3. Uganda: Investigate break-ins at groups’ offices (News story, 13 June)

UKRAINE

Ukraine
Head of state: Petro Poroshenko
Head of government: Volodymyr Hroysman (replaced Arseniy Yatsenyuk in April)

Sporadic low-scale fighting continued in eastern Ukraine with both sides violating the ceasefire agreement. Both the Ukrainian and pro-Russian separatist forces continued to enjoy impunity for violations of international humanitarian law, including war crimes, such as torture. Authorities in Ukraine and the self-styled People’s Republics of Donetsk and Luhansk conducted unlawful detention of individuals perceived to support the other side, including for use in prisoner exchanges. The long-awaited State Investigation Bureau, intended to investigate violations by the military and law enforcement officials, was formally established but not operational by the end of the year. Independent media and activists were not allowed to work freely in the People’s Republics of Donetsk and Luhansk. Media perceived as pro-Russian faced harassment in government-controlled territories. The largest-ever Pride march for lesbian, gay, bisexual, transgender and intersex (LGBTI) people in the capital, Kyiv, was supported by the city authorities and effectively protected by the police. In Crimea, the de facto authorities continued their campaign to eliminate pro-Ukrainian dissent. It increasingly relied on Russian anti-extremism and anti-terrorism legislation and criminal prosecution of dozens of people perceived to be disloyal.
BACKGROUND
Following a two-month political crisis, after several reform-oriented politicians resigned from top government positions alleging widespread corruption, Parliament accepted Arseniy Yatsenyuk’s resignation on 12 April. He was replaced by Volodymyr Hroysman.

Sporadic fighting and exchange of fire between government and Russia-backed separatist forces continued. Gunfire, shelling and unexploded ordnance continued to cause civilian deaths and injuries. The UN Human Rights Monitoring Mission estimated that there were more than 9,700 conflict-related deaths, of which around 2,000 were civilians, and at least 22,500 conflict-related injuries since the beginning of the conflict in 2014.

The International Criminal Court (ICC) published its preliminary examination of Ukraine on 14 November. It concluded that the “situation within the territory of Crimea and Sevastopol amounts to an international armed conflict between Ukraine and the Russian Federation” and that “information… would suggest the existence of an international armed conflict in the context of armed hostilities in eastern Ukraine”. An amendment to the Constitution was passed in June, postponing the ratification of the Rome Statute of the ICC for an “interim period” of three years.

The Ukrainian authorities continued to heavily restrict the movement of residents of the separatist-controlled Donetsk and Luhansk regions to government-controlled territory.

The Russian authorities held parliamentary elections in Crimea, which were not internationally recognized.

The conflict-affected economy started to grow slowly: GDP increased by 1%. Prices of basic commodities and services such as heating and water continued to rise, adding to the declining living standards of the majority of the population. Living standards in the separatist-controlled areas continued to deteriorate.

TORTURE AND OTHER ILL-TREATMENT
Little progress was made in bringing to justice law enforcement officials responsible for the abusive use of force during EuroMaydan protests in Kyiv in 2013-2014. The investigation was marred by bureaucratic hurdles. On 24 October, the Prosecutor General reduced the staff and the powers of the special department responsible for the EuroMaydan abuses investigations, and created a new unit to investigate only former President Vyktor Yanukovych and his close confidants.

The new State Investigation Bureau was formally created in February to investigate crimes committed by law enforcement officials and the military, but the selection of its head, on an open competition basis, was not completed by the end of the year.\(^1\)

The UN Subcommittee on Prevention of Torture (SPT) suspended its visit to Ukraine on 25 May after the Security Service of Ukraine (SBU) denied it access to some of its facilities in eastern Ukraine where secret prisoners were reportedly held as well as tortured and otherwise ill-treated. The SPT resumed and completed its visit in September and produced a report which the Ukrainian authorities did not give their consent to publish.

ENFORCED DISAPPEARANCE
Lawyer Yuriy Grabovsky went missing on 6 March and was found murdered on 25 March. Before his disappearance, Yuriy Grabovsky complained of intimidation and harassment by the Ukrainian authorities in an attempt to make him withdraw from the case of one of two alleged Russian servicemen who were captured in eastern Ukraine by government forces. During a press conference on 29 March, the Chief Military Prosecutor of Ukraine announced that two suspects had been detained in connection with Yuriy Grabovsky’s murder. At the end of the year, they remained in pre-trial detention and the investigation was ongoing.\(^2\)
ARBITRARY ARRESTS AND DETENTIONS

Both the Ukrainian authorities and separatist forces in eastern Ukraine engaged in unlawful detentions in the territory under their respective control. Civilians they suspected of sympathizing with the other side were used as currency for prisoner exchanges. Those unwanted by the other side remained in detention, often unacknowledged, for months with no legal remedies nor prospect of release.

Kostyantyn Beskorovaynyi returned home on 25 February after his abduction and indirect official acknowledgement of his secret arrest became the subject of international campaigning. In July, Ukraine’s Chief Military Prosecutor promised an effective investigation into his allegations of enforced disappearance, torture and 15-months’ secret detention by the SBU, but no tangible outcomes of the investigation were reported by the end of the year.

Dozens more individuals were held secretly on SBU premises in Mariupol, Pokrovsk, Kramatorsk, Izyum and Kharkiv, and possibly elsewhere. Some were eventually exchanged for prisoners held by the separatists. Amnesty International and Human Rights Watch received the names of 16 individuals from three separate sources, all independently confirming them as secret prisoners held by the SBU in Kharkiv since 2014 or 2015, and shared the list with the Ukrainian authorities. At least 18 people, including the 16 independently confirmed prisoners, were subsequently secretly released; their detention was never officially acknowledged. Of them, Vyktor Ashykhmyn, Mykola Vakaruk and Dmytro Koroliov decided to speak out and submit official complaints.

In the self-proclaimed People’s Republics of Donetsk and Luhansk, local “Ministries of State Security” used their powers under local “decrees” to detain individuals arbitrarily for up to 30 days and repeatedly extend this. Igor Kozlovsky (arrested on 27 January), and Volodymyr Fomychev (arrested on 4 January), were both accused of possessing illegal weapons, which they denied, and of “supporting” the “Ukrainian side”. A court in Donetsk sentenced Volodymyr Fomychev to two years in jail on 16 August. Igor Kozlovsky remained in pre-trial detention at the end of the year.

INTERNALLY DISPLACED PEOPLE

The CERD Committee highlighted a number of concerns about difficulties faced by internally displaced people (IDPs) in its 2016 review of Ukraine. These included the linking of social benefits, including pensions, to the status of IDPs and residence in government-controlled areas.

FREEDOM OF EXPRESSION – JOURNALISTS

Media outlets perceived as espousing pro-Russian or pro-separatist views, and those particularly critical of the authorities, faced harassment including threats of closure or physical violence. The TV channel Inter was threatened with closure repeatedly by the Interior Minister, and on 4 September around 15 masked men attempted forcefully but unsuccessfully to enter Inter’s premises, accusing it of pro-Russian news coverage. They then threw petrol bombs into the building, starting a fire.

Popular TV presenter Savik Shuster (who holds Italian and Canadian nationality) had his work permit annulled by the Ukrainian Migration Service, in violation of the existing procedure. The Kyiv Appeals Court reinstated the permit on 12 July. Subsequently, criminal proceedings were launched against Savik Shuster’s TV channel 3STV by the tax authorities. On 1 December, Savik Shuster decided to close the channel due to the pressure and lack of funds.

Ruslan Kotsaba, a freelance journalist and blogger from Ivano-Frankivsk, was sentenced to three-and-a-half years in jail on 12 May, for “obstructing legitimate activities of the Ukrainian Armed Forces in a special period”. He had been arrested in 2015 after posting a video on YouTube in which he demanded an immediate end to fighting in Donbass and called on Ukrainian men to resist
conscription. He was fully acquitted on appeal on 12 July and immediately released.

On 20 July, journalist Pavel Sheremet was killed by a bomb planted in his car in the capital Kyiv. No perpetrators had been identified by the end of the year. The investigation into the killing of journalist Oles Buzina, shot dead by two masked gunmen in 2015, had likewise yielded no results.

Journalists with pro-Ukrainian views or reporting for Ukrainian media outlets were not able to operate openly in separatist-controlled areas and Crimea. A Russian crew from the independent Russian Dozhd TV channel was arrested in Donetsk and deported to Russia by the Ministry of State Security after recording an interview with a former separatist commander.

In Crimea, independent journalists were unable to work openly. Journalists from mainland Ukraine were denied access and turned back at the de facto border. Local journalists and bloggers critical of the Russian occupation and illegal annexation of Crimea risked prosecution, and few dared to express their views. Mykola Semena, a veteran journalist, was investigated under “extremism” charges (facing up to seven years’ imprisonment if convicted) and placed under travel restrictions. He had published an article online under a pseudonym in which he supported the “blockade” of Crimea by pro-Ukrainian activists as a necessary measure for the peninsula to be “returned back” to Ukraine. He was officially designated as a “supporter of extremism”, and his bank account was frozen. At the end of the year, the investigation into his case was ongoing.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

On 19 March, a court in Lviv, western Ukraine, banned the holding of the LGBTI Festival of Equality in the street due to public safety concerns. The organizers moved the event indoors, but on 20 March the venue was attacked by a group of masked right-wing activists. No injuries were reported but the organizers were forced to cancel the event.

An LGBTI Pride march, supported by the Kyiv authorities and heavily protected by police, was held in central Kyiv on 12 June. With around 2,000 participants, it became the largest-ever event of its kind in Ukraine.6

CRIMEA

None of the enforced disappearances that followed the Russian occupation were effectively investigated. Ervin Ibragimov, member of the World Congress of Crimean Tatars, was forcibly disappeared near his home in Bakhchisaray, central Crimea, on 24 May. Available video footage from a security camera shows uniformed men forcing Ervin Ibragimov into a minivan and driving him away. An investigation was opened, but no progress had been made at the end of the year.7

Freedoms of expression, association and peaceful assembly, already heavily restricted, were further reduced. Some of the independent media that had been forced to relocate to mainland Ukraine in earlier years had access to their websites blocked by the de facto authorities in Crimea. On 7 March, the mayor of Crimean capital Simferopol banned all public assemblies except those organized by the authorities.

Ethnic Crimean Tatars continued to bear the brunt of the de facto authorities’ campaign to eliminate all remaining vestiges of pro-Ukrainian dissent.8 The Mejlis of the Crimean Tatar People, a body elected at an informal assembly, Kurultai, to represent the community, was suspended on 18 April and banned by a court as “extremist” on 26 April. Its banning was upheld by the Supreme Court of the Russian Federation on 29 September.9

The trial continued of the Mejlis’ deputy leader, Ahtem Chiygoz, on trumped-up charges of organizing “mass disturbances” on 26 February 2014 in Simferopol (a predominantly peaceful rally on the eve of the Russian occupation, marked by some clashes between pro-Russian and pro-Ukrainian demonstrators). Held in a pre-trial
detention centre in the vicinity of the court building, he was only allowed to attend his court hearings via a video link, purportedly because of the “danger” he would pose. Ahtem Chiygoz remained one of several prisoners of conscience in Crimea. Ali Asanov and Mustafa Degermendzhi also continued to be held in pre-trial detention for allegedly participating in the same “mass disturbances” on 26 February 2014.

The Russian authorities used allegations of possession of “extremist literature” and of membership of the Islamist organization Hizb ut-Tahrir as a pretext for house searches of ethnic Crimean Tatars (predominantly Muslims) and arrests. At least 19 men were arrested as alleged members of Hizb ut-Tahrir. Of them, four men from Sevastopol were put on trial in a military court in Russia, in violation of international humanitarian law governing occupied territories, and sentenced to between five and seven years in prison. During the trial, nearly all prosecution witnesses tried to retract their earlier statements, claiming that these had been forcibly extracted under threat of criminal prosecution by members of the Russian security service.

UNITED ARAB EMIRATES

United Arab Emirates
Head of state: Sheikh Khalifa bin Zayed Al Nahyan
Head of government: Sheikh Mohammed bin Rashed Al Maktoum

The authorities continued to arbitrarily restrict the rights to freedom of expression and association, detaining and prosecuting government critics, opponents and foreign nationals under criminal defamation and anti-terrorism laws. Enforced disappearances, unfair trials and torture and other ill-treatment of detainees remained common. Scores of people sentenced after unfair trials in previous years remained in prison; they included prisoners of conscience. Women continued to be discriminated against in law and in practice. Migrant workers faced exploitation and abuse. The courts continued to impose death sentences; no executions were reported.

BACKGROUND

The United Arab Emirates (UAE) remained part of the Saudi Arabia-led international coalition engaged in armed conflict in Yemen (see Yemen entry) and participated in international military action in Syria and Iraq against the armed group Islamic State (IS).

In August, the authorities agreed to the transfer of 15 detainees from the US detention centre at Guantánamo Bay, Cuba, to the UAE.

The government failed to respond to requests to visit the UAE made by the Special Rapporteur on torture and other UN human rights experts.

FREEDOMS OF EXPRESSION AND ASSOCIATION

The authorities tightened the law relating to electronic information and restricted online expression and association, enacting
legislation to ban the use of virtual private networks. They also arrested and prosecuted peaceful critics and others, including foreign nationals, under criminal defamation provisions of the Penal Code, the 2012 cybercrime law and the 2014 anti-terrorism law in unfair trials before the State Security Chamber (SSC) of the Federal Supreme Court. The SSC’s proceedings fell far short of international fair trial standards.

In May, the SSC acquitted Moza ‘Abdouli of “insulting” UAE leaders and political institutions and “spreading false information”. She had been arrested in November 2015 together with her sister, Amina ‘Abdouli, and brother, Mos’ab ‘Abdouli. Another brother, Waleed ‘Abdouli, arrested in November 2015 for criticizing his siblings’ detention at Friday prayers, was released without charge in March.

Tayseer al-Najjar, a Jordanian journalist arrested in December 2015, remained in detention at the end of the year awaiting trial before the SSC, apparently in connection with Facebook posts criticizing the UAE and alleged links to Egypt’s banned Muslim Brotherhood organization. In October, he told his wife that his eyesight was deteriorating in detention.

In August, the government appeared to be behind an attempt to remotely hack into the iPhone of human rights defender Ahmed Mansoor. If successful, it would have allowed remote access to all information on the phone, and remote control of his phone’s applications, microphone and camera. The sophisticated spyware used to carry out this operation is sold by NSO Group, an Israel-based, US-owned company which claimed to sell their product exclusively to governments.

Human rights defender and prisoner of conscience Dr Mohammed al-Roken remained in prison, serving a 10-year sentence imposed after the unfair "UAE 94" mass trial in 2013.

ENFORCED DISAPPEARANCES
The authorities subjected scores of detainees, including foreign nationals, to enforced disappearance, holding them for months in secret and unacknowledged detention for interrogation. Upon release, many reported that they had been tortured and otherwise ill-treated.

‘Abdulrahman Bin Sobeih was subjected to enforced disappearance for three months by UAE authorities after he was forcibly returned to the UAE by Indonesia in December 2015. He had been sentenced in his absence in 2013 to a 15-year prison term after the unfair UAE 94 trial. Following a retrial, in November he was sentenced to 10 years’ imprisonment, followed by three years’ surveillance.

Prisoner of conscience Dr Nasser Bin Ghaith, an academic and economist arrested in August 2015, was subjected to enforced disappearance until April when he was brought before the SSC. He faced charges relating solely to the peaceful exercise of his rights to freedom of expression and association. He told the court that officials had tortured and otherwise ill-treated him, but the judge failed to order an investigation. In December his case was transferred to an appeal court.

TORTURE AND OTHER ILL-TREATMENT
Torture and other ill-treatment of detainees, particularly those subjected to enforced disappearance, remained common and were committed with impunity. Neither the government nor the SSC conducted independent investigations into detainees’ allegations of torture.

Between March and June the authorities released six of at least 12 men of Libyan origin whom they had arrested in 2014 and 2015. They were released after the SSC acquitted them of providing support for Libyan armed groups. During 2015, State Security officials had subjected at least 10 of the men to months of incommunicado detention and torture, including beatings, electric shocks and sleep deprivation, before they were brought to trial. The fate of two of the men remained undisclosed, while those freed in 2016 included Salim al-Aradi, a Canadian-Libyan national, and Kamal Eldarat
and his son, Mohammed Eldarat, both US-Libyan nationals.

UNFAIR TRIALS
Scores of people, including foreign nationals, were prosecuted before the SSC, often on vaguely worded charges relating to national security. The SSC denied defendants the right to an effective defence and accepted evidence obtained under torture to convict defendants. In December, the government enacted legislation providing for an appeal in state security cases.

In March, the SSC convicted 34 men on charges that included establishing Shabab al-Manara (Minaret Youth Group) to overthrow the government and create an “IS-style caliphate”. They received prison sentences ranging from three years to life. Authorities detained them in 2013 and subjected them to enforced disappearance for 20 months. Some appeared to have been convicted based on “confessions” they said were extracted through torture.

In June, the SSC sentenced Egyptian national Mosaab Ahmed ‘Abdel-‘Aziz Ramadan to three years’ imprisonment for running an “international group in the UAE affiliated to the Egyptian Muslim Brotherhood”. Before trial, the authorities subjected him to several months of enforced disappearance during which he alleged that security officials forced him to “confess” under torture.

WOMEN’S RIGHTS
Women remained subject to discrimination in law and in practice, notably in matters of marriage and divorce, inheritance and child custody. They were inadequately protected against sexual violence and violence within the family.

MIGRANT WORKERS’ RIGHTS
Migrant workers, who comprise around 90% of the private workforce, continued to face exploitation and abuse. They remained tied to employers under the kafala sponsorship system and were denied collective bargaining rights. Trade unions remained banned and migrant workers who engaged in strike action faced deportation and a one-year ban on returning to the UAE.

In January, Ministerial Decrees 764, 765 and 767 of 2015 came into effect, which the government said would address some abuses against migrant workers, including the longstanding practice of contract substitution whereby employers require migrant workers to sign new contracts with reduced wages when they arrive in the UAE.

The decrees did not apply to domestic workers, mostly women from Asia and Africa, who remained explicitly excluded from labour law protections and particularly vulnerable to exploitation and serious abuses, including forced labour and human trafficking.

DEATH PENALTY
Courts handed down death sentences; no executions were reported. Law 7/2016, relating to data protection and expression, expanded the applicability of the death penalty.

UNITED KINGDOM

Full accountability for torture allegations against UK intelligence agencies and armed forces remained unrealized. An extremely broad surveillance law was passed. Women in Northern Ireland faced significant restrictions on access to abortion. The government failed to establish a review into the impacts of cuts to civil legal aid. Hate crimes rose significantly following the UK’s referendum vote to leave the EU.

LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS
In June, the majority of the electorate in the UK and Gibraltar voted in a referendum to leave the EU.

United Kingdom of Great Britain and Northern Ireland
Head of state: Queen Elizabeth II
Head of government: Theresa May (replaced David Cameron in July)
Although the new Justice Secretary announced in August that the government intended to continue with plans to replace the Human Rights Act (which incorporates the European Convention on Human Rights into domestic law) with a British Bill of Rights, by the end of the year the Attorney General suggested that concrete proposals would be deferred until after the EU referendum process had been completed.

**JUSTICE SYSTEM**

Calls intensified for a review of cuts to civil legal aid brought about by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO), based on their impact on vulnerable and marginalized people in various contexts, including inquests, immigration, welfare, family and housing law.\(^1\) Official statistics published in June by the Legal Aid Agency showed that legal help in civil cases had dropped to one third of pre-LASPO levels. In July, the UN Committee on Economic, Social and Cultural Rights called on the government to reassess the impact of reforms to the legal aid system. The government failed to establish a review.

**COUNTER-TERROR AND SECURITY**

Counter-terrorism powers and related policy initiatives to counter “extremism” continued to raise concerns.

**Definition of terrorism**

Despite a Court of Appeal judgment in January which narrowed the definition of terrorism, and recurring criticism of the overbroad statutory definition by the Independent Reviewer of Terrorism Legislation, the Home Secretary confirmed, in October, that the government had no intention of changing it.

**Administrative controls**

In November, Parliament extended the Terrorism Prevention and Investigation Measures (TPIM) Act 2011 for five more years. TPIMs are government-imposed administrative restrictions on individuals suspected of involvement in terrorism-related activity.

The Independent Reviewer’s annual report, published in November, documented that new powers to prevent suspected “foreign terrorist fighters” from travelling were applied 24 times during 2015, and pre-existing powers to withdraw passports from British citizens were exercised 23 times, but that a power available since 2015 to temporarily exclude returning “foreign terrorist fighters” had not been used.

**“Counter-extremism” policy**

Plans for a Counter-Extremism and Safeguarding Bill were announced in May, but no concrete legislative proposal had been tabled by end of year.

NGO research into the statutory “prevent duty” on certain public bodies, including schools, to “have due regard to the need to prevent people from being drawn into terrorism”, found that the scheme created a serious risk of violating human rights, including peaceful exercise of freedom of expression, and that its application in educational and health care settings undermined trust.

In April, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association warned that the government’s approach to “non-violent extremism” risked violating both freedoms. In July, the Parliamentary Joint Committee for Human Rights recommended the use of existing laws rather than drafting new, unclear legislation.

**Drones**

In May, the Joint Committee for Human Rights published its inquiry into the use of drones for targeted killing. The inquiry examined the drone strike by the Royal Air Force in 2015 in al-Raqqah, Syria, killing three people, including at least one British national, believed to be members of the armed group Islamic State (IS). The inquiry called on the government to clarify its policy of targeted killings in armed conflict and its role in targeted killing by other states outside armed conflict.
TORTURE AND OTHER ILL-TREATMENT

Internment in Northern Ireland

In December, the government responded to questions put to it by the European Court of Human Rights (ECtHR), following a 2014 request by the Irish government to review the 1978 judgment in Ireland v UK, on torture techniques used in internment in Northern Ireland in 1971-72.

Rendition

In June, the Crown Prosecution Service (CPS) decided not to bring any criminal charges relating to allegations by two Libyan families that they had been subject to rendition, torture and other ill-treatment in 2004 by the US and Libyan governments, with the knowledge and co-operation of UK officials. In November, the two families – Abdul-Hakim Belhaj and Fatima Boudchar, and Sami al-Saadi and his wife and children – began judicial review proceedings to challenge the CPS decision.

Armed forces

In September, it emerged that the Royal Military Police were investigating approximately 600 cases of alleged mistreatment and abuse in detention in Afghanistan between 2005 and 2013.

As of November, the Iraq Historic Allegations Team, the body investigating allegations of abuse of Iraqi civilians by UK armed forces personnel, had concluded or was about to conclude investigations into 2,356 of 3,389 allegations received.

The Iraq Fatality Investigations, a separate body established in 2013, reported in September on the death of 15-year-old Ahmad Jabbar Kareem Ali, finding that he drowned after being forced into the Shatt-al-Basra canal in southern Iraq in 2003 by UK soldiers. The Ministry of Defence apologized for the incident.

Allegations of war crimes committed by UK armed forces in Iraq between 2003 and 2008 remained under preliminary examination by the Office of the Prosecutor of the International Criminal Court.

SURVEILLANCE

In November, the Investigatory Powers Act (IPA), which overhauled the existing, piecemeal domestic legislation on surveillance, became law. The IPA granted increased powers to public authorities to interfere with private communication and information in the UK and abroad. It permitted a broad range of vaguely defined interception, interference and data retention practices, and imposed new requirements on private companies, facilitating government surveillance by creating “internet connection records”. The new law lacked a requirement for clear prior judicial authorization.

In October, the Investigatory Powers Tribunal (IPT) ruled that the secret, bulk collection of domestic and foreign communications data and the collection of “bulk personal datasets” had violated the right to privacy previously, but were now lawful.

Proceedings were pending before the ECtHR regarding the legality of the pre-IPA mass surveillance regime and intelligence sharing practices. The Court of Justice of the EU ruled in December that the general, indiscriminate retention of communications data under the Data Retention and Investigatory Powers Act 2014 was not permitted.

NORTHERN IRELAND: LEGACY ISSUES

The former and current Secretaries of State for Northern Ireland both referred to those raising allegations of collusion or focusing on human rights violations by state agents as contributing to a “pernicious counter narrative”. NGOs advocating for accountability for victims raised concerns that such language placed their work as human rights defenders at risk.

In November, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence urged the UK government to address structural or systemic patterns of violations and abuses, rather than focusing solely on existing “event-based” approaches. He suggested widening the
focus of measures from cases of death to include torture, sexual abuse and unlawful detention, with a gender-sensitive approach. The Special Rapporteur also urged limiting national security arguments against claims for redress, and ensuring that reparations for all victims be tackled seriously and systematically.

The Lord Chief Justice of Northern Ireland set out a detailed five-year plan to address the backlog of “legacy” coroner’s inquests, but failed to receive funding from the Northern Ireland Executive and central government.

The government continued to refuse to establish an independent public inquiry into the 1989 killing of Patrick Finucane, despite having acknowledged previously that there had been “collusion” in the case.

SEXUAL AND REPRODUCTIVE RIGHTS

Access to abortion in Northern Ireland remained limited to exceptional cases where the life or health of the woman or girl was at risk. The abortion law in Northern Ireland was criticized by both the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child in July.

Women in Northern Ireland faced criminal prosecution for taking WHO-approved medication to induce abortions. A woman was given a three-month suspended sentence after pleading guilty to two offences under the 1861 law governing abortion in Northern Ireland.

Official statistics for the previous year showed that 833 women from Northern Ireland had travelled to England or Wales to access abortion, and that 16 lawful abortions had been performed in Northern Ireland.

In June, the Northern Ireland Court of Appeal heard appeals of a 2015 High Court, ruling that the region’s abortion law was incompatible with domestic and international human rights law.

In November, Scotland’s First Minister set out proposals to provide access to abortion services through the National Health Service in Scotland for women and girls from Northern Ireland.

DISCRIMINATION

The National Police Chiefs’ Council’s official statistics in June and September showed a 57% spike in reporting of hate crime in the week immediately following the EU membership referendum, followed by a decrease in reporting to a level 14% higher than the same period the previous year. The UN High Commissioner for Human Rights expressed his concern in June. Government statistics published in October showed an increase in hate crimes of 19% over the previous year, with 79% of the incidents recorded classified as “race hate crimes”. In November, the CERD Committee called on the UK to take steps to address the increase in such hate crimes.

In the first inquiry of its kind, the UN Committee on the Rights of Persons with Disabilities reported on the cumulative impact of legislative changes on welfare, care and legal assistance. The government disagreed with the Committee’s findings of “grave or systematic violations of the rights of persons with disabilities.”

REFUGEES’ AND MIGRANTS’ RIGHTS

The Immigration Act became law in May. It extended sanctions against landlords whose tenants’ immigration status disqualifies them from renting, while increasing landlords’ eviction powers; extended powers to block limited appeal rights against removal from the UK until after the person has left the country; and introduced a scheme whereby separated children seeking asylum in the UK may be transferred between local authorities.

The government continued to resist calls to take more responsibility for hosting refugees. In April, the government announced it would resettle up to 3,000 people from the Middle East and North Africa by May 2020. In October, the government accepted a few dozen separated children from the “Jungle” camp in Calais, France, alongside a larger number of other children relocated to join family under provisions of the Dublin III regulations.
In January, an Independent Review into the welfare in detention of vulnerable persons made strong criticisms of the scale and longevity of immigration detention. In August, the Home Office responded with a new “adults at risk” policy. However, NGOs criticized the policy for further removing safeguards against harmful detention, including by adopting a narrow definition of “torture” when considering the risk posed by detention to a person’s welfare. In November, the High Court permitted a challenge to the policy, ordering that the previous wider definition of torture be used for the time being.

VIOLENCE AGAINST WOMEN AND GIRLS

In December, the House of Commons voted to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), which the government had signed in 2012. In July, the UN Committee on the Rights of the Child recommended improved collection of information on violence against children, including domestic and gender-based violence.

Serious concerns remained about the reduced funding of specialist services for women who had experienced domestic violence or abuse. Research by the domestic women’s rights organization Women’s Aid showed that refuges were being forced to turn away two in three survivors due to lack of space or inability to meet their needs, and that the rate for ethnic minority women was four in five.

TRADE UNION RIGHTS

In May, the Trade Union Act, which placed more restrictions on unions organizing strike action, came into force. During the year, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association and the UN Committee on Economic, Social and Cultural Rights called on the government to review and revise the law.

1. United Kingdom: Cuts that hurt – the impact of legal aid cuts in England on access to justice (EUR 45/4936/2016)
2. United Kingdom: Submission to the UN Committee on Economic, Social and Cultural Rights (EUR 45/3990/2016)

UNITED STATES OF AMERICA

United States of America
Head of state and government: Barack Obama

Two years after a Senate committee reported on abuses in the secret detention programme operated by the CIA, there was still no accountability for crimes under international law committed under it. More detainees were transferred out of the US detention centre at Guantánamo Bay, Cuba, but others remained in indefinite detention there, while pre-trial military commission proceedings continued in a handful of cases. Concern about the treatment of refugees and migrants, the use of isolation in state and federal prisons and the use of force in policing continued. There were 20 executions during the year. In November, Donald Trump was elected as President; his inauguration was scheduled for 20 January 2017.

INTERNATIONAL SCRUTINY

In August, the UN Human Rights Committee expressed concern that the investigation into torture in the counter-terrorism context, which the USA was legally obliged to conduct, had not taken place. The Committee noted that the USA had provided no further information on the Senate Select Committee on Intelligence (SSCI) report into the secret detention programme operated by the CIA after the attacks of 11 September 2001 (9/11). The full 6,963-page report remained classified top secret and the SSCI had not released it by the end of the year.

On 16 August, the Committee noted that the USA had provided no further information on reports that Guantánamo Bay detainees
had been denied access to judicial remedy for torture and other human rights violations incurred while in US custody.

**IMPUNITY**

No action was taken to end impunity for the systematic human rights violations, including torture and enforced disappearance, committed in the secret CIA detention programme after 9/11.

In May, the US Court of Appeals for the District of Columbia (DC) Circuit ruled that the SSCI report into the secret CIA detention programme remained a “congressional record” and was not subject to disclosure under the Freedom of Information Act. A petition seeking US Supreme Court review of the ruling was filed in November. Separately, in late December, a DC District Court judge ordered the administration to preserve the SSCI report, and to deposit an electronic or paper copy of it with the Court for secure storage. At the end of the year, it was not known if the government would appeal the order.

On 12 August, the DC Circuit Court of Appeals dismissed a lawsuit for damages brought on behalf of Afghan national Mohamed Jawad who had been held in US military custody from 2002 to 2009. During that time he was subjected to torture or other cruel, inhuman or degrading treatment. He was under 18 years old when taken into US custody in Afghanistan and transferred to detention in Guantánamo Bay.\(^1\) The Court of Appeals upheld a lower court decision to dismiss the lawsuit on the grounds that the federal courts lacked jurisdiction under Section 7 of the Military Commission Act (MCA) of 2006.\(^2\)

In October, the US Court of Appeals for the Fourth Circuit overturned a lower court’s dismissal of a lawsuit brought by Iraqi nationals who claimed they were tortured by interrogators employed by CACI Premier Technology, Inc. at Abu Ghraib prison in Iraq in 2003 and 2004. The Court held that intentional conduct by contracted interrogators, which was unlawful at the time it was committed, could not be shielded from judicial review.

**COUNTER-TERROR AND SECURITY**

At the end of the year, nearly eight years after President Obama made the commitment to close the Guantánamo Bay detention facility by January 2010, 59 men were still held there, the majority of them without charge or trial. During 2016, 48 detainees were transferred to government authorities in Bosnia and Herzegovina, Cape Verde, Ghana, Italy, Kuwait, Mauritania, Montenegro, Oman, Saudi Arabia, Senegal, Serbia and the United Arab Emirates.

In August, the UN Committee against Torture said that its recommendation to end indefinite detention without charge or trial, which amounted per se to a violation of the UN Convention against Torture, had not been implemented.

Pre-trial military commission proceedings continued against five detainees accused of involvement in the 9/11 attacks and charged in 2012 for capital trial under the MCA of 2009. The five – Khalid Sheikh Mohammed, Walid bin Attash, Ramzi bin al-Shibh, Ammar al Baluchi and Mustafa al Hawasawi – were held incommunicado in secret US custody for up to four years prior to their transfer to Guantánamo Bay in 2006. Their trial had not begun by the end of 2016.

Pre-trial military commission proceedings also continued against ‘Abd al-Rahim Nashiri. He was arraigned for capital trial in 2011 on charges relating to the attempted bombing of the *USS The Sullivans* in 2000, and the bombings of the *USS Cole* in 2000 and of the French supertanker *Limburg* in 2002, all in Yemen. He had been held in secret CIA custody for nearly four years prior to his transfer to Guantánamo Bay in 2006. In August 2016, the DC Circuit Court of Appeals ruled that a decision on his claim, that the offences with which he had been charged were not triable by military commission because they were not committed in the context of and associated with hostilities, had to await a final appeal in
the case in what was still likely a decade away.

Omar Khadr who pleaded guilty in 2010 to charges under the MCA relating to conduct in 2002 in Afghanistan when he was aged 15, and was transferred to his native Canada in 2012, sought disqualification of one of the judges on the Court of Military Commission Review (CMCR) on grounds of lack of impartiality. The DC Circuit Court of Appeals rejected the challenge, again ruling that the claim would have to wait for a final appeal to be decided.

During the year, Omar Khadr’s appeal to the CMCR against his conviction, including on grounds that he had pleaded guilty to offences that were not war crimes triable by military commission, was held in abeyance pending the Court of Appeals’ decision on the case of Guantánamo Bay detainee Ali Hamza Suliman al Bahlul who is serving a life sentence imposed in 2008 under the MCA of 2006. In 2015, a three-judge panel of the Court had overturned Ali Hamza Suliman al Bahlul’s conviction for conspiracy to commit war crimes on the grounds that the charge was not recognized under international law and could not be tried by a military tribunal. The government successfully sought reconsideration by the full court, which in October 2016 upheld the conspiracy conviction in a fractured vote involving five separate opinions and no resolution of the ultimate issue. Three of the nine judges dissented, arguing that Congress did not have the power to make conspiracy an offence triable by military commission, stressing that “whatever deference the judiciary may owe to the political branches in matters of national security and defense, it is not absolute”. Two judges wrote separately to say that it was improper to decide the ultimate issue for procedural reasons unique to Ali Hamza Suliman al Bahlul’s case.

EXCESSIVE USE OF FORCE

The authorities continued to fail to track the exact number of people killed by law enforcement officials during the year – documentation by media outlets put the numbers at nearly 1,000 individuals killed. The US Department of Justice (DOJ) announced plans to create a system to track these deaths under the Deaths in Custody Reporting Act, to be implemented in 2017. However, the programme is not compulsory for law enforcement agencies and the data compiled may not reflect the total numbers. According to the limited data that is available, black men are disproportionately victims of police killings.

At least 21 people across 17 states died after police used electric-shock weapons on them, bringing the total number of such deaths since 2001 to at least 700. Most of the victims were not armed and did not appear to pose a threat of death or serious injury when the electric-shock weapon was deployed.

FREEDOM OF ASSEMBLY

In July, the deaths of Philando Castile in Falcon Heights, Minnesota, and Alton Sterling in Baton Rouge, Louisiana, sparked protests against the police across the country. Similar protests against police use of force occurred in other cities such as Tulsa in Oklahoma and Charlotte in North Carolina. The use of heavy-duty riot gear and military-grade weapons and equipment to police these demonstrations raised several concerns in terms of the demonstrators’ right to peaceful assembly.

Protests in and around Standing Rock, North Dakota, against the Dakota Access Pipeline to transport crude oil, despite being largely peaceful, drew a heavy police response from local and state law enforcement authorities. Local law enforcement agencies placed a police barricade on the road leading to the protest sites. Officers responded in riot gear and with assault weapons and used pepper spray, rubber bullets and electric-shock weapons against protesters. There were more than 400 arrests after August, mainly for acts of trespassing and non-violent resistance. Authorities targeted reporters and activists for low-level offences such as trespassing.
GUN VIOLENCE
Attempts by US Congress to pass legislation to prevent the sale of assault weapons or implement comprehensive background checks for weapon buyers, failed to pass. Congress continued to deny funding to the Center for Disease Control and Prevention to conduct or sponsor research into the causes of gun violence and ways to prevent it.

REFUGEES’ AND MIGRANTS’ RIGHTS
More than 42,000 unaccompanied children and 56,000 individuals who comprised family units were apprehended crossing the southern border irregularly during the year. Families were detained for months, some for more than a year, while pursuing claims to remain in the USA. Many were held in facilities without proper access to medical care and legal counsel. The UN High Commissioner for Refugees called the situation in the Northern Triangle a humanitarian and protection crisis.

The authorities resettled more than 12,000 Syrian refugees by the end of the year and said they would go from taking in 70,000 refugees per year to accepting 85,000 in fiscal year 2016 and 100,000 in the year 2017. Legislators introduced bills attempting to prevent lawfully admitted refugees from living in their state. In September, Texas announced its withdrawal from the federal Refugee Resettlement Program on the basis of alleged security concerns, despite refugees being required to undergo an exhaustive screening process before entering the USA. Kansas and New Jersey also withdrew from the Program.

WOMEN’S RIGHTS
Native American and Alaskan Native women remained more than 2.5 times more likely to be raped or sexually assaulted than non-Indigenous women. Gross inequalities remained for Indigenous women in accessing post-rape care, including access to examinations, rape kits – a package of items used by medical staff to gather forensic evidence – and other essential health care services.

Disparities in women’s access to sexual and reproductive health care, including maternal care, continued. The maternal mortality ratio rose over the last six years; African-American women remained nearly four times more likely to die of pregnancy-related complications than white women.

The threat of criminal punishment for drug use during pregnancy continued to deter women from marginalized groups from accessing health care, including prenatal care. However, a harmful amendment to Tennessee’s “fetal assault” law expired in July after successful advocacy ensured the law did not become permanent.3

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE
Legal discrimination against LGBTI people persisted at the state and federal level. No federal protections existed banning discrimination on the grounds of sexual orientation and gender identity in the workplace, housing or health care. While some individual states and cities enacted non-discrimination laws that included protection on the grounds of sexual orientation and gender identity, the vast majority of states provided no legal protections for LGBTI people. Conversion therapy, criticized by the UN Committee against Torture as a form of torture, remained legal in most states and territories.

Transgender people continued to be particularly marginalized. Murder rates of transgender women were high and discriminatory state laws, such as North Carolina’s “bathroom bill” which bans cities from allowing transgender individuals to use public bathrooms in accordance with their gender identity, undermined their rights.

PRISON CONDITIONS
Over 80,000 prisoners at any given time were held in conditions of physical and social deprivation in federal and state prisons throughout the country. In January, the DOJ issued guiding principles and policy
recommendations that would limit the use of solitary confinement and restrictive housing – prison or jail housing that had different rules than were in place for the general prison population – in federal prisons. The recommendations emphasized housing prisoners in the least restrictive environment possible, diverting persons with mental illness out of isolation, and drastically limiting the use of solitary confinement for juveniles.

DEATH PENALTY
Twenty men were executed in five states, bringing to 1,442 the total number of executions since the US Supreme Court approved new capital laws in 1976. This was the lowest annual total since 1991. Approximately 30 new death sentences were passed. Around 2,900 people remained on death row at the end of the year.

Texas carried out fewer than 10 executions for the first time since 1996. Oklahoma did not carry out any executions for the first time since 1994. Texas and Oklahoma combined accounted for 45% of executions in the USA between 1976 and 2016.

In the November elections, the Oklahoma electorate voted to amend the state constitution to prohibit Oklahoma’s state courts from declaring the death penalty a “cruel or unusual” punishment. In California, the state with the largest death row population, voters opted not to repeal the death penalty; and in Nebraska the electorate voted to reject the legislature’s 2015 repeal of the death penalty.

Execution moratoriums remained in force in Pennsylvania, Washington State and Oregon throughout the year.

Florida, where executions had been on the increase in recent years, saw them on hold all year after the US Supreme Court ruled in Hurst v Florida in January that Florida’s capital sentencing statute was unconstitutional for giving juries only an advisory role in who was sentenced to death. Florida legislature passed a new statute, but in October the Florida Supreme Court ruled it unconstitutional because it did not require juror unanimity on death sentencing. In December, the Florida Supreme Court ruled that the Hurst ruling applied to those death row inmates – just over 200 of nearly 400 – whose death sentences had not yet been finalized on mandatory appeal by 2002. They could be entitled to new sentencing hearings as a result.

In August, the Delaware Supreme Court struck down Delaware’s capital sentencing statute in the wake of Hurst v Florida, because it gave judges the ultimate power to decide whether the prosecution had proved all facts necessary to impose the death penalty. Delaware’s Attorney General announced that he would not appeal the ruling.

States continued to face difficulties with their lethal injection protocols and the acquisition of drugs. Louisiana will not carry out any executions throughout 2017 due to the litigation in federal court on its lethal injection protocol. Ohio continued to face problems sourcing lethal injection drugs and there were no executions for the second year running in Ohio. In March, Ohio Supreme Court ruled 4-3 that the state could try to execute Romell Broom for the second time. The first attempt in 2009 was abandoned after the lethal injection team failed to establish an intravenous line during two hours of trying. An execution date for Romell Broom had not been set by the end of the year.

The US Supreme Court intervened in a number of capital cases. In March, it granted Louisiana death row inmate Michael Wearry a new trial, 14 years after he was convicted. The Court found that prosecutorial misconduct, including the withholding of exculpatory evidence, had violated Michael Wearry’s right to a fair trial. In May, it granted Georgia death row inmate Timothy Foster a new trial because of racial discrimination at jury selection. Timothy Foster, an African-American, was sentenced to death by an all-white jury after prosecutors had peremptorily removed every black prospective juror from the jury pool.

In August, the National Hispanic Caucus of State Legislators “overwhelmingly”
approved a resolution calling for abolition of the death penalty across the USA. The resolution cited racial discrimination, ineffectiveness, cost and the risk of error.

In April, Gary Tyler was released after 42 years in prison in Louisiana. Gary Tyler, an African-American, had originally been sentenced to death for the fatal shooting of a 13-year-old white boy in 1974 during a riot over school integration. Gary Tyler, aged 16 at the time of the shooting, was convicted and sentenced to death by an all-white jury. His death sentence was overturned after the US Supreme Court ruled Louisiana’s mandatory death penalty statute unconstitutional in 1976; and his life sentence was overturned after the Court in 2012 barred mandatory life without parole sentences for crimes committed by under-18-year-olds. The prosecution agreed to vacate the murder conviction, allowed him to plead guilty to manslaughter, and he received the maximum prison sentence of 21 years, less than half the time he had already served.4

URUGUAY

**Eastern Republic of Uruguay**
Head of state and government: Tabaré Vázquez

Despite efforts by the Working Group for Truth and Justice, little progress was made in the few criminal prosecutions of crimes under international law and human rights violations committed during the period of civil-military government (1973-1985). Discrimination against people with disabilities persisted and lack of gender equality remained a concern. Uruguay hosted the Global LGBTI Human Rights Conference. The exercise of conscientious objection among medical practitioners continued to pose significant barriers to women’s access to safe and legal abortion.

**BACKGROUND**


In July, the UN CEDAW Committee urged Uruguay to increase action to reduce discrimination against Afro-descendant women and to improve their access to education, employment and health. The Committee also expressed concern about the lack of a specific mechanism to ensure reparations for women who had suffered sexual violence under the civil-military government, among other issues.

In August, the UN Committee on the Rights of Persons with Disabilities called for the creation of consultation mechanisms for people with disabilities to enable them to participate in the adoption of public and legislative policies and to ensure accessible methods for reporting discrimination on grounds of disability.

**PRISON CONDITIONS**

In June, the Parliamentary Commissioner for the Penitentiary System, with the support of other national institutions and the UN High Commissioner for Human Rights, facilitated workshops on human rights education for prison directors. These workshops aimed to improve public servants’ understanding of human rights-based approaches in order to avoid internal conflicts and the excessive use of force.

**IMPUNITY**

The Truth and Justice Working Group, established in May 2015 to investigate crimes against humanity committed between 1968 and 1985, continued to collect testimonies, conduct exhumations, and locate the remains of missing persons. It also gained access to important documentation, including archives at the headquarters of
Naval Fusiliers and was due to make its findings public in 2017.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

In July, Uruguay hosted the Global LGBTI Human Rights Conference. Uruguay chaired the thematic group discussion calling for LGBTI people to be included in the 2030 Agenda for Sustainable Development.

For the first time Uruguay carried out a census of transgender people to better understand their situation. The multiple discrimination suffered by transgender people remained a problem, despite efforts and policies to improve the situation.

Homophobia-free health centres were successfully developed; however, the lack of comprehensive health care for LGBTI people remained a challenge.

SEXUAL AND REPRODUCTIVE RIGHTS

The UN CEDAW Committee commended Uruguay for a drastic reduction in maternal mortality and the expansion of women’s access to sexual and reproductive health services. However, it expressed concern that such access remained limited in rural areas. The Committee expressed further concern at the widespread use of conscientious objection among medical practitioners, which limited women’s access to safe and legal abortion services. The Committee called on the government to assess the nationwide availability of sexual and reproductive health services in order to identify underserved areas and ensure appropriate funding; to take measures to ensure that women have access to legal abortion and post-abortion services; and to introduce more rigorous requirements to prevent blanket use of conscientious objection in cases of abortion.

UZBEKISTAN

Republic of Uzbekistan
Head of state: Shavkat Mirzioiev (replaced Islam Karimov in September)
Head of government: Abdulla Aripov (replaced Shavkat Mirzioiev in December)

Torture in detention centres and prisons continued to be pervasive. The authorities secured the return, including by secret rendition, of hundreds of people they suspected of criminal activity, of being in opposition to the government or of being a threat to national security; they were at risk of torture. Forced labour was widely used.

The rights to freedom of expression and of association remained severely restricted. Human rights defenders continued to face routine harassment and violence.

BACKGROUND

President Karimov died on 2 September, after 27 years in power. The authorities controlled all information surrounding his death and launched sustained attacks on social media against independent news outlets and human rights activists who criticized the late President’s human rights record.

Prime Minister Mirzioiev, appointed acting President in September, was elected President on 4 December.

TORTURE AND OTHER ILL-TREATMENT

The authorities continued to categorically deny reports of pervasive torture and other ill-treatment by law enforcement officials. In October, the Director of the National Centre for Human Rights said that torture allegations were based on fabricated evidence and “clearly designed as a means of disinformation... to put undue pressure” on Uzbekistan.¹

Human rights defenders, former prisoners and relatives of prisoners continued to provide credible information that police and National Security Service (NSS) officers routinely used torture to coerce suspects,
detainees and prisoners into confessing crimes or incriminating others.

Judges continued to ignore or dismiss as unfounded allegations of torture or other ill-treatment, even when presented with credible evidence.

In February, the Dzhizakh Regional Criminal Court convicted fish farmer Aramais Avakian and four co-defendants of plotting anti-constitutional activities and of membership of an “extremist organization”. They were sentenced to between five and 12 years in prison.

Aramais Avakian consistently denied the charges and told the court that NSS officers had abducted him, held him incommunicado for a month, tortured and forced him to confess. They broke several of his ribs and gave him electric shocks. In court, several of the prosecution witnesses said that NSS officers had detained and tortured them in order to incriminate Aramais Avakian and his co-defendants. During the appeal hearing in March, his co-defendant Furkat Dzhuraev told the judge that he, too, had been tortured. The trial and appeal judges ignored all allegations of torture and admitted the defendants’ forced “confessions” as evidence against them.

COUNTER-TERROR AND SECURITY

The authorities continued to secure the return – through extradition proceedings or otherwise – of numerous Uzbekistani nationals they suspected of criminal activity, or labelled as opponents or a threat to national security.

Forced returns

In October, the authorities said they had secured the return of 542 individuals between January 2015 and July 2016.

The government offered assurances to the authorities of the sending state saying that independent monitors and diplomats would have free and confidential access to extradited individuals and that they would receive a fair trial; in reality, access was limited. In some cases it took up to a year for diplomats to be granted permission to see a detainee or prisoner, and they were generally accompanied by officials, precluding confidential conversations.

NSS officers continued the practice of secret renditions (abducting wanted individuals) from abroad. In Russia, local security services were complicit in this practice in those rare instances when the Russian authorities refused to comply with extradition requests.

Those abducted or otherwise forcibly returned were subjected to incommunicado detention, often in undisclosed locations, and tortured or otherwise ill-treated to force them to confess or incriminate others. In many cases, security forces pressured relatives not to seek support from human rights organizations, and not to file complaints about alleged human rights violations.

On 4 March, Russian intelligence officers apprehended asylum-seeker Sarvar Mardiev as he was released from prison in Russia and drove him away. His whereabouts were undisclosed until October, when the Uzbekistan authorities confirmed that Sarvar Mardiev was detained in Kashkadaria the day after his release from prison in Russia. They said he was in pre-trial detention charged with crimes against the state. He was not granted access to a lawyer for a month.

Persecution of family members

The authorities increased pressure on relatives of those suspected or convicted of crimes against the state, including individuals working or seeking protection abroad.

The authorities used the threat of bringing charges of membership of a banned Islamist group against a detained relative to prevent families from exposing human rights violations and seeking help from human rights organizations at home and/or abroad.

Local mahalla (neighbourhood) committees continued to collaborate with security forces and local and national authorities in closely monitoring residents of their mahallas for any signs of behaviour or activities considered improper, suspect or illegal. Mahalla committees publicly exposed
residents and their families and took punitive action against them.

In February, mahalla members informed the wife of Aramais Avakian that local residents had decided to expel her and her children from their neighbourhood because of the “actions of her terrorist husband” and because she had given interviews to foreign journalists, slandered local officials and brought Uzbekistan into disrepute.

FORCED LABOUR
Forced labour was used in the cotton industry. International organizations estimated that the authorities compelled over a million public sector employees to work in the cotton fields, in the preparation of the fields in spring and the harvest in the autumn. Uzbekistan was the world’s second biggest user of modern-day slavery according to the 2016 Global Slavery Index.

FREEDOM OF EXPRESSION – HUMAN RIGHTS DEFENDERS
The rights to freedom of expression and association remained severely restricted.

Activists who attempted to document the use of forced labour in the cotton fields were repeatedly detained and searched.

On 8 October, police and NSS officers detained the head of the independent NGO Human Rights Defenders’ Alliance of Uzbekistan, Elena Urlaeva, and independent photographer Timur Karpov as well as two French activists in Buk District of Tashkent Region. They were interviewing medical staff and teachers sent to work in the cotton fields. Elena Urlaeva reported that she was escorted to an interrogation room in Buk police station by a group of women, two of whom pulled her by her hair, punched and verbally insulted her. Police officers did not stop them but instead threatened Elena Urlaeva and refused to call medical assistance for her. They released her without charges after six hours. Timur Karpov was detained for 10 hours and threatened. Their recording equipment and documentation materials were confiscated.

1. Uzbekistan: Fast-track to torture abductions and forcible returns from Russia to Uzbekistan (EUR 62/3740/2016)

VENEZUELA
Bolivarian Republic of Venezuela
Head of state and government: Nicolás Maduro Moros

The government declared a state of emergency which was renewed four times. Most of those suspected of responsibility for crimes under international law and for human rights violations during the 2014 protests had yet to be brought to justice. Prison overcrowding and violence continued. Survivors of gender-based violence faced significant obstacles in accessing justice. Human rights defenders and journalists frequently faced campaigns to discredit them, as well as attacks and intimidation. Political opponents and critics of the government continued to face imprisonment. There were reports of excessive use of force by the police and security forces.

BACKGROUND
On 15 January, President Maduro declared a state of general emergency and economic emergency which lasted the year. The declaration established provisions which could restrict the work of civil society and NGOs, including by allowing the authorities to audit signed agreements between national organizations and legal entities with companies or institutions based abroad.

The authorities failed to report on the results of the implementation of the National Human Rights Plan, which had been approved in 2015.

Most of the judgments and orders passed on Venezuela by the Inter-American Court of Human Rights had yet to be complied with by the end of the year.

Food and medicine shortages intensified dramatically, provoking protests throughout the country. In July, the executive announced a new mandatory temporary work regime.
under which employees in public and private companies could be transferred to state-run food production companies, which would amount to forced labour.

In October, the UN High Commissioner for Human Rights stated that several Special Rapporteurs had experienced difficulties in visiting the country because the government failed to grant them the relevant permits.

In November, Venezuela’s human rights record was examined for the second time under the UN Universal Periodic Review (UPR) process.

There was concern that the temporary nature of the positions held by more than 60% of judges made them susceptible to political pressure. Contrary to international human rights standards, civilians were tried before military courts. Police forces refused to comply with release orders issued by courts.

The powers of the opposition-led National Assembly were severely limited by resolutions from the Supreme Court of Justice, which hindered the ability of MPs to represent Indigenous Peoples. The Court also annulled a parliamentary declaration on non-discrimination connected with sexual orientation and gender identity; and a declaration which called for compliance with the decisions issued by intergovernmental organizations.

**IMPUNITY**

The country’s withdrawal from the jurisdiction of the Inter-American Court of Human Rights (in effect since 2013) continued to deny victims of human rights violations and their relatives access to justice, truth and reparation.

Although two officials were convicted in December of murdering Bassil Da Costa and Geraldine Moreno during the 2014 protests, progress was slow in bringing to justice those suspected of criminal responsibility for the killing of 41 other people – including security force personnel – as well as the torture and other ill-treatment of demonstrators during the protests. The suspects included members of the security forces. Information provided by the Attorney General during the UPR process revealed that nine officials had been convicted of various crimes and that 18 others were under investigation, even though 298 investigations had been initiated the previous year. However, the only official data published by the Public Prosecutor’s Office was about the conviction of one man for the 2014 murder of Adriana Urquiola in the city of Los Teques, Miranda State.

According to a report presented to Parliament by the Public Prosecutor’s Office in January, over 11,000 reports of crimes under international law and human rights violations were received in 2015, while only 77 trials were initiated during that year. No one had been brought to justice for the killings of eight members of the Barrios family or the threats and intimidation against other family members in Aragua State since 1998. Alcedo Mora Márquez, an employee of the Government Secretariat in Merida State and a community leader in the area, went missing in February 2015. Before his disappearance, he submitted reports on the misconduct of local public officials.

In March, 28 miners disappeared in Bolivar State; in October, the Public Prosecutor’s Office presented a report revealing that it had found the miners’ corpses and determined who was responsible for their disappearance. Twelve people were charged with murder, robbery and “deprivation of liberty”.¹

**EXCESSIVE USE OF FORCE**

There were continued reports of excessive use of force by security forces, particularly in the repression of protests over the lack of food and medicine. In June, Jenny Ortiz Gómez died as a result of several gunshots to the head when police officers carried out public order operations. The suspected perpetrator was charged with intentional homicide and misuse of firearms.

According to the Venezuelan Observatory of Social Conflict, approximately 590 protests were registered each month during the year. The majority were related to demands for
economic, social and cultural rights, in particular access to food, health and housing.

HUMAN RIGHTS DEFENDERS

Human rights defenders continued to be targeted with attacks and intimidation by state media and high-ranking government officials.

In April, Humberto Prado Sifontes, director of the Venezuelan Prisons Observatory (OVP), was once again the victim of threats and insults when his email and social media accounts were hacked following the publication of an interview where he reported on crisis and violence in the prison system. In May, Rigoberto Lobo Puentes, a member of the Human Rights Observatory of the University of The Andes, was shot in the head and back with a pellet gun by police officers in Merida State, when tending to injured victims during a protest. The officers continued to shoot at him after he got into his car.

In June, lawyers Raquel Sánchez and Oscar Alfredo Ríos, members of the NGO Venezuelan Penal Forum, were attacked by a group of hooded assailants who smashed the windscreen and side mirrors of their car when they were travelling through Tachira State. Raquel Sánchez was severely wounded when she was hit on the head as she got out of the car.

PRISON CONDITIONS

Prisons remained seriously overcrowded, and despite the announcement concerning new detention centres, prisoners’ living conditions – including their access to food and health – worsened. The presence of weapons held by prisoners remained a problem which the authorities failed to control. According to the OVP, the number of prisoners exceeded prison capacity by 190% in the first half of the year. Local NGOs also denounced the critical situation in pre-trial detention facilities.

In March, 57 people – including four inmates, a custodian and the prison director – were injured at the Fenix Penitentiary Centre in Lara State.

In August, seven people were killed and several others wounded by grenades during a riot at the Aragua Penitentiary Centre.

In October, several inmates were evicted from the General Penitentiary of Venezuela after weeks of confrontation with the Bolivarian National Guard, who allegedly used excessive force in the confrontation.

The Office of the Ombudsman announced a proposal to reduce overcrowding in pre-trial detention facilities. According to its annual report, presented to Parliament, 22,759 people remained in pre-trial detention in police facilities, resulting in overcrowding and the spread of diseases and violence.

ARBITRARY ARRESTS AND DETENTIONS

Lawyer Marcelo Crovato remained under house arrest at the end of the year. He had been detained without trial in April 2014 for defending residents whose houses had been raided by the authorities during protests, and was placed under house arrest in 2015.

Decisions of the UN Working Group on Arbitrary Detention had yet to be complied with by the end of the year. They included decisions on the cases of Daniel Ceballos and Antonio Ledezma, two prominent government critics.

In June, Francisco Márquez and Gabriel San Miguel, two activists supporting the opposition party Popular Will, were arrested while on their way from the capital, Caracas, to Portuguesa State to help organize electoral activities. In August, Gabriel San Miguel was freed following action taken by the Spanish government, while Francisco Márquez was freed in October.

Emilio Baduel Cafarelli and Alexander Tirado Lara were transferred on three occasions to detention centres known as dangerous, prompting concern for their lives and physical integrity. They had been convicted of incitement, intimidation using explosives and conspiracy to commit a crime during the 2014 protests.

Opposition members Coromoto Rodríguez, Yon Goicoechea, Alejandro Puglia and José Vicente García were arrested in May, August, September and October respectively, under
circumstances which amounted to arbitrary detention. Coromoto Rodríguez and Alejandro Puglia were released in October.

In September, Andrés Moreno Febres-Cordero, Marco Trejo, James Mathison and César Cuellar were arrested and – despite being civilians – were brought before a military court for participating in the production of a video for the political party Justice First which had criticized the government. Marco Trejo and Andrés Moreno Febres-Cordero were released in November.

PRISONERS OF CONSCIENCE
Political opponents of the government continued to face imprisonment. In July, an appeals court dismissed prisoner of conscience Leopoldo López’s appeal against his prison sentence, without taking into account the absence of credible evidence to support the charges and public statements made before his conviction by the authorities, thus seriously undermining his right to a fair trial. He had been sentenced to 13 years and nine months in prison.

According to the Venezuelan Criminal Forum, more than 100 people remained in detention due to political reasons.

In November, the lesbian, gay, bisexual, transgender and intersex (LGBTI) activist and prisoner of conscience Rosmit Mantilla was released from jail. He had been imprisoned since 2014. The circumstances and conditions of his release remained unclear by the end of the year.

POLICE AND SECURITY FORCES
Recent official data on homicides remained unavailable. The Venezuelan Violence Observatory reported that the country had the second highest homicide rate in the Americas.

In January, the Public Prosecutor’s Office reported that investigations had been initiated into 245 deaths which occurred in alleged armed clashes with officials during the government’s Operation Liberation and Protection of the People (OLP), which had been implemented by security forces in July 2015 to tackle the high crime rate. The high number of civilian casualties suggested that security forces may have used excessive force or carried out extrajudicial executions.

On 15 October, 12 young people were arbitrarily detained in the region of Barlovento, in the state of Miranda, during an OLP security operation. On 28 November their bodies were found in two mass graves. According to the Public Prosecutor’s Office, 18 members of the armed forces were detained for their presumed participation in the massacre.

The UN Human Rights Committee raised concerns over reports of abuses by military forces against Indigenous Peoples settled in la Guajira, Zulia State, on the border with Colombia.

FREEDOM OF EXPRESSION
The authorities continued to single out media outlets and journalists critical of the government.

In March, David Natera Febres, director of the regional newspaper The Caroni Post, was sentenced to four years in prison and fined for publishing reports on corruption. The sentence had yet to be implemented by the end of the year.

In June, 17 journalists and media workers who were covering protests in Caracas over the lack of food were attacked and their equipment stolen. The case was reported to the Public Prosecutor’s Office to no avail.

VIOLENCE AGAINST WOMEN AND GIRLS
Implementation of the 2007 legislation criminalizing gender-based violence remained slow due to a lack of resources; by the end of the year there were still no shelters available to victims seeking refuge.

Statistics from the Public Prosecutor’s Office indicated that 121,168 complaints of gender-based violence were received in 2015. Criminal proceedings were initiated in 19,816 cases and civil protection measures such as restraining orders were granted in less than 50% of cases. According to women’s rights organizations, 96% of the
cases that did reach the courts did not result in convictions.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

In May, the National Assembly approved the declaration of 17 May as the “Day against Homophobia, Transphobia and Biphobia”.

In August, the Ministry of Interior and Justice and the Public Prosecutor’s Office agreed that transgender people could freely express their gender identity on the photograph on their identification documents. However, there were no advances in legislation to guarantee equal rights, including to provide for the possibility for an individual to adjust their name, gender and other details in official documentation to correspond to their gender identity, or to criminalize hate crimes based on sexual orientation, gender identity or expression.

SEXUAL AND REPRODUCTIVE RIGHTS

Access to contraceptives, including emergency contraception, was increasingly limited due to shortages of medicine. Abortion continued to be criminalized in all cases except when the life of the woman or girl was at risk.

According to a report by the UN Population Fund, the maternal mortality rate in the country was 95 per 100,000 live births, significantly higher than the regional average of 68 deaths per 100,000 live births. Contraceptive usage stood at 70% for traditional methods and 64% for modern methods, with regional averages at 73% and 67% respectively.

INDIGENOUS PEOPLES’ RIGHTS

The legal provisions to guarantee and regulate consultation with Indigenous Peoples over matters affecting their livelihoods were not complied with. There were reports of criminalization of Indigenous and environmental rights defenders. Concern was raised over the impact on Indigenous land and environment of large-scale mining projects in the southern region of Venezuela known as the Mining Arc. Approval for the implementation of the projects was granted without consulting with and seeking the free, prior and informed consent of Indigenous communities in the area.

RIGHT TO HEALTH – LACK OF FOOD AND MEDICINE

The economic and social crisis in the country continued to worsen. In light of the lack of official statistics, private and independent agencies such as the Workers’ Centre for Documentation and Analysis (CENDA) reported an inflation of 552% for food products from November 2015 to October 2016, which made it extremely difficult for the population to purchase food even when they were able to find it. According to the Venezuelan Health Observatory, 12.1% of the population ate only twice a day or less. The Bengoa Foundation for Food and Nutrition estimated that 25% of children were malnourished.

Studies on living conditions carried out by three major universities revealed that 73% of homes in the country suffered from income poverty in 2015, while official data from the National Institute of Statistics put that figure at 33.1%.

The government’s refusal to allow international aid efforts to address the humanitarian crisis and provide medicine exacerbated the critical health situation. The poor state of public health services led to an increase in preventable and treatable diseases such as malaria and tuberculosis. NGOs such as the Coalition of Organizations for the Right to Life and Health and professional associations calculated that there was a shortage of 75% of high-cost drugs and 90% of essential drugs.

1. Venezuela: Establish the whereabouts of missing miners (AMR 53/3602/2016)
VIET NAM

Socialist Republic of Viet Nam
Head of state: Tran Dai Quang (replaced Truong Tan Sang in April)
Head of government: Nguyen Xuan Phuc (replaced Nguyen Tan Dung in April)

Severe restrictions on the rights to freedom of expression, of association and of peaceful assembly continued. The media and the judiciary, as well as political and religious institutions, remained under state control. Prisoners of conscience were tortured and otherwise ill-treated, and subjected to unfair trials. Physical attacks against human rights defenders continued, and prominent activists were subjected to daily surveillance and harassment. Peaceful dissidents and government critics were arrested and convicted on national security charges. Demonstrations were repressed, with participants and organizers arrested and tortured. The death penalty was retained.

BACKGROUND
The five-yearly leadership change took place in January at the congress of the Communist Party of Viet Nam. In May, a general election for the 500 seats in the National Assembly was contested by 900 Communist Party members nominated by central or local authorities and 11 independent candidates. Over 100 non-party candidates who attempted to register, including prominent government critics such as Nguyen Quang A, were disqualified on tenuous administrative grounds. Some were subject to harassment and intimidation.

The implementation of key new laws, scheduled for July, was postponed due to flaws in the amended Penal Code. They included the Criminal Procedure Code, the Law on the Organization of Criminal Investigation Agencies, the Law on the Implementation of Custody and Temporary Detention, and the amended Penal Code itself.

REPRESSION OF DISSENT
Peaceful criticism of government policies continued to be silenced through judicial and extra-legal means. There was extensive surveillance and harassment of activists, including those who demonstrated against the Formosa ecological disaster which affected the lives of an estimated 270,000 people (see below). Attacks against human rights defenders were commonplace.\(^1\)

The authorities continued to use vaguely worded legislation to convict peaceful activists under the national security section of the 1999 Penal Code, in particular: Article 258 "abusing democratic freedoms to infringe upon the interests of the state, the legitimate rights and interests of organizations and/or citizens"; Article 88 "spreading propaganda against the Socialist Republic of Viet Nam"; and Article 79 "carrying out activities aimed at overthrowing the people’s administration".

In an eight-day period in March, seven activists and government critics were convicted and sentenced to imprisonment for the peaceful expression of their views. They included Nguyen HUu Vinh, founder of the popular blog site Anh Ba Sàm, and his assistant Nguyen Thi Minh Thúy who were convicted under Article 258 and given five- and three-year prison sentences respectively.\(^2\) They had spent nearly two years in pre-trial detention.

Prominent human rights lawyer Nguyen Van Dài and his assistant Lê Thu Hà remained in incommunicado detention following their arrest on charges under Article 88 in December 2015.\(^3\)

In October, well-known activist Nguyen Ngoc Như Quỳnh, known as blogger MẸ NAMD (Mother Mushroom), was arrested on charges under Article 88 in connection with her blog postings criticizing the government.\(^4\) The Article carries a three- to 20-year prison sentence.

Routine beatings of human rights defenders and their relatives continued. In April, Trần Thị Hồng, wife of prisoner of conscience Pastor Nguyen Công Chính, was
arrested and severely beaten in custody soon after she met with a US delegation visiting Viet Nam.⁵

**FREEDOM OF ASSEMBLY**

Large peaceful demonstrations over the Formosa disaster were frequent. Weekly demonstrations in urban centres around the country in April and May resulted in mass arrests and attacks against participants by police and individuals in plain clothes believed to be police or working under police orders. Many of those detained were tortured or otherwise ill-treated, including with beatings and the use of electric shocks.⁶ Demonstrations continued throughout the year, with those in provinces affected by the Formosa disaster gathering momentum. There were reports that 30,000 people demonstrated in August in Vinh City, Nghệ An province.

**LAND DISPUTES**

In July, a demonstration of around 400 ethnic minority Ede villagers in Buôn Ma Thuột, Đắk Lắk province protesting against the sale of 100 hectares of the community’s ancestral land to a private company was violently repressed by security forces; at least seven demonstrators were arrested and held incommunicado detention.⁷

In August, land activist Cấn Thị Thêu was convicted under Article 245 of “causing public disorder” by a court in the capital Hà Nội and sentenced to 20 months’ imprisonment.⁸ She was accused of inciting protests against reclamation of land in Hà Đông district, Hà Nội, by posting photographs online.

**TORTURE AND OTHER ILL-TREATMENT**

Torture and other ill-treatment, including incommunicado detention, prolonged solitary confinement, deprivation of medical treatment and electric shocks. They included bloggers, labour and land rights activists, political activists, religious followers, members of ethnic groups and advocates for human rights and social justice.

Land rights activist Bùi Thị Minh Hằng, and Hòa Hảo Buddhist Trần Thị Thúy continued to be denied adequate medical treatment since 2015; Catholic activist Đặng Xuân Diệu was held in solitary confinement for prolonged periods and tortured; and Trần Huỳnh Duy Thức had been transferred between several prisons since 2009, apparently as a punishment or to intimidate him.

**REFUGEES AND ASYLUM-SEEKERS**

In April and May, in two separate cases, eight asylum-seekers among groups intercepted en route to Australia and forcibly returned to Viet Nam were sentenced to between two and four years’ imprisonment under Article 275 of the Penal Code for “organizing and/or coercing other persons to flee abroad or to stay abroad illegally”.¹⁰

**RIGHT TO AN ADEQUATE STANDARD OF LIVING**

An ecological disaster in early April killed huge numbers of fish stocks along the coast of Nghệ An, Hà Tĩnh, Quảng Bình, Quảng Trị and Thừa Thiên-Huế provinces, affecting the livelihoods of 270,000 people. After a two-month investigation, the authorities confirmed allegations by the public that a steel plant owned by the Taiwanese Formosa Plastics Group had caused toxic waste discharges. At the end of June, Formosa publicly acknowledged responsibility and announced that it would provide compensation of US$500 million. In October, a court in Hà Tĩnh rejected 506 cases filed by those affected. The plaintiffs were calling for increased compensation in damages for the impact on their livelihoods.

**DEATH PENALTY**

Death sentences continued to be imposed, including for drug-related offences. Official
statistics remained classified as a state secret. Death sentences were reported in the media. There was no available information about executions.

1. Viet Nam: Crackdown on human rights amidst Formosa related activism (ASA 41/5104/2016)
2. Viet Nam: Convictions of Nguyễn Hiền Vinh and Nguyễn Thị Minh Thúy are an outrageous contravention of freedom of expression (ASA 41/3702/2016)
3. Ending torture of prisoners of conscience in Viet Nam (News story, 12 July)
4. Viet Nam: Vietnamese human rights blogger arrested (ASA 41/4979/2016)
5. Viet Nam: Detained pastor on hunger strike since 8 August (ASA 41/4759/2016)
6. Viet Nam: Government cracks down on peaceful demonstrations with range of rights violations, including torture and other ill-treatment (ASA 41/4078/2016)
7. Viet Nam: Minority group’s protest met with violence (ASA 41/4509/2016)
8. Viet Nam: Failing to uphold human rights as land rights activist sentenced to 20 months in prison (ASA 41/4866/2016)
10. Viet Nam: Imprisonment of asylum-seeker forcibly returned by Australia would be unlawful and could be disastrous for her young children (ASA 41/4653/2016)

BACKGROUND
The armed conflict between the internationally recognized government of President Hadi, supported by a Saudi Arabia-led international coalition, and the Huthi armed group and allied forces, which included army units loyal to former President Ali Abdullah Saleh, continued to rage throughout the year. The Huthis and forces allied to former President Saleh continued to control the capital, Sana’a, and other areas. President Hadi’s government controlled southern parts of Yemen including the governorates of Lahj and Aden.

The armed group al-Qa’ida in the Arabian Peninsula (AQAP) continued to control parts of southern Yemen and to carry out bomb attacks in Aden and in the port city of al-Mukallah, which government forces recaptured from AQAP in April. US forces continued to target AQAP forces with missile strikes. The armed group Islamic State (IS) also carried out bomb attacks in Aden and al-Mukallah, mostly targeting government officials and forces.

All parties to the continuing armed conflict committed war crimes and other serious violations of international law with impunity. The Saudi Arabia-led coalition supporting the internationally recognized Yemeni government bombed hospitals and other civilian infrastructure and carried out indiscriminate attacks, killing and injuring civilians. The Huthi armed group and forces allied to it indiscriminately shelled civilian residential areas in Ta’iz city and fired artillery indiscriminately across the border into Saudi Arabia, killing and injuring civilians. Huthi and allied forces severely curtailed the rights to freedom of expression, association and peaceful assembly in areas they controlled, arbitrarily arresting critics and opponents, including journalists and human rights defenders, forcing NGOs to close. They subjected some detainees to enforced disappearance and to torture and other ill-treatment. Women and girls continued to face entrenched discrimination and other abuses, including forced marriage and domestic violence. The death penalty remained in force; no information was publicly available on death sentences or executions.

Republic of Yemen
Head of state: Abd Rabbu Mansour Hadi
Head of government: Ahmed Obeid bin Daghr (replaced Khaled Bahah in April)

All parties to the continuing armed conflict committed war crimes and other serious violations of international law with impunity. The Saudi Arabia-led coalition supporting the internationally recognized Yemeni government bombed hospitals and other civilian infrastructure and carried out indiscriminate attacks, killing and injuring civilians. The Huthi armed group and forces allied to it indiscriminately shelled civilian residential areas in Ta’iz city and fired artillery indiscriminately across the border into Saudi Arabia, killing and injuring civilians. Huthi and allied forces severely curtailed the rights to freedom of expression, association and peaceful assembly in areas they controlled, arbitrarily arresting critics and opponents, including journalists and human rights defenders, forcing NGOs to close. They subjected some detainees to enforced disappearance and to torture and other ill-treatment. Women and girls continued to face entrenched discrimination and other abuses, including forced marriage and domestic violence. The death penalty remained in force; no information was publicly available on death sentences or executions.

BACKGROUND
The armed conflict between the internationally recognized government of President Hadi, supported by a Saudi Arabia-led international coalition, and the Huthi armed group and allied forces, which included army units loyal to former President Ali Abdullah Saleh, continued to rage throughout the year. The Huthis and forces allied to former President Saleh continued to control the capital, Sana’a, and other areas. President Hadi’s government controlled southern parts of Yemen including the governorates of Lahj and Aden.

The armed group al-Qa’ida in the Arabian Peninsula (AQAP) continued to control parts of southern Yemen and to carry out bomb attacks in Aden and in the port city of al-Mukallah, which government forces recaptured from AQAP in April. US forces continued to target AQAP forces with missile strikes. The armed group Islamic State (IS) also carried out bomb attacks in Aden and al-Mukallah, mostly targeting government officials and forces.

According to the Office of the UN High Commissioner for Human Rights, 4,125 civilians, including more than 1,200 children, had been killed and more than 7,000 civilians wounded since the conflict began in March 2015. The UN Office for the Coordination of Humanitarian Affairs (OCHA) reported that more than 3.27 million people had been forcibly displaced in the conflict by October and nearly 21.2 million people, 80%
of the population, relied on humanitarian assistance.

In April, UN-sponsored peace negotiations between the parties to the conflict began in Kuwait, accompanied by a brief lull in hostilities. Fighting intensified after the negotiations collapsed on 6 August. On 25 August, US Secretary of State John Kerry announced a “renewed approach to negotiations”; this had produced no clear outcome by the end of the year.

Huthi and allied forces appointed a 10-member Supreme Political Council to rule Yemen, which in turn appointed former Aden Governor Abdulaziz bin Habtoor to lead a government of “national salvation”. In September, President Hadi ordered the Central Bank to move from Sana’a to Aden, deepening the fiscal crisis caused by the depletion of its reserves and the humanitarian crisis by curtailing the ability of the de facto Huthi administration in Sana’a to import essential food, fuel and medical supplies.

ARMED CONFLICT
Violations by armed groups
Huthi and allied forces, including army units loyal to former President Saleh, repeatedly carried out violations of international humanitarian law, including indiscriminate and disproportionate attacks. They endangered civilians in areas they controlled by launching attacks from the vicinity of schools, hospitals and homes, exposing residents to attacks by pro-government forces, including aerial bombing by the Saudi Arabia-led coalition. They also indiscriminately fired explosive munitions that affect a wide area, including mortars and artillery shells, into residential areas controlled or contested by opposing forces, particularly in Ta’iz city, killing and injuring civilians. By November, Huthi and allied forces had reportedly carried out at least 45 unlawful attacks in Ta’iz, killing and injuring scores of civilians. One attack on 4 October killed 10 civilians, including six children, and injured 17 others in a street near the Bir Basha market, the UN reported. The Huthis and their allies also continued to lay internationally banned anti-personnel landmines that caused civilian casualties, and to recruit and deploy child soldiers. In June, the UN Secretary-General reported that the Huthis were responsible for 72% of 762 verified cases of recruitment of child soldiers during the conflict.

In Sana’a and other areas they controlled, the Huthis and their allies arbitrarily arrested and detained critics and opponents as well as journalists, human rights defenders and members of the Baha’i community, subjecting scores to enforced disappearance. Many arrests were carried out by armed men belonging to Ansarullah, the Huthi political wing, at homes, workplaces, checkpoints or public venues such as mosques. Such arrests were carried out without judicial warrant or stated reasons, and without disclosing where those arrested were being taken or would be held.

Many detainees were held in unofficial locations such as private homes without being told the reason for their imprisonment or allowed any means to challenge its legality, including access to lawyers and the courts. Some were subjected to enforced disappearance and held in secret locations; Huthi authorities refused to acknowledge their detention, disclose any information about them or allow them access to legal counsel and their families. Some detainees were subjected to torture or other ill-treatment. In February, one family reported seeing guards beat their relative at the Political Security Office detention facility in Sana’a.

Anti-Huthi forces and their allies led a campaign of harassment and intimidation against hospital staff, and endangered civilians by stationing fighters and military positions near medical facilities, particularly during fighting in the southern city of Ta’iz. At least three hospitals were shut down due to threats against their staff.

The Huthis and their allies also curtailed freedom of association in areas under their de facto administration.
Violations by the Saudi Arabia-led coalition

The international coalition supporting President Hadi’s government continued to commit serious violations of international human rights and humanitarian law with impunity. The coalition’s partial sea and air blockade further curtailed the import of food and other necessities, deepening the humanitarian crisis caused by the conflict, and prevented commercial flights to Sana’a.

Coalition aircraft carried out bomb attacks on areas controlled or contested by Huthi forces and their allies, particularly in the Sana’a, Hajjah, Hodeidah and Sa’da governorates, killing and injuring thousands of civilians. Many coalition attacks were directed at military targets, but others were indiscriminate, disproportionate or directed against civilians and civilian objects, including funeral gatherings, hospitals, schools, markets and factories. Some coalition attacks targeted key infrastructure, including bridges, water facilities and telecommunication towers. One attack in August destroyed the main road bridge between Sana’a and Hodeidah. Some coalition attacks amounted to war crimes.

In August, the humanitarian NGO Médecins Sans Frontières (MSF) said it had lost “confidence in the Coalition’s ability to avoid such fatal attacks”. MSF withdrew its staff from six hospitals in northern Yemen after coalition aircraft bombed an MSF-supported hospital for the fourth time in a year, killing 19 people and injuring 24. In early December, the Joint Incidents Assessment Team (JIAT) created by the Saudi Arabia-led coalition to investigate alleged violations by its forces concluded that the strike was an “unintentional error”. The JIAT public statement contradicted MSF’s own investigations which found that the incident was not the result of an error, but rather of hostilities conducted “with disregard for the protected nature of hospitals and civilian structures”.

On 21 September a coalition air strike on a residential area of Hodeidah city killed 26 civilians, including seven children, and injured 24 others, according to the UN. On 8 October, a coalition air strike killed more than 100 people attending a funeral gathering in Sana’a and injured more than 500 others. The coalition initially denied responsibility for the 8 October attack but admitted liability after it was condemned internationally, and said the attack had been based on “incorrect information” and that those responsible would be disciplined.

Coalition forces also used imprecise munitions in some attacks, including large bombs made in the USA and the UK that have a wide impact radius and cause casualties and destruction beyond their immediate strike location. The coalition forces also continued to use cluster munitions made in the USA and the UK in attacks in Sa’da and Hajjah governorates although such munitions were widely prohibited internationally because of their inherently indiscriminate nature. Cluster munitions scattered explosive bomblets over a wide area and presented a continuing risk because of their frequent failure to detonate on initial impact. In December the coalition admitted that its forces had used UK-manufactured cluster munitions in 2015 and stated that it would not do so in the future.

IMPUNITY

All parties to the armed conflict committed serious violations of international law with impunity. The Huthis and their allies took no steps to investigate serious violations by their forces and hold those responsible to account. The National Commission of Inquiry, established by President Hadi in September 2015, had its mandate extended for another year in August. It conducted some investigations but lacked independence and impartiality; it was unable to access large parts of the country, and focused almost entirely on violations by the Huthis and their allies.

The JIAT created by the Saudi Arabia-led coalition to investigate alleged violations by its forces was also seriously flawed. It did not disclose details of its mandate, methodology or powers, including how it determines which
incidents to investigate, conducts investigations, or verifies information; nor what status its recommendations carry either with coalition commanders or member states.

LACK OF HUMANITARIAN ACCESS

All parties to the conflict exacerbated the suffering of civilians by restricting the provision of humanitarian assistance. Huthi forces and their allies continued to curtail the entry of food and vital medical supplies into Ta’iz, Yemen’s third most populous city, throughout the year, exposing thousands of civilians to further suffering. Elsewhere, humanitarian workers accused Huthi security officials of imposing arbitrary and excessive restrictions on their movement of goods and staff, seeking to compromise the independence of aid operations, and forcibly closing some humanitarian aid programmes.

Humanitarian aid workers accused the Saudi Arabia-led coalition of hampering the delivery of humanitarian assistance by imposing excessively burdensome procedures that required them to inform the coalition of their planned operations in advance, in order to avoid possible attack.

INTERNALLY DISPLACED PEOPLE

The armed conflict caused massive civilian displacement, particularly in the Ta’iz, Hajjah and Sana’a governorates. In October, the UN Office for the Coordination of Humanitarian Affairs reported that some 3.27 million people, half of them children, were internally displaced within Yemen, an increase of more than 650,000 since December 2015.

INTERNATIONAL SCRUTINY

The UN Panel of Experts on Yemen released its final report on 26 January. The Panel concluded that all parties to the conflict had repeatedly attacked civilians and civilian objects, documenting “119 coalition sorties relating to violations of international humanitarian law”, including many that “involved multiple air strikes on multiple civilian objects”. A subsequent report to the UN Security Council by a new Panel of Experts, leaked in August, accused all parties to the conflict of violating international human rights law and international humanitarian law.

In June, the UN Secretary-General removed the Saudi Arabia-led coalition from an annual list of states and armed groups that violate the rights of children in armed conflict after the Saudi Arabian government threatened to cease funding key UN programmes.

In August, the UN High Commissioner for Human Rights called for the establishment of an “international, independent body to carry out comprehensive investigations in Yemen”. However, the UN Human Rights Council resolved in September that the High Commissioner would continue providing technical support to the National Commission established in 2015 and allocate additional international experts to their Yemen office.

WOMEN’S AND GIRLS’ RIGHTS

Women and girls continued to face discrimination in law and in practice and were inadequately protected against sexual and other violence, including female genital mutilation, forced marriage and other abuses.

DEATH PENALTY

The death penalty remained in force for many crimes; no information was publicly available about death sentences or executions.

ZAMBIA

Republic of Zambia
Head of state and government: Edgar Chagwa Lungu

A contested presidential election was marked by increased political violence. The authorities used the Public Order Act to repress the rights to freedom of expression, assembly and association; the police used excessive force to disperse meetings of opposition parties. The authorities cracked down on independent media outlets and harassed journalists. In April, there was a
wave of xenophobic violence against foreign nationals.

BACKGROUND
Edgar Chagwa Lungu was returned as President in an election on 11 August which saw increased tension and violence, primarily between members of the ruling Patriotic Front and the opposition United Party for National Development (UPND). The election was held under a new Constitution promulgated on 5 January following a controversial process.

The UPND questioned the independence of the judiciary after a UPND petition was dismissed without being heard by three Constitutional Court judges who took the decision without involving two other Constitutional Court judges.

A constitutional referendum held on 11 August at the same time as the general election failed to gain the votes required to amend the country's bill of rights.

In April, there was a wave of xenophobic violence against foreign nationals in Zingalume and George Compounds following allegations of ritual killings. Shops belonging to Rwandan and Zimbabwean nationals were looted. Two Zambian nationals were burned to death in the xenophobic attacks. The alleged perpetrators were arrested and convicted of murder.

The Global Hunger Index of 2016 ranked Zambia as the third hungriest country in the world, with nearly half of the population undernourished.

FREEDOM OF ASSEMBLY
The authorities used the Public Order Act, enacted in 1955, selectively; they arbitrarily restricted the right to freedom of assembly for opposition political parties. Police used excessive force to disperse crowds. On 8 July, police used live ammunition to disperse protesters in Chawama Township in the capital Lusaka, killing Mapenzi Chibulo, a young woman UPND supporter.

On 5 October, UPND leaders Hakainde Hichilema and Geoffrey Mwamba were arrested and charged with unlawful assembly and seditious practices following a brief meeting with party supporters at a village in Mpongwe District. They were released on bail pending trial in October.

FREEDOM OF EXPRESSSION
On 21 March, Eric Chanda, leader of the Fourth Revolution political party, was arrested and charged with defaming the President in 2015.

On 20 June, the printing presses of The Post newspaper were seized by the tax authorities and its operations shut down. On 27 June, police beat and arrested editor-in-chief Fred M'membe and his wife Mutinta Mazoka-M'membe, and deputy managing-editor Joseph Mwenda. The charges against them included breaking into The Post building.

On 22 August, the Zambian Independent Broadcasting Authority (IBA) suspended the licences of three independent broadcasters – Muvi TV, Komboni Radio and Radio Itezhi. Four Muvi TV media workers – John Nyendwa, Mubanga Katyeka, Joe Musakanya and William Mwenge – who had reported for work were arrested and charged with criminal trespass. The licences were subsequently reinstated.

Despite the reinstatement of Komboni Radio's licence, on 5 October the station's director, Lesa Kasoma Nyirenda, was beaten by six armed policemen who prevented her from accessing the premises. She was also charged with assaulting a police officer.

CHILDREN'S RIGHTS
In March the UN Committee on the Rights of the Child issued its concluding observations on Zambia. The Committee expressed concern that vulnerable children were being denied equal access to a range of services including health and education. Under-five and infant mortality rates remained high while adolescents lacked access to adequate reproductive health services and information. The Committee also highlighted the imposition of primary school fees and the high dropout rates for girls due to
discriminatory traditional attitudes and the exclusion of pregnant girls.

1. Zambia: Drop sedition charges against opposition leaders (Press release, 19 October)

ZIMBABWE

Republic of Zimbabwe
Head of state and government: Robert Gabriel Mugabe

Activists and human rights defenders mobilized to hold the government to account for increasing corruption, unemployment, poverty and inequality. In the face of increasing activism, the authorities intensified the crackdown on government critics, imposing blanket bans on protest in central Harare, the capital, and detaining journalists and activists, some of whom were tortured.

BACKGROUND
A report by the Zimbabwe Vulnerability Assessment Committee released in July stated that approximately 4.1 million people would experience food insecurity between January and March 2017 following a drought caused by El Niño.

Cash shortages left the government struggling to pay civil servants their monthly salaries, leading to government proposals to introduce bond notes. The fear of bond notes becoming a worthless currency and returning the country to the unpopular period of hyperinflation similar to 2008 sparked continuous protest up to December.

In June, the government introduced Statutory Instrument SI64 in a desperate bid to curb cheap imports and promote domestic manufacturing, sparking protests by those opposed to the measure.

Tensions in the ruling Zimbabwe African National Union – Patriotic Front (ZANU-PF) party continued to affect the functioning of government.

FREEDOM OF EXPRESSION
The government sought to stifle critical reporting in the privately owned media. In January, the Permanent Secretary of the Ministry of Media, Information and Broadcasting Services (MIMBS), George Charamba, threatened the privately owned media with arrests if they reported on factional strife within ZANU-PF. His comments followed the arrest in January of three members of staff of Newsday: Nqaba Matshazi, deputy editor; Xolisani Ncube, a reporter; and Sifikile Thabete, the legal assistant. The two journalists were charged with publishing falsehoods. At the end of the year, their trial was pending a decision by the Constitutional Court on the validity of the law used to arrest them.

In February, while attending World Radio Day commemorations, Anywhere Mutambudzi, Director of Urban Communications within the MIMBS, threatened to clamp down on community radio initiatives, accusing them of operating illegally. The government has failed to license a single community radio station since the enactment of the Broadcasting Services Act (2001).

Journalists
Journalists faced harassment, arrest and assault while covering protests. The Media Institute of Southern Africa (MISA) recorded assaults on 32 journalists between January and September.

Paidamoyo Muzulu, a Newsday journalist, was arrested and detained in June together with 15 other activists who were holding a protest vigil in Africa Unity Square in Harare. He was charged with robbery and obstructing or defeating the course of justice. The activists were charged with robbery and resisting arrest. All were released on bail pending trial at the end of the year.

Five journalists were arrested while covering demonstrations against the Vice-President’s lengthy stay in the five star Rainbow Towers Hotel. They were detained
for six hours before being released without charge.

Freelancer Godwin Mangudya and three Alpha Media Holding (AMH) journalists – Elias Mambo, Tafadzwa Ufumeli and Richard Chidza – were briefly detained at the Marimba police station for covering protests in the suburb of Mufakose on 6 July. Police officers released them after ordering them to delete images of the protests.

Mugove Tafirenyika, a journalist with the Daily News, was assaulted at the ZANU-PF headquarters by party supporters on 27 July while covering a war veterans’ meeting.

On 3 August, seven journalists – Lawrence Chimunhu and Haru Mutasa of Al Jazeera, and Tsvangiraiy Mukwazhi, Christopher Mahove, Tendayi Musiya, Bridget Mananavire and Imelda Mhetu – were assaulted by police while covering demonstrations against government plans to introduce bond notes. All seven were released without charge.

On 24 August, freelance journalist Lucy Yasin was assaulted by riot police while covering a march by the opposition Movement for Democratic Change (MDC-T) and Tendai Mandimika, a freelance journalist, was arrested and charged with public violence.

On 31 August, Crispen Ndlovu, a Bulawayo-based freelance photojournalist, was arrested and assaulted by riot police for taking pictures of police as they assaulted Alfred Dzirutwe in Bulawayo. He was charged with criminal nuisance and beaten up in a truck and later admitted to a private hospital for treatment of the injuries sustained.

In August, security and intelligence officers dressed in military attire made several visits to Trevor Ncube, the publisher of Alpha Media Holdings (AMH), in a clear attempt to intimidate him.

**Social media**
The authorities attempted to stifle social media.

In April, President Mugabe threatened to introduce laws to restrict access to the internet.

In August, in response to the rising discontent expressed on social media, the authorities introduced a draft bill on Computer and Cyber Crimes to curb anti-government criticism. The bill had not become law by the end of the year.

During a national stay-away on 6 July in protest against corruption, fronted by the social media movement #ThisFlag, social media apps such as WhatsApp were shut down by the government.

**REPRESSION OF DISSENT**
Activists and human rights defenders were subjected to intimidation, harassment and arrests by the authorities and the youth wing of the ruling ZANU-PF party with impunity.

In July alone, 332 people were arrested in connection with anti-government protests. Hundreds were arrested across the country for participating in demonstrations organized by the National Electoral Reform Agenda (NERA), a coalition of 18 political parties campaigning for electoral reform. Organizers of the protests were assaulted the night before the demonstrations.

During celebrations of Independence Day in April, state security agents brutally assaulted and arrested Patson Dzamara for staging a one-man demonstration by raising a placard in front of President Mugabe. He was protesting the abduction and disappearance of his brother, Itai Dzamara, in March 2015. Patson Dzamara was later released without charge. However, in November, he was abducted by armed men shortly before an anti-government protest and severely beaten.

About 105 people were arrested and charged with public violence when workers on commuter omnibuses went on strike on 4 July in Bulawayo and Harare and barricaded roads with stones and burning tyres. They were later released on bail.

Evan Mawarire, leader of the #ThisFlag movement, was arrested by police on 12 July and charged with inciting public violence. While in court, the state changed the charges to "subverting a constitutionally elected government". He was released after the magistrate ruled the change of charges illegal.
and unconstitutional. However, Evan Mawarire left the country in July following continued state persecution.

In August, pictures emerged of a 62-year-old woman, Lillian Chinyerere Shumba, being brutally beaten by riot police outside the Harare Magistrates’ Court. The authorities also arrested Sten Zvorwadza, Chairperson of the National Vendors Union of Zimbabwe (NAVUZ), and Promise Mkwananzi, spokesperson for the Tajamuka/Sesjikile (“We’ve had enough”), campaign, and charged them with inciting public violence.

The unprecedented clampdown on former allies of ZANU-PF intensified following the publication of a communiqué by the Zimbabwe National Liberation War Veterans Association renouncing President Mugabe’s leadership and blaming him for the deteriorating economic situation. Police arrested five war veterans and charged them with undermining the authority of or insulting the President in contravention of section 33(2) of the Criminal Law Act. All five were released on bail and their trials were indefinitely postponed at the end of the year.

**FREEDOM OF ASSOCIATION**

President Mugabe launched an attack on the judiciary following significant judgments that upheld the right to protest. He criticized the country’s judges, labelling them “reckless” and warning them not to be negligent.

In September, in response to an increasing number of demonstrations, police imposed a two-week ban on protests in Harare Central District under Statutory Instrument 101 A. However, a High Court judge lifted the ban, declaring it to be unconstitutional.¹

On 16 September, police imposed a one-month ban on protests in central Harare under Government Notice No.239 A of 2016. An appeal to set aside this ban was dismissed by the courts.²

On 29 September, three students at the University of Zimbabwe – Tonderai Dombo, Andile Mqenqele and Zibusiso Tshuma – were arrested for raising placards in front of President Mugabe demanding jobs during the university’s annual graduation ceremony. They were charged with criminal nuisance and fined US$10.

**TORTURE AND OTHER ILL-TREATMENT**

Activists reported cases of attempted abductions by unidentified armed groups often linked to state security forces. These took place either during the night or just before a planned demonstration. Some of those abducted and taken to ZANU-PF headquarters were subjected to torture including sexual violence.

On 13 September, Silvanos Mudzvova, a well-known actor, director and activist and member of Tajamuka/Sesjikile, was abducted from his home at night by six armed men alleged to be state security agents. He was blindfolded and taken to an area near Lake Chivero where he was tortured. He was injected with an unknown substance and left for dead. He required hospital treatment for the serious injuries sustained, which included abdominal trauma, and was still recovering at the end of the year.

Unidentified men travelling in five vehicles abducted Kudakwashe Kambakunje, NAVUZ Chairperson for the Central Business District, on 27 September in Harare. He was later found 22km outside the city, badly wounded. He had been severely beaten and injected with an unknown substance.

In September, pictures emerged of serious lacerations sustained by Esther Mutsiru and Gladys Musingo while in police custody in Harare. The women had been detained and tortured after participating in a NERA demonstration.

Activist and public relations officer for the Rural Teachers’ Union of Zimbabwe Ostallos Siziba was abducted on 26 August in the lead-up to the NERA demonstrations. He was taken to ZANU-PF headquarters where he was severely beaten. He stated that his abductors tried to force him to have sex with an elderly woman, but he refused. He was later handed over to Harare Central Police station, charged with public violence and released on bail.
CONSTITUTIONAL AND LEGAL DEVELOPMENTS
In January the Constitutional Court outlawed child marriage by setting a minimum age for marriage at 18 years.

In February, the Constitutional Court ruled the criminal defamation law to be invalid and unconstitutional.

DEATH PENALTY
In its report to the UN Universal Periodic Review (UPR), the government revealed that 10 death row inmates had been pardoned during the year after they requested clemency.

RIGHT TO HEALTH
In January, following its review of Zimbabwe's second periodic report, the UN Committee on the Rights of the Child noted the negative impact of the severe economic decline on the delivery of services to children. The Committee expressed serious concern about the high rates of maternal, neonatal and child mortality; malnutrition among children under the age of five; and the significant number of deaths of children under five owing to inadequate sanitation and the lack of clean drinking water.

In the context of continuing widespread food insecurity, particularly among poor households in the south of the country, the Zimbabwe Human Rights Commission criticized the government for partisan distribution of food aid and agricultural subsidies in five districts.

CHILDREN’S RIGHTS
The UN Committee on the Rights of the Child expressed extreme concern about the high rate of sexual violence experienced by adolescent girls as well as early pregnancy and child marriage and its correlation with the school dropout rate of adolescent girls.

HOUSING RIGHTS
On 21 January, Harare City Council demolished over 100 houses in Arlington Estate belonging to members of the Nyikavanhu Housing Cooperative without following due process, including consultation and adequate notice. The demolitions took place after President Mugabe ordered the relocation of the settlers.

1. Zimbabwe: Allow public demonstrations as per court ruling (News story, 7 September)
2. Zimbabwe: Court ruling upholding police ban on protests must be rescinded (News story, 5 October)

For millions, 2016 was a year of unrelenting misery and fear, as governments and armed groups abused human rights in a multitude of ways. Large numbers of people continued to flee conflict and repression in many regions of the world. Among other pervasive issues, this report documents continuing torture and other ill-treatment, the failure to uphold sexual and reproductive rights, government surveillance, and a culture of impunity for past crimes.

This report bears witness to the determination of those who stand up to demand respect for human rights across the world and proclaim their solidarity with those whose rights were flouted. The report represents Amnesty International’s concerns and calls for action. It shows how the human rights movement is growing ever stronger and how the hope it inspires in millions remains a powerful force for change. This report is essential reading for policy makers, activists and anyone with an interest in human rights.

amnesty.org
TAB 17
Barriers and facilitators to HIV testing among young men who have sex with men and transgender women in Kingston, Jamaica: a qualitative study

Carmen H. Logie¹,², Ashley Lacombe-Duncan³, Natasha Brien³, Nicolette Jones³, Nakia Lee-Foon³, Kandasi Levermore³, Annecka Marshall⁵, Laura Nyblade⁶ and Peter A. Newman¹

¹Corresponding author: Carmen H. Logie, Faculty of Social Work, University of Toronto, 246 Bloor Street., Toronto, ON, M5S 1V4, Canada. Tel: 1 (416) 978 6314 carmen.logie@utoronto.ca

Abstract

Introduction: Young men who have sex with men (MSM) in Jamaica have the highest HIV prevalence in the Caribbean. There is little information about HIV among transgender women in Jamaica, who are also overrepresented in the Caribbean epidemic. HIV-related stigma is a barrier to HIV testing among Jamaica’s general population, yet little is known of MSM and transgender women’s HIV testing experiences in Jamaica. We explored perceived barriers and facilitators to HIV testing among young MSM and transgender women in Kingston, Jamaica.

Methods: We implemented a community-based research project in collaboration with HIV and lesbian, gay, bisexual and transgender (LGBT) agencies in Kingston. We held two focus groups, one with young (aged 18–30 years) transgender women (n = 8) and one with young MSM (n = 10). We conducted 53 in-depth individual semi-structured interviews focused on HIV testing experiences with young MSM (n = 20), transgender women (n = 20), and community-based key informants (n = 13). We conducted thematic analysis to identify, analyze, and report themes.

Results: Participant narratives revealed social-ecological barriers and facilitators to HIV testing. Barriers included healthcare provider mistreatment, confidentiality breaches, and HIV-related stigma; these spanned interpersonal, community and structural levels. Healthcare provider discrimination and judgment in HIV testing provision presented barriers to accessing HIV services (e.g. treatment), and resulted in participants hiding their sexual orientation and/or gender identity. Confidentiality concerns included: clinic physical arrangements that segregated HIV testing from other health services, fear that healthcare providers would publicly disclose their status, and concerns at LGBT-friendly clinics that peers would discover they were getting tested. HIV-related stigma contributed to fear of testing HIV-positive; this intersected with the stigma of HIV as a “gay” disease. Participants also anticipated healthcare provider mistreatment if they tested HIV positive. Participants identified individual (belief in benefits of knowing one’s HIV status), social (social support) and structural (accessible testing) factors that can increase HIV testing uptake.

Conclusions: Findings suggest the need for policy and practice changes to enhance confidentiality and reduce discrimination in Jamaica. Interventions to challenge HIV-related and LGBT stigma in community and healthcare settings can enhance access to the HIV prevention cascade among MSM and transgender youth in Jamaica.

Keywords: HIV testing; Jamaica; MSM; gay; transgender; youth; stigma; discrimination

Introduction

HIV disproportionately affects transgender women and men who have sex with men (MSM) in the global pandemic [1,2], including in Caribbean and Latin American countries [3–5]. MSM in Jamaica have reported HIV infection rates of 28–30%, among the highest in the Caribbean [5,6]. This figure is significantly higher than an estimated HIV prevalence of 1.7% (95% CI: 1.4–2.0) among Jamaica’s adult general population [7]. Little is known of transgender women’s HIV prevalence in Jamaica. Figueroa’s study [6] with men who have sex with men (MSM) (n = 449) in Jamaica included 17 transgender participants who had an HIV infection rate of 52.9%. A recent study identified HIV prevalence of 25.2% among transgender women (n = 103) in Jamaica [8]. This finding is congruent with Latin American-based studies, some of which include the Caribbean, that report that more than one quarter of transgender women are living with HIV [9].

HIV testing is the first step in the HIV care cascade; the cascade conceptualizes HIV-related healthcare access as a series of steps from HIV diagnosis to viral suppression [10, 12]. HIV testing facilitates earlier diagnosis and timely initiation of antiretroviral therapy [13,14]. If diagnosed early, HIV can be treated to reduce individual morbidities and to
increase longevity [15]. At a community level, early diagnosis prevents further HIV transmission due to knowledge of one’s status and potential use of treatment-as-prevention, whereby adherence to anti-retroviral therapy reduces the risk of HIV transmission to one’s sero-negative partner [15,16]. Despite these significant benefits, across high- and low-to-middle-income countries people continue to test late in the course of HIV infection [17,18] due to HIV testing barriers, many of which are common across contexts and populations. For example, in quantitative studies conducted among general populations [15,16], MSM [19–22], and transgender women [21,22], reported HIV testing barriers include: fear of testing positive [15–17,20], low HIV risk perception [15–17,20,22], lack of social support [15,19], HIV-related stigma [15,21,22], confidentiality concerns [15], unavailability of testing [15], and cost [15,17]. Reporting fewer sexual partners is associated with lower uptake of HIV testing among MSM [20], whereby past experiences of sexual/physical violence are associated with increased uptake of HIV testing among MSM and transgender women [21].

There is limited knowledge about transgender women’s and MSM’s HIV prevention needs in the Caribbean [23], including Jamaica. Quantitative research in Jamaica has examined HIV testing among university-aged youth [24,25] and incarcerated men [26]. In a study of 1252 university students, being young, married, higher HIV knowledge, and knowing someone with HIV were associated with having ever having received an HIV test [25]. Among incarcerated men in Jamaica (n = 298), perceived HIV-related stigma – awareness of judgment and negative attitudes regarding HIV – was associated with decreased likelihood of HIV testing [26]. Qualitative [27] and quantitative [28–30] studies in Jamaica reported stigmatizing attitudes by university students and health/social service providers towards people living with HIV (PLHIV) and sexual and gender minorities, demonstrated by a reluctance or lack of willingness to work with PLWH, particular if the patient was also a sexual minority person [28,29] and less sympathetic attitudes towards MSM living with HIV compared to heterosexual men living with HIV [30].

Homosexuality is criminalized in Jamaica and community-based organizations report ongoing violence towards lesbian, gay, bisexual, and transgender (LGBT) populations from both within their families and in the broader community, police and education systems [31,32]. Sexual stigma within healthcare settings in Jamaica limits opportunities for LGBT people to disclose their sexual orientation and gender identity to healthcare providers [33]. This is concerning as sexual orientation disclosure to healthcare providers has been associated with MSM in the US being twice as likely to ever receive an HIV test [34]. Lack of legal protections for LGBT people limits access to HIV-related care, including testing [35,36]. Moreover, studies suggest widespread economic insecurity among LGBT people in Caribbean countries [37]. In light of extreme economic insecurity, studies report high rates of sex work among transgender populations, particularly in Caribbean and Latin-American countries, with upwards of 60% of transgender women samples [38] and upwards of 35% among MSM in Jamaica [6]. Sex work involvement increases HIV vulnerability among transgender women [39] and MSM [40] in Caribbean countries. A lack of legal protections inhibits equitable access to employment, limiting LGBT people’s opportunities to income, and ultimately shaping their engagement in practices that increase their vulnerability to HIV in addition to violence.

Thus, this study utilized a social-ecological theoretical approach to explore multidimensional factors that shape health [41,42]. This approach situates uptake of HIV testing and care within the context of larger social and structural factors, including intrapersonal (e.g. beliefs), interpersonal (relationships with friends and intimate partners), social (e.g. community norms), and structural (e.g. access to care) factors [43]. The study purpose was to explore perceived barriers and facilitators to HIV testing uptake among young transgender women and MSM in Jamaica.

Methods
Participants and procedures
This qualitative study was designed and conducted in partnership with Jamaica AIDS Support for Life (JASL), a community-based agency focused on HIV prevention and lesbian, gay, bisexual, and transgender (LGBT) health in Kingston, Jamaica. We also collaborated with six other agencies focused on LGBT issues, human rights and health; agencies were involved in participant recruitment and key informant interviews. Research involved 53 semi-structured individual interviews: 20 with young gay, bisexual and other MSM, 20 with young transgender women, and 13 with key informants from LGBT agencies, HIV clinicians and outreach workers in Kingston, Jamaica. We also conducted 2 focus groups, 1 with young MSM and 1 with young transgender women. Data were collected between February and October 2014.

Participant mean ages ranged from 22.25 (SD: 1.77) for MSM interview participants (n = 20) to 23.3 years (SD: 3.79) for transgender women interview participants (n = 20). The total range of ages was 18–30 for all interview or focus group participant groups. The majority of MSM identified as gay (60% of MSM interview participants; 80% of MSM focus group participants), followed by bisexual (30% of MSM interview participants; 0% of MSM focus group participants) or pansexual (10% of MSM interview participants; 20% of MSM focus group participants). Transgender women interview participants identified primarily as gay (65%) or heterosexual (35%) whereas an equal proportion of transgender women focus group participants identified as heterosexual (50%) or gay (50%).

Young persons were chosen as the focal population based on identified needs of JASL. Young people from key populations – including MSM and transgender women – have distinct HIV prevention, testing, care, and support needs, yet there is a dearth of research in this area [44]. Mayer et al. [45] discussed adolescence as a critical time for identity formation. Young people in stigmatizing or discriminatory social and legal environments may lose friends
and family when disclosing sexual orientation and/or gender identity, and have little skills or resources to continue education, acquire housing or employment, increasing likelihood of homelessness, substance use and survival sex work [45] – social drivers of HIV.

Our team hired and trained three peer research assistants (PRAs), aged 18–29, who self-identified as lesbian, gay, bisexual and/or transgender, to conduct outreach and interviews with participants. PRA were identified by JASL due to their perceived leadership in LGBT communities, intimate knowledge and connections to the LGBT community, and training and/or comfort level discussing HIV issues [46,47]. We used purposive, word-of-mouth and venue-based sampling, conducted by PRAs and JASL staff to identify individuals who met the inclusion criteria: 18–30 years of age, self-identified gay, bisexual, or MSM, and/or transgender, residing in Jamaica, and capable of providing informed consent. Participants were recruited at JASL, other LGBT community agencies, LGBT events, and word-of-mouth in the LGBT community. People were invited to participate in one of two 90-minute focus groups – one for MSM and one for transgender women. Following the focus group phase, additional participants were invited to participate in a 60-minute individual interview. All interviews and focus groups were conducted at JASL in Kingston, Jamaica. Participants were provided with $15 USD for their time and to cover the cost of transportation. Focus groups were co-facilitated by a PRA, the research coordinator (NJ), and the principal investigator (CHL), while individual interviews were conducted by trained PRA. All interviews and focus groups were conducted in English. Participants provided written informed consent directly prior to participation in the interview or focus group.

Participants completed a brief socio-demographic questionnaire prior to beginning the interview or focus group. Given the sensitive topic of the study, no identifiable data (e.g. name, address) were recorded. Participants were able to use pseudonyms throughout participation. Focus group and individual interview questions were semi-structured, open-ended, and were developed in collaboration with Jamaican-based community agencies based on identified needs to improve testing services to MSM and transgender youth. Questions were pilot tested among a sub-set of PRAs (n = 3) and refined appropriately. Interview guides (one MSM specific, one transgender specific) included questions that focused broadly on HIV and young MSM/young transgender women in Jamaica. Sub-sections of the interview guide included questions focused on HIV prevention, HIV testing, and HIV treatment, care and support. This specific analysis includes questions related to HIV testing, including: (1) How often do MSM/transgender women typically test for HIV infection?; (2) Where do MSM/transgender women typically go to be tested for HIV infection? Why these places?; (3) What are the facilitators/motivators for HIV testing?; (4) What are the reasons MSM/transgender women would not get tested for HIV?; (5) What are the benefits to getting an HIV test? At the end of the interview or focus group, participants were referred for HIV and STI testing, care, and support at JASL, the partner organization.

Participants were also provided with a resource sheet detailing LGBT-friendly organizations to seek healthcare and social support. Ethics review and approval were obtained from Research Ethics Boards at the University of Toronto, Canada and the University of the West Indies, Mona Campus, Jamaica.

Data analysis
Focus groups and individual interviews were digitally recorded and transcribed verbatim. The transcriptionist provided interpretations of Jamaican patois dialect that was verified by the research coordinator (NJ). Transcripts were redacted to remove personal identifying information and uploaded into NVivo 10 data analysis software. A thematic approach to data analysis that explored inductive and deductive themes was used, while engaging in constant comparison amongst the transcripts [48,49]. Authors (CHL, ALD, NB, NJ) engaged in initial discussions around codes emerging from the data, as well as analytic categories that evolved into the development of tangible themes [50]. To this end, all codes were collapsed into broader, conceptual themes. For example, fear of testing HIV positive was collapsed into the theme HIV-related stigma, where the participants’ fear originated from the perceived HIV-related stigma associated with testing positive. Coding was shared with the community-based agencies, researchers and PRA in Jamaica (KL, AM), who provided feedback about coding that was integrated into further analysis. Having multiple researchers review the transcripts and engage in data analysis enhances the reliability of the findings through investigator triangulation [51,52].

Results
The data are presented according to perceived barriers and facilitators to HIV testing and in order of magnitude of endorsement across all participant groups. Barriers to HIV testing included mistreatment by medical staff, confidentiality concerns, and HIV-related stigma: these spanned interpersonal, community and structural levels. Facilitators for testing included structural (access to HIV testing), social (social support), and individual-level factors (benefits of knowledge).

Barriers to HIV testing
Mistreatment by medical staff
Many participants (n = 24) across all participants groups described experiences of, and fear of, mistreatment by healthcare providers and other medical staff as a barrier to accessing HIV testing, with KI’s discussing mistreatment most often (n = 11). A young transgender woman explained: “Nuff time mi think if di doctor know it’s a bad result, im discriminate me, talk, put up mi name and tell other people” (T005). Another transgender participant explained that healthcare workers said disparaging things to people who were diagnosed with HIV. Due to the intersection of stigmas related to HIV, age, gender identity, and sexuality, this participant described how MSM and transgender women often felt like it was necessary to hide their
sexual orientation and/or gender identity from health care workers:

Sometimes, when you go to the clinic and you find out that you are positive, they will look on you ‘a way’. They may say, ‘He’s so young, how ’m [does he] manage to be HIV?’ Also, if you are gay, you can’t let them know you are gay, if you are a transsexual, you can’t let them know that either. (T008)

Healthcare providers often shamed persons as sexually promiscuous for accessing HIV testing; a participant explained:

Interviewer: What is important to you in seeking an HIV test? Respondent: That I’m not disrespected and that I am treated like everyone else and if I ask a lot of questions persons should be patient with me, I get customer care not like, once I went to a doctor and she made me feel like a whore. Interviewer: Do you want to share that experience? Respondent: Not really cause it’s not based on my sexuality it was like the number of partners I’ve had ... she made it seem like a lot and I didn’t think it was a lot so yeah. You shouldn’t be judged of your personal opinion on the patient and that’s what she was doing. (M005)

Mistreatment by healthcare providers could also lead to avoiding future engagement with HIV services. To illustrate, a key informant told the story of a transgender person who was stigmatized by a nurse for having HIV and an STI:

The nurse who attended to him told him that he had ‘gone bad’ again because he first has HIV and now he has an STI. The nurse also told him that he was not living any life, that he was evil, wicked and was killing off other people. So, he was not going back. (KI 1)

**Confidentiality concerns**

Participants (n = 21) across all groups explained that the physical set-up in some HIV testing clinics compromised confidentiality. Some clinics separated patients coming for an HIV test in an area from persons seeking other health services. For example, a key informant described a client’s experience accessing HIV testing at a public clinic where HIV testing services were segregated in Section 3:

They might go to the Comprehensive Clinic, as many people go there. One MSM said that when he went there, he saw ‘Ms. Jane’ there and now she will know why I am here because I have to go to Section 3. So, most of them are concerned about confidentiality. Apparently friends went to (clinic name) and nowhere else, and by the time they got back into the community, persons knew that they went there for HIV treatment. So, they won’t go there. (KI 2)

An MSM participant discussed concerns that clinic staff might breach confidentiality:

In terms of being fearful, it’s the confidentiality thing. When you go to clinic or other places, sometimes you go to the doctor and then when you come out everybody knows your business. So, that’s a big thing in terms of going to get an HIV test, people are going to be afraid that confidentiality is not upheld. (focus group discussion [FGD] MSM)

Participants also expressed HIV-related stigma contributed to interpersonal barriers, specifically regarding fear of accessing HIV testing where they might see other LGBT community members. A transgender participant (T012) explained: “I seek sexual healthcare from clinics that is not of LGBT groups, a clinic where ‘normal’ people go to.” Another transgender participant described concerns about LGBT persons working at the clinics breaching confidentiality to the LGBT community: “for instance, if you go to a place where gays work, you might worry at times that they’ll bring out your results to people on the street to other friends” (T003).

**HIV-related stigma**

HIV-related stigma contributed to fear of testing and receiving a positive result. This theme was noted among 18 participants, however, overwhelmingly among MSM (n = 11). An MSM participant described the stigma that accompanies an HIV-positive test result: “there is still a stigma attached that if you have it yuh jus a go dead [you will just die]. Just knowing is still difficult” (MSM FGD). Others mentioned the perception that HIV infection was life threatening, and this produced fear of testing. Post-testing services should provide support and provide hope for persons testing HIV positive: “the stigma that’s attached to being positive is that your life will end. So you need something to say to those people other than ‘there are persons you can talk to” (M001).

Some participants described how receiving an HIV-positive test result might impact their interpersonal relationships with both intimate partners and friends:

You and your partner, no matter how you love each other once you go to do a test and it comes back positive the love isn’t there anymore. The love will drop and nobody wants that and there’s the risk that they might tell other persons about you and that’s not nice. (MSM FGD)

The stigma of HIV as a “gay disease” also produced a barrier to HIV testing. An MSM participant (M006)
discussed how this stereotype produced concerns regarding HIV testing:

The gay men, they have a high rate of HIV infections – doesn’t mean that they are the ones spreading it. I think it’s being spread by humans. I think it is something that is spread through unsafe sexual practices. Interviewer 1: How does this affect your willingness to seek sexual health care? Respondent: Alright, it affects my willingness because I, what if it, what if my HIV test turns out to be positive, I would feel like I’m adding into a stereotype.

A key informant (KI 3) explained how the stigma of HIV as a “gay” issue could exacerbate internalized stigma: “If they (LGBT youth) have rejection of self, they often succumb to some sort of fatalism where they think that no matter what they do, they are bound to get HIV.”

Participants believed that tackling HIV-related stigma was central to increasing HIV testing uptake:

What you guys should focus on doing is making testing not so taboo that you would just go and do it. Because it should be something that you do on a regular basis. Try to make it not as scary. It has all sorts of negative connotations and fear attached to it. So you have to limit the fear and eliminate the stigma and get people to want to get tested. (MSM FGD)

Facilitators to HIV testing

Benefits of knowledge

MSM (n = 18) and transgender women (n = 13) overwhelmingly described knowing one’s HIV status provided important information to stay healthy. This theme was also endorsed by some key informants (n = 3). An MSM participant described: “getting tested is good because you will know your status and know yourself. I think it is a very good move. You should get tested.” (M0016). This was also articulated by a transgender woman: “I think everyone should know their status and in order for you to do so, you have to do an HIV test. Regardless of the result, it’s best to know your status, than to not know your status” (T003).

Knowing one’s status was discussed as particularly important when participants perceived they may have been exposed to HIV: “every 3 months I get a test. No matter what, even if you use a condom, the condom can burst and you don’t know your partner’s status. Sometimes you have to go get tested to know your status” (M010). A transgender woman described: “I think that 70% percent of me has safe sex. Within that 30 percent, I can get AIDS and don’t even know it. I will tell you my next HIV result” (T017).

Both MSM and transgender women discussed knowledge as helpful in accessing treatment and care. For example, a transgender participant explained: “it’s very important because the sooner that you know that you are infected with any kind of sexual infection, you can get rid of it or get your meds” (T009). In addition to accessing treatment, participants discussed how this knowledge would help them reduce transmission of HIV: “it’s better to know (HIV status) than to not know and possibly spread it” (M005).

Social support

All participant groups endorsed social support as a facilitator to HIV testing uptake (n = 16). MSM in particular (n = 10) described how going for HIV testing with a sex partner was a motivation for HIV testing. An MSM participant explained that receiving a test with his partner reduced anxiety: “I am going to do it (HIV test) with my partner. We’re going to do it together. I guess that will help to calm my nerves. But I’ve always been anxious to do it!” (M009). A transgender woman discussed going for an HIV test prior to engaging in condomless sex: “I would use a condom, or I would set a date to say we can go to the doctor to see if we are straight [HIV-negative]” (T004). Participants, including transgender women (n = 3) also discussed getting tested with friends. An MSM participant described: “When my friends drag me to things such as focus group discussions, they always do HIV testing there. I decide to do it then” (M016). A transgender woman articulated the importance of peer support from her transgender friends when accessing HIV testing: “They are there for you. They don’t laugh at you. There are there to help you, to get you strong, to build and motivate you” (T019). Participants also discussed the importance of HIV counsellors as a source of social support:

The second time I got tested, I was nervous. I don’t know why I was so nervous, so I waited till the bus locked up and was almost ready to drive away. The lady said: ‘so you’re not getting tested?’ She said: ‘there’s nothing to worry about man.’ She kinda calmed me down, talked to me in a way that was friendly. She made me feel like there was nothing wrong. Her approach made me feel better. (M001)

Enhanced access to HIV testing

Participants (n = 11) described the importance of proximity and no-cost HIV testing to enhancing access. An MSM participant articulated facilitators to testing included: “availability, cause I’m not gonna go 10 miles to get that [HIV test] done. Luckily a lot of places like [organization name] does testing for free and that helps” (M012). Another MSM participant described how his proximity to testing on university campus impacts the frequency of HIV testing: “we have a clinic here on campus, where mainly every two weeks I would text the guys and say ‘guys, let us meet on this day we are going to the clinic to get a checkup’” (M003). Participants explained the JASL health buses that provided safer sex resources (e.g. condoms, lubricant) as well as a mobile HIV testing clinic facilitated HIV testing access at different venues:
Transgender participants involved in street-based sex work also discussed accessing HIV-testing on the health bus: “the bus will come to our spot on the road and take HIV tests and give us condoms and stuff like that” (TG FGD).

Discussion
This study’s exploration of young MSM and transgender women’s HIV testing perceptions and experiences in Jamaica revealed a number of different factors that shape testing uptake. Experiences of perceived and enacted stigma – mistreatment and prejudice – in healthcare settings due to LGBT stigma and HIV-related stigma contributed to anticipated stigma that presented a barrier to HIV testing [53]. Anticipated stigma – expecting future discrimination and mistreatment if one tested HIV positive – converged with confidentiality concerns to produce mistrust and fears of losing relationships with LGBT peers and intimate partners if one tested HIV positive. Participants identified individual (benefits of knowledge), social (social support) and structural (accessible testing services) factors that can increase HIV testing uptake.

Our study corroborates Jamaican research on HIV testing, and expands on this body of knowledge, to increase understanding of factors associated with HIV testing uptake among MSM and transgender women. Our finding that HIV-related stigma, in particular fear of mistreatment if one tested HIV positive, presented a barrier to HIV testing confirms other research conducted among general populations in Jamaica [27] and other contexts including North America, Asia, and Africa [54–56]. The belief that an HIV-positive diagnosis could equal death emerged as a belief driving fear of HIV testing, and HIV-related stigma, among participants. This points to the need for strategies tailored for MSM and transgender women to promote treatment literacy and knowledge of being able to lead a healthy life with HIV.

Prior research in Jamaica has highlighted healthcare worker resistance to working with LGBT people and PLHIV [28,29,57]. Our findings suggest these stigmatizing attitudes may contribute to discriminatory practices in HIV testing services. Of considerable importance is the finding that mistreatment by medical staff was highly endorsed by all participant groups – most often by key informants. These findings suggest that not only do participants experience mistreatment first hand, but that key informants may be witnesses to mistreatment in their respective settings. Future studies may seek to understand barriers and facilitators to challenging mistreatment in social service and healthcare settings. Moreover, a recent study [57] identified that the highest levels of stigma are directed towards MSM with HIV. Thus, our finding that MSM more often endorsed HIV-related stigma as a barrier to HIV testing, relative to transgender women or key informants, while concerning, is not surprising.

While confidentiality concerns regarding HIV testing were raised in a study with Jamaican university students, the study did not expand upon the context of these concerns [25]; our findings highlight structural issues regarding confidentiality, such as physical organization of HIV testing clinics, and mistrust that healthcare providers will maintain confidentiality. Last, our finding that social support is a motivation for HIV testing is consistent with global studies of HIV testing uptake among MSM [19]. We build on these findings by describing the importance of different types of social support (friend, intimate partner, HIV counsellor) that appeared to vary between MSM and transgender women. Future HIV testing interventions could tailor messages to encourage specific social support roles in HIV testing uptake (e.g. bring a partner for MSM; bring a friend for transgender women).

Study limitations and strengths
There are a few study limitations to note. Given that many participants were recruited from the community partner JASL, an AIDS service organization, or through a mobile health clinic, it is likely that these participants face less barriers to accessing HIV prevention and sexual health services compared to those with no access. While these participants may hold more positive beliefs and attitudes towards testing than those who do not access care, their experience within care settings allowed for the elucidation of several themes (e.g. mistreatment by health care providers; confidentiality concerns) that could present barriers to future testing among similar populations. Through street and peer outreach we also recruited participants who experience substantial marginalization and do not access care. Kingston is a large urban centre, thus MSM and transgender women in Kingston may have different experiences compared to those living in smaller or more rural areas of Jamaica. Further studies are warranted to understand the experiences of transgender women and MSM living in other regions of Jamaica. However, our study is the first qualitative study to focus on engagement in the HIV care cascade among transgender women in Jamaica, and among a few studies with young MSM in Jamaica. These findings can inform interventions to address uptake of HIV testing among young MSM and transgender women in Jamaica.

Conclusions
Transgender women and MSM are disproportionately affected by HIV [5,6], yet few studies have documented their engagement in HIV testing in Jamaica. Interventions are required to enhance uptake of HIV testing among MSM and transgender women in Jamaica. To address confidentiality concerns, HIV testing clinics could reorganize physical spaces to have centralized waiting areas for
healthcare services rather than specific sections for HIV testing. This could minimize lateral stigma from other patients in the waiting areas who could transfer information back to geographical and/or LGBT communities. Healthcare providers could benefit from interventions to reduce HIV and LGBT-related stigma, as well as to protect confidentiality. Nyblade et al.’s [58] review on reducing stigma in healthcare settings identified actionable areas to reduce HIV-related stigma include providing information to healthcare workers of stigma and its harmful effects, providing correct knowledge regarding HIV transmission, and challenging the association between HIV and immorality. National legal frameworks that do not protect LGBT rights limit the acceptability and implementation of stigma reduction interventions, particularly in publicly funded health clinics. Challenging statesponsored LGBT stigma and discrimination is a lengthy process and long-term target. Successful interventions have been conducted to reduce discrimination of other socially stigmatized and criminalized identities (e.g. sex work) by state actors (e.g. police) in effort to reduce HIV incidence and increase access to HIV care in Jamaica [59]. Future research could build on successful elements of these local structural interventions to develop and pilot test healthcare interventions in Jamaica. Interventions targeting young MSM and transgender women could build on the strengths identified in this study, in particular, the value of knowing one’s status and of social support. The needs, dignity and rights of young MSM and transgender women need to be addressed to enhance their access to the HIV care cascade of care in Jamaica.

**Authors’ affiliations**

1Factor-Inwentash Faculty of Social Work, University of Toronto, Toronto, Canada; 2Women’s College Research Institute, Women’s College Hospital, University of Toronto, Toronto, Canada; 3Jamaica AIDS Support for Life, Kingston, Jamaica; 4Dalva Lana School of Public Health, University of Toronto, Toronto, Canada; 5Institute for Gender and Development Studies, University of the West Indies, Mona Campus, Kingston, Jamaica; 6International Development Group and Health Policy Project, RTI, Washington, D.C., USA

**Competing interests**
The authors have no competing interests to declare.

**Authors’ contribution**

CHL was the nominated principal investigator, conceptualized the study and led data analysis and manuscript writing. KL, AM, and PAN were study investigators and contributed to study design. KL and NI led data collection. ALD, NB, NJ, NLF contributed to data analysis. ALD and NB contributed to manuscript writing. AM, NJ, PAN and UN provided edits and feedback. All authors have read and approved the final manuscript.

**Acknowledgements**

We would like to thank all of the participants, peer research assistants and collaborators: Jamaica AIDS Support for Life, JFLAG: Jamaica Forum for Lesbians, All-Sexuals and Gays, Caribbean Vulnerable Communities (CVC), Aphrodite’s Pride.

**Funding**

We would like to thank the Canadian Institutes of Health Research for funding (grant id: 0000303157; fund: 495419; competition: 201209).

**References**


TAB 18
AMNESTY INTERNATIONAL

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

Amnesty International’s mission is to conduct research and take action to prevent and end grave abuses of all human rights – civil, political, social, cultural and economic. From freedom of expression and association to physical and mental integrity, from protection from discrimination to the right to housing – these rights are indivisible.

Amnesty International is funded mainly by its membership and public donations. No funds are sought or accepted from governments for investigating and campaigning against human rights abuses. Amnesty International is independent of any government, political ideology, economic interest or religion. Amnesty International is a democratic movement whose major policy decisions are taken by representatives from all national sections at International Council Meetings held every two years. Check online for current details.
## CONTENTS

### ANNUAL REPORT 2015/16

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABBREVIATIONS</td>
<td>ix</td>
</tr>
<tr>
<td>PREFACE</td>
<td>xi</td>
</tr>
<tr>
<td>FOREWORD</td>
<td>14</td>
</tr>
<tr>
<td>AFRICA REGIONAL OVERVIEW</td>
<td>18</td>
</tr>
<tr>
<td>AMERICAS REGIONAL OVERVIEW</td>
<td>26</td>
</tr>
<tr>
<td>ASIA-PACIFIC REGIONAL OVERVIEW</td>
<td>34</td>
</tr>
<tr>
<td>EUROPE AND CENTRAL ASIA REGIONAL OVERVIEW</td>
<td>41</td>
</tr>
<tr>
<td>MIDDLE EAST AND NORTH AFRICA REGIONAL OVERVIEW</td>
<td>49</td>
</tr>
<tr>
<td>AFGHANISTAN</td>
<td>60</td>
</tr>
<tr>
<td>ALBANIA</td>
<td>63</td>
</tr>
<tr>
<td>ALGERIA</td>
<td>65</td>
</tr>
<tr>
<td>ANGOLA</td>
<td>67</td>
</tr>
<tr>
<td>ARGENTINA</td>
<td>70</td>
</tr>
<tr>
<td>ARMENIA</td>
<td>71</td>
</tr>
<tr>
<td>AUSTRALIA</td>
<td>73</td>
</tr>
<tr>
<td>AUSTRIA</td>
<td>74</td>
</tr>
<tr>
<td>AZERBAIJAN</td>
<td>76</td>
</tr>
<tr>
<td>BAHAMAS</td>
<td>78</td>
</tr>
<tr>
<td>BAHRAIN</td>
<td>79</td>
</tr>
<tr>
<td>BANGLADESH</td>
<td>82</td>
</tr>
<tr>
<td>BELARUS</td>
<td>84</td>
</tr>
<tr>
<td>BELGIUM</td>
<td>86</td>
</tr>
<tr>
<td>BENIN</td>
<td>87</td>
</tr>
<tr>
<td>BOLIVIA</td>
<td>88</td>
</tr>
<tr>
<td>BOSNIA AND HERZEGOVINA</td>
<td>90</td>
</tr>
<tr>
<td>BRAZIL</td>
<td>91</td>
</tr>
<tr>
<td>BULGARIA</td>
<td>95</td>
</tr>
<tr>
<td>BURKINA FASO</td>
<td>97</td>
</tr>
<tr>
<td>BURUNDI</td>
<td>99</td>
</tr>
<tr>
<td>CAMBODIA</td>
<td>103</td>
</tr>
<tr>
<td>CAMEROON</td>
<td>106</td>
</tr>
<tr>
<td>CANADA</td>
<td>108</td>
</tr>
<tr>
<td>CENTRAL AFRICAN REPUBLIC</td>
<td>110</td>
</tr>
<tr>
<td>CHAD</td>
<td>113</td>
</tr>
<tr>
<td>CHILE</td>
<td>115</td>
</tr>
<tr>
<td>CHINA</td>
<td>117</td>
</tr>
<tr>
<td>COLOMBIA</td>
<td>122</td>
</tr>
<tr>
<td>CONGO (REPUBLIC OF)</td>
<td>127</td>
</tr>
<tr>
<td>CÔTE D’IVOIRE</td>
<td>129</td>
</tr>
<tr>
<td>CROATIA</td>
<td>131</td>
</tr>
</tbody>
</table>
CUBA .......................................................................................................................... 132
CYPRUS ......................................................................................................................... 133
CZECH REPUBLIC ........................................................................................................ 134
DEMOCRATIC REPUBLIC OF THE CONGO .............................................................. 136
DENMARK ..................................................................................................................... 140
DOMINICAN REPUBLIC ............................................................................................... 141
ECUADOR ....................................................................................................................... 143
EGYPT ........................................................................................................................... 145
EL SALVADOR ................................................................................................................ 149
EQUATORIAL GUINEA .................................................................................................... 151
ERITREA ........................................................................................................................ 152
ESTONIA ........................................................................................................................ 154
ETHIOPIA ....................................................................................................................... 155
FIJI .................................................................................................................................. 156
FINLAND ......................................................................................................................... 157
FRANCE .......................................................................................................................... 158
GAMBIA .......................................................................................................................... 161
GEORGIA ........................................................................................................................ 163
GERMANY ....................................................................................................................... 165
GHANA ............................................................................................................................ 166
GREECE ........................................................................................................................... 168
GUATEMALA ................................................................................................................... 170
GUINEA ............................................................................................................................ 172
GUINEA-BISSAU ........................................................................................................... 174
GUYANA .......................................................................................................................... 175
HAITI ................................................................................................................................ 176
HONDURAS ..................................................................................................................... 178
HUNGARY ......................................................................................................................... 179
INDIA ............................................................................................................................... 181
INDONESIA ..................................................................................................................... 186
IRAN ................................................................................................................................. 190
IRAQ ................................................................................................................................. 194
IRELAND .......................................................................................................................... 198
ISRAEL AND THE OCCUPIED PALESTINIAN TERRITORIES ..................................... 200
ITALY ................................................................................................................................ 204
JAMAICA .......................................................................................................................... 207
JAPAN ................................................................................................................................ 208
JORDAN ............................................................................................................................ 210
KAZAKHSTAN ............................................................................................................... 212
KENYA ............................................................................................................................. 214
KOREA (DEMOCRATIC PEOPLE’S REPUBLIC OF) .................................................... 217
KOREA (REPUBLIC OF) ................................................................................................. 220
KUWAIT ............................................................................................................................ 222
KYRGYZSTAN .................................................................................................................. 224
<table>
<thead>
<tr>
<th>Country</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>LAOS</td>
<td>226</td>
</tr>
<tr>
<td>LATVIA</td>
<td>227</td>
</tr>
<tr>
<td>LEBANON</td>
<td>228</td>
</tr>
<tr>
<td>LESOTHO</td>
<td>229</td>
</tr>
<tr>
<td>LIBYA</td>
<td>231</td>
</tr>
<tr>
<td>LITHUANIA</td>
<td>236</td>
</tr>
<tr>
<td>MACEDONIA</td>
<td>236</td>
</tr>
<tr>
<td>MADAGASCAR</td>
<td>238</td>
</tr>
<tr>
<td>MALAWI</td>
<td>239</td>
</tr>
<tr>
<td>MALAYSIA</td>
<td>240</td>
</tr>
<tr>
<td>MALDIVES</td>
<td>242</td>
</tr>
<tr>
<td>MALI</td>
<td>243</td>
</tr>
<tr>
<td>MALTA</td>
<td>245</td>
</tr>
<tr>
<td>MAURITANIA</td>
<td>247</td>
</tr>
<tr>
<td>MEXICO</td>
<td>249</td>
</tr>
<tr>
<td>MOLDOVA</td>
<td>253</td>
</tr>
<tr>
<td>MONGOLIA</td>
<td>254</td>
</tr>
<tr>
<td>MONTENEGRO</td>
<td>255</td>
</tr>
<tr>
<td>MOROCCO / WESTERN SAHARA</td>
<td>256</td>
</tr>
<tr>
<td>MOZAMBIQUE</td>
<td>260</td>
</tr>
<tr>
<td>MYANMAR</td>
<td>261</td>
</tr>
<tr>
<td>NAMIBIA</td>
<td>265</td>
</tr>
<tr>
<td>NAURU</td>
<td>266</td>
</tr>
<tr>
<td>NEPAL</td>
<td>267</td>
</tr>
<tr>
<td>NETHERLANDS</td>
<td>269</td>
</tr>
<tr>
<td>NEW ZEALAND</td>
<td>270</td>
</tr>
<tr>
<td>NICARAGUA</td>
<td>271</td>
</tr>
<tr>
<td>NIGER</td>
<td>272</td>
</tr>
<tr>
<td>NIGERIA</td>
<td>274</td>
</tr>
<tr>
<td>NORWAY</td>
<td>278</td>
</tr>
<tr>
<td>OMAN</td>
<td>279</td>
</tr>
<tr>
<td>PAKISTAN</td>
<td>280</td>
</tr>
<tr>
<td>PALESTINE (STATE OF)</td>
<td>284</td>
</tr>
<tr>
<td>PANAMA</td>
<td>286</td>
</tr>
<tr>
<td>PAPUA NEW GUINEA</td>
<td>288</td>
</tr>
<tr>
<td>PARAGUAY</td>
<td>289</td>
</tr>
<tr>
<td>PERU</td>
<td>291</td>
</tr>
<tr>
<td>PHILIPPINES</td>
<td>293</td>
</tr>
<tr>
<td>POLAND</td>
<td>295</td>
</tr>
<tr>
<td>PORTUGAL</td>
<td>297</td>
</tr>
<tr>
<td>PUERTO RICO</td>
<td>298</td>
</tr>
<tr>
<td>QATAR</td>
<td>299</td>
</tr>
<tr>
<td>ROMANIA</td>
<td>300</td>
</tr>
<tr>
<td>RUSSIAN FEDERATION</td>
<td>302</td>
</tr>
<tr>
<td>Country</td>
<td>Page</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>------</td>
</tr>
<tr>
<td>RWANDA</td>
<td>307</td>
</tr>
<tr>
<td>SAUDI ARABIA</td>
<td>309</td>
</tr>
<tr>
<td>SENEGAL</td>
<td>313</td>
</tr>
<tr>
<td>SERBIA</td>
<td>315</td>
</tr>
<tr>
<td>SIERRA LEONE</td>
<td>318</td>
</tr>
<tr>
<td>SINGAPORE</td>
<td>320</td>
</tr>
<tr>
<td>SLOVAKIA</td>
<td>321</td>
</tr>
<tr>
<td>SLOVENIA</td>
<td>323</td>
</tr>
<tr>
<td>SOMALIA</td>
<td>324</td>
</tr>
<tr>
<td>SOUTH AFRICA</td>
<td>328</td>
</tr>
<tr>
<td>SOUTH SUDAN</td>
<td>332</td>
</tr>
<tr>
<td>SPAIN</td>
<td>336</td>
</tr>
<tr>
<td>SRI LANKA</td>
<td>339</td>
</tr>
<tr>
<td>SUDAN</td>
<td>342</td>
</tr>
<tr>
<td>SWAZILAND</td>
<td>345</td>
</tr>
<tr>
<td>SWEDEN</td>
<td>348</td>
</tr>
<tr>
<td>SWITZERLAND</td>
<td>348</td>
</tr>
<tr>
<td>SYRIA</td>
<td>350</td>
</tr>
<tr>
<td>TAIWAN</td>
<td>354</td>
</tr>
<tr>
<td>TAJIKISTAN</td>
<td>355</td>
</tr>
<tr>
<td>TANZANIA</td>
<td>358</td>
</tr>
<tr>
<td>THAILAND</td>
<td>359</td>
</tr>
<tr>
<td>TIMOR-LESTE</td>
<td>362</td>
</tr>
<tr>
<td>TOGO</td>
<td>363</td>
</tr>
<tr>
<td>TRINIDAD AND TOBAGO</td>
<td>364</td>
</tr>
<tr>
<td>TUNISIA</td>
<td>365</td>
</tr>
<tr>
<td>TURKEY</td>
<td>369</td>
</tr>
<tr>
<td>TURKMENISTAN</td>
<td>373</td>
</tr>
<tr>
<td>UGANDA</td>
<td>375</td>
</tr>
<tr>
<td>UKRAINE</td>
<td>378</td>
</tr>
<tr>
<td>UNITED ARAB EMIRATES</td>
<td>382</td>
</tr>
<tr>
<td>UNITED KINGDOM</td>
<td>384</td>
</tr>
<tr>
<td>UNITED STATES OF AMERICA</td>
<td>387</td>
</tr>
<tr>
<td>URUGUAY</td>
<td>391</td>
</tr>
<tr>
<td>UZBEKISTAN</td>
<td>392</td>
</tr>
<tr>
<td>VENEZUELA</td>
<td>395</td>
</tr>
<tr>
<td>VIET NAM</td>
<td>398</td>
</tr>
<tr>
<td>YEMEN</td>
<td>400</td>
</tr>
<tr>
<td>ZAMBIA</td>
<td>404</td>
</tr>
<tr>
<td>ZIMBABWE</td>
<td>405</td>
</tr>
</tbody>
</table>
treatment in Milan, his subsequent illegal rendition to Egypt, and his torture and other ill-treatment in secret detention in Cairo. The case remained pending at the European Court of Human Rights. In December, President Mattarella granted a pardon to a CIA agent and a partial pardon to another one; both agents had previously been convicted in their absence by Italian courts for their role in the kidnapping and rendition.

In February, new counter-terrorism laws were adopted that increased prison sentences for “persons who are recruited by others to commit acts of terrorism”, and provided penalties for persons who organize, finance, or promote travel “for the purpose of performing acts of terrorism”. The laws also made it a crime for a person to participate in a conflict on a foreign territory “in support of a terrorist organization”, and granted the government the authority to keep a list of websites used for recruitment and to instruct Internet service providers to block such sites.

**LEGAL, CONSTITUTIONAL OR INSTITUTIONAL DEVELOPMENTS**

Despite the government’s promises, Italy again failed to establish a national human rights institution in accordance with the Principles relating to the Status of National Institutions (Paris Principles).

**JAMAICA**

**Jamaica**  
Head of state: Queen Elizabeth II, represented by Patrick Linton Allen  
Head of government: Portia Simpson Miller

Excessive use of force by the police and extrajudicial executions continued. A Commission of Enquiry into alleged human rights violations during the 2010 state of emergency was under way. Violence and discrimination against lesbian, gay, bisexual, transgender and intersex (LGBTI) people continued. In August Jamaica held its first gay pride march.

**BACKGROUND**

Jamaica continued to have one of the highest homicide rates per capita in the world. Violent crime remained a key concern for the public. Between January and June, police recorded 1,486 reports of serious and violent crimes, classified as murders, shootings, rapes and aggravated assaults. According to media reports, there were more than 1,100 murders during the year, an increase of approximately 20% compared with 2014.

The Dangerous Drugs (Amendment) Act 2015 came into force in April, removing powers of arrest and detention for possession or use of small quantities of cannabis and allowing members of the Rastafarian faith to use the drug for religious purposes.

In May, Jamaica was examined under the UPR. Jamaica accepted 23 of the 177 recommendations made.

The government took steps to establish a National Human Rights Institution.

**POLICE AND SECURITY FORCES**

Human rights organizations continued to highlight concerns around arbitrary arrests and ill-treatment in police custody.

After years of rising numbers of police killings (over 200 per year from 2011 to 2013), the numbers began to decline in 2014 and 2015. The Independent Commission of Investigation (INDECOM), an independent police oversight agency, reported 50 killings involving the police in the first half of 2015, fewer than for the same period of 2014.

A long-overdue Commission of Enquiry into human rights violations committed during the 2010 state of emergency began in December 2014 and was scheduled to be completed in early 2016. During the state of emergency, 76 civilians were killed by security forces, including 44 who were alleged to have been extrajudicially executed.

**JUSTICE SYSTEM**

Major backlogs in the judiciary led to continued delays and hampered access to justice. In particular, investigations into police killings remained slow. With a high number of
new cases and few resources, the capacity of the Coroner’s Court to help resolve the backlog also remained limited.

CHILDREN’S RIGHTS
According to the Jamaica Constabulary Force, 29 children were murdered between January and June, suggesting a failure by the state to protect children from extreme violence and abuse. Conditions of detention and treatment of juvenile offenders were poor. The NGO Jamaicans for Justice (JFJ) documented high levels of attempted suicide among children and young people in juvenile prisons, raising serious concerns about the psychosocial health and well-being of juveniles in state institutions. JFJ also reported that juvenile offenders were not presented promptly before a judge, exceeding the constitutional period to assess the legality of detention and contravening the UN Convention on the Rights of the Child.

VIOLENCE AGAINST WOMEN AND GIRLS
High levels of gender-based violence and domestic violence continued with high numbers of women killed by their spouse or partner. Lesbian, bisexual and transgender women were at risk of sexual violence due to their real or perceived sexual orientation and gender expression.

The government was finalizing a National Strategic Plan of Action to Eliminate Gender-based Violence in Jamaica. A Joint Select Committee of Parliament was under way to review the Sexual Offences Act 2009. Civil society organizations made recommendations during the review, which included widening the definition of rape, decriminalizing sex work, and using gender-neutral language throughout the Act.

RIGHTS OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE
There remained no legal protection against discrimination based on real or perceived sexual orientation or gender identity. Consensual sex between men remained criminalized. Between January and July, the Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG) received 47 reports of human rights violations against LGBTI people. Homelessness and displacement of LGBTI youths remained a concern. Young people pushed out of their homes because of their sexual orientation or gender identity continued to live in storm drains and abandoned buildings. Local NGOs supported homeless LGBTI youths, while the state did little to help. By mid-year, J-FLAG had provided social and crisis services to 329 LGBTI people and continued to receive requests for advice from LGBTI Jamaicans planning to seek asylum in other countries.

In August, a gay pride celebration was held in Jamaica for the first time. The Minister of Justice called for tolerance during the celebration and expressed his support for the rights of LGBTI people to express themselves peacefully.

JAPAN

Japan
Head of government: Shinzo Abe

Despite the post-World War II Constitution that renounced the “use of force as means of settling international disputes”, in July Prime Minister Shinzo Abe pushed through the House of Representatives new legislation that would allow Japan’s self-defence forces to join collective military actions overseas. Negative public reaction opposing the legislation included one of the largest demonstrations in decades. The Japanese and South Korean governments reached a settlement on the military sexual slavery system before and during World War II; the outcome was severely criticized by survivors. Executions of people on death row continued.

DISCRIMINATION – ETHNIC MINORITIES
Despite a 2014 recommendation by the CERD Committee, the ruling coalition opposed legislation prohibiting racial
TAB 19
JAMAICA

CIVIL SOCIETY REPORT ON THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

(Replies to the List of Issues CCPR/C/JAM/Q/4)

Submitted for the Review of the Fourth Periodic Report of Jamaica (CCPR/C/JAM/4) at the 118th session of the Human Rights Committee (Geneva – October/November 2016)

By: Jamaicans for Justice (JFJ), the Caribbean Vulnerable Communities Coalition (CVC), the Jamaica Youth Advocacy Network (JYAN), J-FLAG, Stand Up for Jamaica

October, 2016

With the support of:
## Contents

I. **INTRODUCTION** ........................................................................................................................... 2  
   A. **JOINING ORGANISATIONS** .................................................................................................... 2  
   B. **CONTACT DETAILS** ............................................................................................................ 2  

II. **REPLIES OF CIVIL SOCIETY TO THE ISSUES IDENTIFIED IN THE LOI** .......................... 3  
   A. **Constitutional and legal framework within which the Covenant is implemented (art. 2)** ........ 3  
      National Human Rights Institution ......................................................................................... 3  
      Institutionalization of Engagement with Human Rights Mechanisms ................................... 5  
      Optional Protocol to the Covenant ....................................................................................... 6  
   B. **NON-DISCRIMINATION AND EQUALITY BETWEEN MEN AND WOMEN (ARTS. 2, 3 AND 26)** ......................................................................................................................................................... 7  
      Overarching Rights Protection Framework: The Charter of Fundamental Rights and Freedoms .. 7  
      Disability ......................................................................................................................................... 9  
      Sexual Orientation and Gender Identity .................................................................................... 10  
      HIV/AIDS ...................................................................................................................................... 14  
      Gender Discrimination ............................................................................................................... 17  
   C. **Violence against women, including domestic violence (arts. 2, 3, 6 and 26)** .................... 19  
   D. **State of emergency, extrajudicial killings and investigations (arts. 2, 4 and 6)** ................. 24  
      Independent Commission of Investigations (INDECOM) ....................................................... 24  
   E. **Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment and treatment of persons deprived of their liberty (arts. 6, 7 and 10)** .................................................. 26  
      Treatment of people deprived of liberty ..................................................................................... 26  
      Anti-torture provisions ............................................................................................................... 28  
   F. **Right to an effective remedy and fair trial (arts. 2, 6 and 14)** ............................................. 29  
      Justice Reform Agenda ............................................................................................................... 29  
      The Coroner’s Court .................................................................................................................... 30  
   G. **Rights of the child (arts. 9, 10, 14 and 24)** ........................................................................ 30  
   H. **Freedom of expression and human rights defenders (arts. 6, 19 and 22)** ......................... 32
I. INTRODUCTION

This report provides the Human Rights Committee of the United Nations with updated civil society positions that account for the matters raised in the List of Issues for Jamaica adopted at its 116th Session. It is submitted by a coalition of five leading human rights organizations, most of which have submitted independent, detailed reports of a thematic nature dealing with specific articles within their sphere of competence both for consideration in the 116th and 118th sessions. This report provides contextual replies to the specific List of Issues, not the general status of the Covenant’s implementation. For further comprehensive, thematic accounts of specific violations of the Covenant, the Committee may review our companion reports below.

- **NGO Report on Jamaica’s Implementation of the ICCPR** by Jamaicans for Justice and International Human Rights Clinic, Loyola Law School (December, 2015) [confidential]
- **Incarceration of Children Considered Beyond Parental Control: Violations by Jamaica** by: Stand Up for Jamaica, Jamaicans for Justice, Center for International Human Rights, Northwestern Pritzker School of Law et al. (September, 2016)

A. JOINING ORGANISATIONS

**Jamaicans for Justice (JFJ)**

JFJ is a human rights organizations with consultative status at the UN’s ECOSOC since 2014. JFJ works extensively on public security, detention, children’s rights and state accountability issues.  

2 Fagan Avenue,  
Kingston, Jamaica  
www.jamaicansforjustice.org

**Caribbean Vulnerable Communities Coalition (CVC)**

CVC is a coalition of community leaders and non-governmental agencies that are advocates and service providers, working with populations vulnerable to HIV or forgotten in healthcare programmes.  

Suite#1, 1D-1E Braemar Avenue,  
Kingston, Jamaica  
www.cvccoalition.org

**Stand Up for Jamaica (SUFJ)**

SUFJ provides services to prisoners in Jamaican prisons by covering the legal costs and by providing for their basic necessities, and engages in human rights advocacy around detention issues.  

131 Tower Street,  
Kingston, Jamaica  
www.standupforjamaica.org

**Jamaica Youth Advocacy Network (JYAN)**

JYAN is a youth-led organization that focuses on policy advocacy, youth activism & youth sexual and reproductive rights.  

1A Fairway Avenue  
Kingston, Jamaica

**J-FLAG**

J-FLAG is a human rights and social justice organisation which works to improve the human rights situation of LGBT persons.  

Kingston, Jamaica  
www.jflag.org

B. CONTACT DETAILS

For Committee Secretariat correspondence or any further information related to this report, contact coordinating NGO, Jamaicans for Justice (JFJ) via: its Advocacy Manager at Malcolm@jamaicansforjustice.org, (876) 755-4524.
II. REPLIES OF CIVIL SOCIETY TO THE ISSUES IDENTIFIED IN THE LOI

The State party, Jamaica, faces a range of human rights challenges, not least of which are longstanding shortcomings in fulfilling the obligations imposed by the International Covenant on Civil and Political Rights (the Covenant). Despite some important progress at the policy level, effective, sustainable realization of rights remains elusive. Attention to the pervasive implementation deficits is critical to translating commitments to action. The State party, and this Committee must measure the extent of rights compliance by the objectively measurable situation on the ground, and not the promulgation of policy positions. The present review cycle provides the opportunity craft a pathway to full adherence to the Covenant’s provisions.

These replies to the Committee’s List of Issues are organized in a series of themes solely based on the Committee’s grouping of the issues at its 116th Session.

A. CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED (ART. 2)

National Human Rights Institution

**Issue 1 in LoI:** Please indicate the time frame for and the progress made in the establishment of a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), with the necessary adequate financial and human resources.

**Issue in Prior Concluding Observation (2011):** The Committee is concerned that the State party has not yet established a national institution in accordance with the Paris Principles (General Assembly resolution 48/134) (art. 2). The State party should establish an independent national human rights institution, and provide it with adequate financial and human resources, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

**Response of Civil Society**

Jamaica has not established a National Human Rights Institution (NHRI) in accordance with the Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles).¹ The failure of the State party to do so leaves important gaps in Jamaica’s rights protection infrastructure that undermine the fulfilment of its obligations under Article 2 of the Covenant. Moreover, the State’s proposed path of action may not comply with the international standards if its present approach to the process is not corrected. The Committee should reiterate its previous recommendation, and probe the State party for specific details on the nature and timeline of its proposed reform.

**The establishment of an NHRI in the context of obligations under the Covenant**

In 2011, the Committee stated that it was “concerned that the State party has not yet established a national institution in accordance with the Paris Principles,” and accordingly recommended its establishment.² To date, this remains unaddressed. The establishment of an NHRI is supported by Article 2’s requirement to “take necessary steps to...give effect to the rights recognized in the present Covenant,” which includes the establishment of administrative mechanisms such as NHRI’s; and the requirement to “ensure that any

---

¹ United Nations General Assembly (1993), Resolution 48/134
person...shall have an effective remedy,” including “by competent...administrative...authorities, or by any other competent authority.”

The Committee elaborated on these in its General Comment No. 31 on The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, which states: “the Committee attaches importance to States Parties’ establishing appropriate...administrative mechanisms for addressing claims of rights violations under domestic law” which are “required to give effect to the general obligation to investigate allegations of violations promptly. National human rights institutions, endowed with appropriate powers, can contribute to this end. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant” (emphasis added). In the context of the deficiencies in Jamaica’s administrative mechanisms to provide a remedy, mentioned in summary below, and the concessions to this effect implicated by the State party’s agreement that a NHRI is necessary, its establishment is closely connected with the State party’s fulfilment of its obligations under the Covenant, absent some alternative structure.

In its report, the State party indicated it was “actively pursuing the establishment of a National Human Rights Institution (NHRI),” and would “continue consultations with relevant stakeholders with a view to developing a hybrid model.” This commitment is not new. In 2011, the State party accepted five similar recommendations during the first cycle of its Universal Periodic Review (UPR) by the Human Rights Council, which it failed to act on. Four years later, the establishment of an NHRI was recommended eight times during the second cycle of its UPR in 2015 – all of which the State party accepted, but have not implemented.

Moreover, the State party’s stated commitment to consultation is suspicious, given the Paris Principle’s unambiguous requirement that governments consult with civil society actors involved in human rights work. To date, no member of this coalition or those at the forefront of human rights protection have been consulted, despite specific requests to State party. Checks with other human rights defenders reveal a similar situation.

The value of an NHRI in compliance with the Paris Principles to closing protection gaps

The lack of a robust national mechanism for the protection and promotion of the rights enshrined in the Covenant has contributed the sustained human rights challenges experienced in Jamaica. The substitute institution, the Public Defender, which the government plans to expand to form the NHRI does not accord with the minimum standards outlined in the Paris Principles in important respects. Information widely shared by the state party suggests that the expansion may not actually involve a substantial review of the existing legislation, the Public Defender (Interim) Act 2000. Such an approach would not comply with the Paris Principles, and would not represent an “appropriate...administrative mechanisms for addressing claims of rights violations under domestic law,” as required by this Committee. In addition to the chronic financial and human resource deficits faced by the Public Defender, it faces challenges in other important respects, including:

---

3 International Covenant on Civil and Political Rights (ICCPR), Article 2(3)
4 United Nations Human Rights Committee (2004), General Comment 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add, para 15
5 Government of Jamaica (2015), Fourth period report of States parties due in 2014: Jamaica, CCPR/C/JAM/4, para 65
8 Human Rights Committee, General Comment No. 31
1. **The inadequacy of its mandate and sphere of competence** – The Public Defender’s mandate is not sufficiently broad in scope, fails to affirmatively express a twin duty to protect and promote human rights, and does not clearly extend to “acts of omission,” in contravention of Principles.9

2. **The exclusion elements of the security forces from its jurisdiction** – The enabling legislation (which is still “interim”) explicitly excludes the Jamaica Defence Force (JDF) from the jurisdiction of the Public Defender, limiting the breadth of protection.10 This, despite the frequent deployment of soldiers for domestic policing operations, the adjudicated, disturbing cases of human rights violations by the military, and the State-Party’s own admission of credible reports that persons have been “tortured physically and psychologically by Jamaica Defence Force (JDF) soldiers,” which resulted in the removal of soldiers from posts.1112 This exemption was exploited by the JDF during the investigation of alleged extra-judicial killings and other human rights violations during the 2010 State of Emergency by the OPD – a matter on which the Committee has spoken strongly in the previous review – in which the JDF blocked attempts to obtain evidence by the OPD.13 The Public Defender has called on the state to urgently remove these exemptions14

3. **The discretionary limitation of investigations by the government** – The enabling legislation allows the Executive branch, through the Secretary of the Cabinet to limit any investigation by the Public Defender by *inter alia*, limiting the documents that can be obtained by the Public Defender, or prohibiting “giving of any information or the answering of any question or production of any documents or things” once it declares it prejudicial to security.15 Once this is done, the Public Defender “shall not further require such information or answer to be given or such document or thing to be produced.”

**Recommendations**

1. The Committee should express concern that the State party has not established a national institution in accordance with the Paris Principles (General Assembly resolution 48/134) (art. 2), despite multiple commitments to do so. It should recommend the following: establish an independent national human rights institution, and provide it with adequate financial and human resources, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

2. The Committee should, in its open sessions with the State party, specifically request details on the nature of the proposed expansion of the Public Defender to establish a NHRI in compliance with the Paris Principles, taking into account the aforementioned challenges to compliance it presently faces.

**Institutionalization of Engagement with Human Rights Mechanisms**

### Issue 3 in LoI: Please provide information on the existence or development of a permanent institutionalized mechanism or body to coordinate government engagement with the international and regional human rights mechanisms aimed at implementing recommendations and reporting thereon.

**Response of Civil Society**

9 Paris Principles, A2

10 Public Defender (Interim) Act, 2000, section 13(1)

11 See generally, Report of the commission to inquire into certain events which occurred in Western Kingston during the month of May 2010 (2016) and the merits decision in *Michael Gayle vs Jamaica* (2005), Inter-American Commission on Human Rights

12 Government of Jamaica (2015), Fourth Periodic Report, para 167. It is important to note that in this setting, JDF soldiers were being used to guard prisons. The OPD is allowed to investigate prisons.


14 Ibid, para 52.6.1

15 Public Defender (Interim) Act, Section 18
No “permanent institutionalized mechanism or body to coordinate government engagement with the international and regional human rights mechanisms aimed at implementing recommendations and reporting thereon” exists in Jamaica, to the extent that this coalition is aware. There appears to be an inter-ministerial committee – or similar variation – spearheaded by the Ministry of Foreign Affairs and Foreign Trade with general aims of coordinating reporting in some fashion. However, it is neither permanent nor sufficiently institutionalized in the operations of government. Unlike with such bodies in other jurisdictions, engagement is not mainstreamed, and implementation of outcomes is not centrally coordinated. Consequently, important recommendations go unfulfilled.

Recommendations

The Committee should remind the State party of the value of such mechanisms to sustaining human rights gains, particularly in respect of ensuring adherence to international standards. It should recommend the following: establish, through formal executive directive or other appropriate, sufficiently mandatory means, a permanent governmental mechanism tasked with coordinating government engagement human rights mechanisms and implementing recommendations, in consultation with civil society.

Optional Protocol to the Covenant

Issue 4 in LoI: Given that Jamaica withdrew from the Optional Protocol to the Covenant and that it has stated that is unable to reaccess, please indicate what measures have been taken to ensure that individuals who allege that their human rights under the Covenant have been violated have access to an effective remedy (see State party report, para. 70).

Residents of State party have little access to an effective remedy because the breadth of the Covenant’s provisions are not fully realized in Jamaican law, and the only potentially analogous international mechanism, the Inter-American System, has fledgling security. The State party withdrawn from the Optional Protocol on the basis of the alleged availability of suitable remedies, the decision of Pratt & Morgan v The Attorney General, and its ratification of the American Convention on Human Rights. However, none of these reasons remain valid.

Inadequate coverage in domestic law

Jamaica’s Charter of Fundamental Rights and Freedoms (the Charter) does not provide adequate protection against the violation of human rights that are guaranteed under the ICCPR. The Charter of Rights does not adequately protect against discrimination on the basis of gender, sexual orientation, gender identity, health status, disability or marital status. The Charter, while guaranteeing equality before the law, saves laws from challenge which are discriminatory both directly and indirectly. The ICCPR provides redress for these various forms of discrimination that the Charter ignores and therefore the argument related to the availability of suitable remedies fails.

Pratt and Morgan

The decision of Pratt and Morgan imposed a 5-year time limit on the execution of the death penalty. This 5 year would be spent during appeals to international human rights bodies. However, the Charter of Rights in section 13(8) nullifies the effect of Pratt and Morgan and therefore the argument relying on this decision also fails.

Inter-American System
The Inter-American Commission on Human Rights has been an avenue for ventilating human rights issues for Jamaicans, however financial constraints have hindered the functioning of the IACHR.\(^\text{16}\) Hearings have been suspended and staff members are being laid off.\(^\text{17}\) The IACHR is no longer a secure alternative.

### B. NON-DISCRIMINATION AND EQUALITY BETWEEN MEN AND WOMEN (ARTS. 2, 3 AND 26)

**OVERARCHING RIGHTS PROTECTION FRAMEWORK: THE CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS**

The State party faces a range of severe gaps in anti-discrimination. Many of these stem from a flawed rights protection framework, exemplified by the Charter of Rights. As such, it is important to review this first.

The 2011 Charter of Fundamental Rights and Freedoms demonstrates a critical development in the protection of human rights in Jamaica. The 2011 Charter reformulates the guarantee of human rights in Jamaica and presents a different approach to how individual rights are treated within the law. This reformulation of rights protection is supplemented with the inclusion of rights that were hitherto not guaranteed within the Jamaica Constitution and the removal of previously problematic sections. However, the 2011 Charter has its own challenges which take away from the advances that have been made.

**Reformulation of Human Rights protection**

The rights which are guaranteed under the former Chapter III of the Jamaican Constitution were subject to their own specific limitations, usually on the basis of nebulous concepts such as public order, public safety or public morality. The rights were mostly framed negatively, which failed to capture the States duty to protect and promote human rights.\(^\text{18}\) The duty bearers were limited to the agents of the State; rights violations at the hands of agents of the state could not give rise to constitutional claims.

The 2011 Charter made a number of improvements including the protection of a few economic, social and cultural rights:

1. The right to life, liberty and security of the person is framed broadly  
2. The freedom of thought, conscience and observance of beliefs is separated from the freedom of religion  
3. The right to seek, receive, distribute or disseminate information, opinions and ideas through any media is specifically protected  
4. The rights to “equality before the law” and “equitable and humane treatment by any public authority in the exercise of any function” are separated from the freedom from discrimination and have no closed list of categories.  
5. Freedom from discrimination has included other grounds: “being male or female”, “social class,” and “religion”  
6. The right to privacy is broadened to include “respect for and protection of private and family life”  
7. The right of children to special protections is guaranteed as well as the right to primary education.  
8. The right to enjoy a healthy and productive environment free from the threat of injury or damage from environmental abuse and degradation of the ecological heritage is included  
9. The right to vote is guaranteed

These rights, save the right to due process, property rights, the right to protection of the law and freedom of religion, were not subject to specific limitations but were all subject to a general limitation found in section 13(2),  

---

\(^{16}\) IACHR Press Release, *Severe Financial Crisis of the IACHR Leads to Suspension of Hearings and Imminent Layoff of Nearly Half its Staff* (23 May 2016)  
\(^{17}\) Ibid  
\(^{18}\) See Human Rights Committee, *General Comment 6: The right to life*, para. 5
that is that the rights guaranteed will not be abridged by laws or state action save as where it is demonstrably justified in a free and democratic society. This limitation removes the arbitrary concepts such as public morality which may allow for unchecked limitation on rights.

The 2011 Charter also has other welcomed additions. Section 13(5) of the Charter binds all natural and juristic persons, therefore making non-State actors, duty bearers in specific circumstances. Section 19(2) of the Charter allows for “public or civic organizations” to bring constitutional claims of violations of rights on behalf of rights holders. This allows civil society organizations to step in for marginalized persons who are not in a position to access this remedy for themselves. Critically, section 26(8) of the old Chapter III – “the general savings law clause” – has been removed. This section prevented constitutional challenges to laws that existed prior to 1962, regardless of whether or not they violated rights.

Limited Protection from Discrimination

Notwithstanding the improvements within the 2011 Charter, there are challenges with its equality provisions that have not been addressed since the last review by this Committee. While sections 13(3)(g) and (h) of the 2011 Charter guarantee the rights to equality before the law and equitable and human treatment by a public authority, respectively, section 13(3)(i) only protects against discrimination on certain grounds. Even though it may be supposed that sections 13(3)(g) and (h) protect against discrimination regardless of status because these sections have no closed list of categories, it is unclear whether this will be the approach taken by local courts. Also, these sections relate primarily to State actors, which means that discrimination at the hands of non-State actors is only prohibited by section 13(3)(i).

Section 13(3)(i) does not prohibit discrimination broadly. It fails to address discrimination on the basis of age, sex19, gender20, sexual orientation, gender identity, language, health status, marital status, disability, birth status or other status. Discriminatory treatment by employers, landlords and service providers is not prohibited under the Constitution. Outside of the 2011 Charter, there are no comprehensive anti-discrimination laws with a complaint mechanism accordingly, the failure to prohibit discrimination broadly is a violation of the State party’s obligation under article 26, to “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground.”

Savings Law Clauses

Sections 13(7), (8), (12) and 18 grossly limit the rights guaranteed in the 2011 Charter, allowing for problematic exemptions and permitting the continuation of rights violations by the State and the derogation from the guarantee of rights within section 13(3).

Section 13(7) limits the freedom from torture and inhuman and degrading treatment by saving all the punishments that were prescribed by law immediately before the commencement of the 2011 Charter. Section 13(8) saves the death penalty22 and Section 13(12) acts as a modified general savings law clause by saving laws related to sexual offences, abortion and obscene publications from being challenged on the basis that they violate rights. Laws

---

19 The terms “sex” and “gender” were specifically avoided in the formulation of the Charter of Rights. This was done to avoid the protection of sexual orientation and gender identity discrimination. See Report of the Joint Select Committee on its Deliberations on the Bill Entitled An Act to Amend the Constitution of Jamaica to Provide for a Charter of Rights and For Connected Matters, § 13(2)(j), (20 July 1999) available at http://jis.gov.jm/media/charter-of-rights1.pdf

20 Ibid


22 The effect of this was to undue the cases of Pratt & Morgan v The Attorney General of Jamaica [1994] 2 AC 1 and Thomas v Baptiste [1999] UKPC 13 decided by the Judicial Committee of the Privy Council which respectively decided that the execution of the death penalty after a long delay in carrying out the sentence amounted to cruel, inhuman and degrading punishment and acknowledged that carrying out a sentence of death after subjecting a person to intolerable prison conditions would amount to cruel, inhuman and degrading punishment
which discriminate on the basis of sex such as the Sexual Offences Act which states that only women can be victims of rape and only men can be convicted of rape and the Offences Against the Person Act which criminalizes intimacy between men, whether in public or private are protected from challenge notwithstanding the right to equality before the law.

These savings law clauses collectively amount to two steps backward in the 2011 Charter which had made significant strides in the protection of human rights for all persons. Sections 13(7) and (8) permit violations of article 7 of the ICCPR and sections 13(12) and 18 offend the guarantee of equality before the law within the 2011 Charter itself and in article 26 of the covenant.

Recommendations

The Committee should recommend the following: take all appropriate measures to adequately protect and promote the human rights of all persons, through amendments to the Charter of Fundamental Rights and Freedoms, to inter-alia, guarantee of the right to non-discrimination found in section 13(3)(i) to protect against all forms of discrimination by both state and non-state actors; repeal those clauses which unduly limit the human rights of its citizens, including but not limited to, the savings law clause in sections 13(7), (8) and (12).

Disability

Issue 5 in LoI: Please inform the Committee of the measures that have been put in place to promote the inclusion of persons with disabilities. Please provide information on the status of implementation of the Disabilities Act, 2014 and the number of cases that the Jamaica Council for Persons with Disabilities has taken to date.

Response of Civil Society

The State party, while taking laudable legislative first steps, is yet to fully implement a sustained programme of protection for people living with disabilities. Basic rights of access and equal protection are routinely violated. Though the Government of Jamaica enacted the Disabilities Act in 2014 to guarantee equality to persons with disabilities and to protect them from discrimination, the Act is not in force as the commencement date has not been gazetted. Additionally, many persons with disabilities are unaware of how the Act will protect them.

The State party has taken some measures to promote inclusion of persons with disabilities, such as the implementation of a policy whereby 5% of the Housing provided by the National Housing Trust is set aside for persons with disabilities, however not all of these houses are built to the specific needs of persons with disabilities. The State party also promised 5% employment of government ministries would be for persons with disabilities, however this promise has not been honoured. Persons with disabilities have been included on government boards and committees. There are four accessible buses and persons with disabilities are given a concessionary bus fare. Persons who are deaf or physically disabled have the right to drive, depending on the nature of the disability.

Access to Public Services

Persons with disabilities still have challenges with access to public buildings and offices. Building codes which require architectural designs which are tailored to the needs of persons with disabilities are to be implemented. Most courts lack wheelchair case and sign-language translation must be requested by the prosecuting attorney where there is a complainant or witness who has a hearing and/or speech disability. Access to emergency services for persons with disabilities is also a challenge. Not all police stations have wheelchair access and nor are they all

23 See Sexual Offences Act (2009), ss. 2 and 3 which respectively define sexual intercourse as the penetration of the vagina of one person by the penis of another and rape as only occurring when a man has sexual intercourse with a woman without her consent.

24 See Offences Against the Person Act (1864), s 79
staffed with individuals who speak sign language. The same is true for other emergency services, such as hospitals and healthcare facilities.

There are no clear policies on how to identify and/or treat with witnesses or complainants who have mental disabilities. Persons with mental disabilities or mental health challenges who are charged with a crime are unduly impacted by rules regarding unfitness to plea. Where a person is deemed unfit to plea, she/he is remanded in custody and is brought back to court after periodic evaluations. There are reports of the evaluation/screening process lasting for less than ten minutes. There are not sufficient numbers of psychiatrists available to deal with the volume of persons with mental health challenges in the remand centres which calls into question the adequacy of the evaluations used to determine fitness to plea.

These unaddressed challenges as well as the Disabilities Act remaining unenforceable are a violation of articles 2 and 26 of the Covenant.

RECOMMENDATIONS

The Committee should emphasize the duty of states to both legislate special protective measures and secure their meaningful implementation in order to comply with the Covenant, and express concern that the State party has not taken adequate steps to implement mechanisms to better protect the rights of persons with disabilities. It should recommend the following: improve infrastructure through the adoption and implementation of building codes as well as policies and practices to be more inclusive of the realities of persons with disabilities and gazette the date of commencement of the Disabilities Act, implementing all provisions of the Act and the speedy production of regulations. Further the State party should improve data collection mechanisms on the treatment of persons with mental health challenges in prisons and remand centres and engage in targeted awareness raising efforts around the Disabilities Act

SEXUAL ORIENTATION AND GENDER IDENTITY

Issue 6 in LoI: Please indicate steps taken to amend the laws to prohibit discrimination on the basis of sex, sexual orientation and gender identity and decriminalize sexual relations between consenting adults of the same sex. Please provide information on the specific outcome of the Diversity Policy developed by the Jamaica Constabulary Force (see State party report, paras. 73-79) and what steps will be taken to prevent acts of violence and hate crimes that reportedly occur against the lesbian, gay, bisexual and transgender population. Please indicate what has been done to put an end to incitement to violence and mob violence against that population. In line with the Committee’s previous concluding observations, please indicate the steps taken to investigate reported cases of harassment, discrimination or violence against persons on the basis of the person’s sexual orientation and gender identity in the fields of health, education, employment and housing (see CCPR/C/JAM/CO/3, para 8).

RESPONSE OF CIVIL SOCIETY

In its November 2011 Concluding Observations, this Committee made the following observation and recommendations to Jamaica:

While welcoming the adoption of the Charter of Fundamental Rights and Freedoms in April 2011, the Committee regrets that the right to freedom from discrimination is now expressed on the grounds of “being male or female”, failing to prohibit discrimination on grounds of sexual orientation and gender identity. The Committee is also concerned that the State party continues to retain provisions under the Offences against the Person Act which criminalize consensual same-sex relationships, thus promoting discrimination against homosexuals. The
Committee further regrets report of virulent lyrics by musicians and entertainers that incite violence against homosexuals (arts. 2, 16, 26).

The Committee found in its follow-up:

[C1] The recommendation has not been implemented: State party’s legislation has not been amended to prohibit discrimination on the basis of sex, sexual orientation and gender identity; sexual relations between consenting adults of the same sex have not been decriminalized; no information is provided on the way the Anti-Bullying initiative is supported by the State party and on the measures taken to ensure that individuals who incite violence against homosexuals are investigated, prosecuted and properly sanctioned

Though there has been a significant increase in the levels of tolerance within the Jamaican society, LGBT Jamaicans continue to face challenges, inclusive of legal barriers, to the equal protection of their human rights. LGBT Jamaicans still exist within a legal context that enables their exclusion. Incidents of harassment and violence against members of the LGBT community continue to occur, often times with impunity, and stigma and discrimination still feature prominently in the lives of many LGBT Jamaicans.

Incidents of Violence and Harassment
LGBT individuals have been attacked, and sometimes killed, by mobs. Lesbians have been subjected to “corrective rape.” Frequent threats of violence have led LGBT individuals to live in fear and, in some cases, to flee their homes. In a 2015 J-FLAG survey of 316 LGBT Jamaicans, 43% of respondents reported receiving threats of physical violence in the last 5 years, and 18% reported being threatened with sexual violence. On average, these individuals received two or three such threats each.25 From January to June 2016, 23 individuals reported to J-FLAG that they had been physically assaulted or attacked due to their sexual orientation or gender identity.26 These experiences of violence are sometimes met with inaction and indifference by the police. There are incidents in which the police themselves are the perpetrators.

Incidents of police involvement contribute a culture of silence within the LGBT community. A 2015 study commissioned by J-FLAG on “The Developmental Cost of Homophobia” indicates that a large number of LGBT people did not report the last incident of physical or sexual assault that was perpetrated against them to the police. Thirty percent of the persons did not report because they felt the incident was too minor to be reported, while 40.5% did not report because they felt the police would not do anything to address the matter. About 1 in 4 (25.5%) feared a homophobic response from the police, and about 1 in 5 (22.9%) did not report because they felt too ashamed or embarrassed and did not want anyone to know what had happened to them.27

The State party has failed in its obligation to take appropriate measures to prevent these attacks and to vigorously investigate and prosecute the attackers. These attacks and threats violate rights protected by Articles 6 (life), 7 (torture and cruel, inhuman, or degrading treatment), and 9 (security of person). Jamaica’s failure to take adequate measures to respect and ensure these rights violates its obligations under Article 2(1) (obligation to respect and ensure, without discrimination) and 26 (equal protection of the law).

Stigma & Discrimination
Homophobic and Transphobic attitudes remain popular within the Jamaican society. A 2015 survey of 1003 Jamaicans, which was commissioned by J-FLAG and published in 2016, noted that 65% of respondents believed that LGBT people should not be allowed to work with children. Only 36% of respondents said they would allow their gay child to continue living in their home, and 43% of respondents said they would not let a gay child be around his or her siblings. Sixty-five percent of respondents said they avoid LGBT people, and 75% agreed that

27 J-FLAG 2015, supra note 7, p. 59.
LGBT sexual behaviour should be illegal. Fifty-nine percent of respondents reported that they would physically harm an LGBT person who approached them.

In the health care sector, LGBT Jamaicans face discrimination from health care professionals as well as from non-medical staff. Non-medical staff have turned LGBT patients away or humiliated them and have disclosed an LGBT patient’s sexual orientation or gender identity to a third party. LGBT Jamaicans have to contend with discriminatory treatment by both employers and co-workers and in the area of housing, landlords are not sanctioned if they refuse to rent to an LGBT person or wrongfully evicting them on the basis of their sexual orientation or gender identity.

**Gaps in Recognition & Protection**

The Jamaica Charter of Fundamental Rights and Freedoms does not protect against discrimination on the basis of sexual orientation or gender identity. The effect of this is that discriminatory treatment in employment, education, healthcare and housing at the hands of non-state actors is allowed to occur with impunity. Jamaica still does not have any anti-discrimination legislation and therefore the only protection against discrimination lies within the Charter. Targeted forms of violence against the LGBT community are not defined within Jamaican criminal laws. The absence of hate-crime legislation means that homophobic and transphobic violence and the incitement of same is not recognized within Jamaican laws. Mob violence, “corrective rape” and other forms of violence are captured in the generic legal protections available which do not punish violence motivated by hatred and/or intolerance for particular groups.

There are no state laws or policies which address explicitly homophobic and transphobic bullying and harassment in schools and the workplace. This means that LGBT Youth have little legal protection against the targeted physical and verbal abuse they have come to experience in schools. This is compounded with policies and practices within public and private educational institutions which perpetuate stigma around and discrimination against LGBT persons.

**Legal Exclusion**

Family law legislation excludes same-sex unions from all the legal benefits that are given to both married and unmarried heterosexual unions. Section 18 of the Jamaica Charter of Fundamental Rights and Freedoms prevents these laws from being challenged in court and goes further to prevent the legal recognition of same-sex unions. The Sexual Offences Act of Jamaica, 2009 governs the legal regime for protection from sexual violence. The Act’s definition of sexual intercourse and rape means that there is unequal protection for persons in same-sex unions who experience intimate partner sexual violence. Their abuse only amounts to lesser offences such as “grievous sexual assault”, indecent assault, or sexual touching (if it involves a minor) whereas intimate partner sexual violence within heterosexual unions can give rise to offences such as rape and sexual intercourse with a person under sixteen which carry heavier sentences.

The Domestic Violence Act of Jamaica, 2005 also fails to equally protect LGBT persons in same-sex unions from other forms of intimate partner violence. The Act’s definitions of “spouse” and “visiting relationship” are exclusively heterosexual. The effect of this is that LGBT persons in same-sex unions may only seek protection if they cohabit with their partners. They can apply for protection as “members of the household” of the abuser. Persons in non-cohabiting same-sex unions cannot seek protection under the Act.

---

28 “Corrective Rape” defines the rape of an individual, usually lesbian, bisexual or trans women, with the intention of “making that person heterosexual”.
29 Sexual Offences Act (2009), s. 2
30 Ibid, s. 3
31 Ibid, s. 4
32 Ibid, s. 8
33 The Domestic Violence Act (2005), s. 2
Laws with Negative Impact
Sections 76 – 79 of the Offences Against the Person Act, 1864 continue to criminalize consensual anal sex and same-sex intimacy between men. Even though these laws, arguably, violate the right to equality before the law within the Charter of Rights, they cannot be subjected to a constitutional challenge. Section 13(12) of the Charter saves laws that existed before the passing of the Charter which relate to, among other things, sexual offences.

Positive Steps
In August 2011, the Jamaica Constabulary Force issued a Policy on Diversity with the aim to “effectively transform the negative aspects of police culture manifested in the scant regards paid to reports made by members of diverse groups, as it relate to the incidence of crimes committed against them.” According to the policy definitions, diverse groups comprise, among others, persons of various sexual orientation. In addition, the police have undergone a number of human rights-related capacity building and sensitization workshops. For example, in September 2015, two-hundred and thirty (230) police officers participated in a two-day training which ‘focused on the safety and security of women and girls, persons living with disabilities, marginalised youth, and members of the lesbian, gay, bisexual or Transgendered (LGBT) community.’ However, as demonstrated, “much more work needs to be done to ensure that all Jamaicans are protected and where their rights are infringed, they are treated equally before the law.”

RECOMMENDATIONS
The Committee should express concern that LGBT persons face severe rights violations within the State party, enabled by a legal context that effectively excludes them from equal protection, and that the State party has not taken all necessary steps to safeguard the rights, dignity and access to justice for LGBT Jamaicans. It should recommend the following:

1. Enact comprehensive anti-discrimination legislation to prohibit all forms of discrimination, inclusive of discrimination on the basis of sexual orientation and gender identity. This legislation should prohibit discrimination at the hands state and non-state actors in all areas of life, including but not limited to housing, employment, education and provisions of services. Additionally, this legislation should establish a body to receive and investigate complaints and conduct hearings where necessary.

2. Amend laws which exclude, fail to equally protect and/or discriminate against LGBT persons so as to eradicate legal and policy barriers which prevent LGBT Jamaicans from fully participating in all areas of public life on an equal footing with cisgender heterosexual Jamaicans.

3. Improve the country’s strategy to address displacement and homelessness, including increasing the number of shelters and temporary housing facilities and ensuring that staff and other persons living at the facility are sensitized to enable them to foster an LGBT-friendly environment.

4. Conduct a national human rights public education campaign to encourage the public to engender a culture of respect for the rights of all persons particularly vulnerable and marginalized groups, including LGBT persons; specifically targeting families, employers, community members and state actors in an attempt to reduce discrimination and violence as well as the number of displaced LGBT persons.

36 JAMAICA OBSERVER, Cops urged to use diversity training to make a difference, Oct. 14, 2015
37 J-FLAG 2013, supra note 25, p. 4.
HIV/AIDS

**Issue 7 in LOI:** Please provide information on the implementation of the National Workplace Policy on HIV/AIDS and the progress made on the National Integrated Strategic Plan for Sexual Health and HIV, which, inter alia, aims to reduce stigma and discrimination. Please provide information about steps to pass the Occupational Health and Safety Act to prevent discrimination against HIV-positive persons in the workplace (see State party report, para. 81). Please provide information about the impact of the National HIV-Related Discrimination Reporting and Redress System, including data on the number of cases successfully handled by the System (see State party report, para. 82).

**Prior Concluding Observation:** The Committee regrets reports of prevalent societal stigmatization of people with HIV/AIDS...The State party should take concrete measures to raise awareness of HIV/AIDS with a view to combating prejudices and negative stereotypes against people living with HIV/AIDS. The State party should also ensure that persons living with HIV/AIDS...have equal access to medical care and treatment.38

---

**RESPONSE OF CIVIL SOCIETY**

Discrimination against people living with HIV/AIDS persists in Jamaica, largely due to the absence of any meaningful legal protection. To date, the State party has failed to address the Committee’s recommendation, and despite some commendable policy steps, it continues to violate Articles 2 and 26 of the Covenant by failing to prohibit discrimination on the grounds of health status, or assuring equal treatment in various spheres of public life, including employment and health services. As described in section 1339, Jamaica’s constitutional provisions exclude “health status” from its anti-discrimination provisions, and Jamaica has no comprehensive anti-discrimination legislation.

Accordingly, the nascent protection efforts embodied in the National HIV/AID Workplace Policy and the National HIV-Related Discrimination Reporting and Redress System have not been meaningfully implemented and lack any real accountability structures. Without a comprehensive HIV and AIDS law, an anti-discrimination law or human rights act/commission to legally enforce non-discrimination, existing and future HIV and AIDS policies and strategic plans will not have the desired result of ensuring equal access to prevention, care, treatment, and support by key populations, as well as the full enjoyment of PLHIV in all aspects of social, cultural, civil, and political life.40

**The HIV Response in Jamaica**

The creation and implementation of Jamaica’s 2012-2017 National HIV Strategic Plan seeks to guide the nationwide HIV response and impact the epidemic. The Plan highlights that the epidemic expands beyond the scope of health and is a developmental issue which calls for the involvement of various stakeholders, spearheaded by the State. The HIV epidemic in Jamaica is generalized (1.7%) and concentrated in four key populations: men who have sex with men (MSM), drug users/homeless, sex workers, and prisoners.41 Recent data from Spectrum 2015 has indicated that the HIV prevalence rate among adolescents (10-19) is a growing concern and is worthy of examination and programmatic intervention.

While efforts have been made to enact and update the existing policies, there are gaps in research and programs which will aid in the reduction of HIV transmission and AIDS related deaths among established and emerging key populations. Additional research including qualitative research must be conducted to examine the social contexts and drivers of HIV vulnerability, especially for the most invisible sub-groups within the key populations that do not take up services. Issues such as gender roles, gender-based violence, stigma and discrimination and cultural and religious attitudes continues to adversely affect the response. The State must encourage and develop sustained

---

38 UN Human Rights Committee, Concluding Observations, para 9
39 Jamaica (Constitution) Order in Council 1962, section 13
40 HIV and AIDS Legal Assessment Report for Jamaica, Nov 12, 2013
41 Ibid
public awareness programs to combat myths surrounding HIV and AIDS and must frame the HIV response from a human rights approach.

These efforts are undercut by legal barriers which impact the HIV epidemic, notably the criminalisation of sex work and private, consensual same-sex sexual acts as well as the barriers hindering the provision of certain information, services and commodities to adolescents under the age of 16. These laws prevent members of key populations from seeking necessary information, testing and treatment and has the effect of driving groups underground.

National HIV/AIDS Workplace Policy

The National HIV/AIDS Workplace Policy, which was developed by the Ministry of Labour and Social Security (MLSS) and adopted in 2013, provides guidelines for both the public and private, formal and informal sectors, to develop and implement HIV/AIDS workplace policies and programmes to protect workers living with or affected by HIV and AIDS. It is a positive, long-overdue first step. However, while the government has attempted to achieve its national adherence—such as by establishing a Steering Committee to support integration of a HIV-sensitive approach in the operations of the Ministry of Labour & Social Security—meaningful implementation has not occurred, leaving much more to be done.

The policy lacks the force of law, and depends in large part on the voluntary support of various private and public actors. Importantly, without the force of law, accountability for breaches remains elusive, which necessarily undercuts the normalization efforts. As this Committee has noted on several occasions, robust accountability structures, and cross-cutting access to a remedy are necessary components of rights protection. The increased vulnerability of persons living with HIV/AIDS heightens the importance of these. Absent those foundations, the present policy—while laudable—is inadequate. The policy is expected to be reviewed in 2016 but no announcement to this effect has been made.

Efforts to reduce stigma and discrimination and manage HIV issues in the workplace hinge on the full and meaningful involvement of the private sector—whether small, medium or large enterprises—in the HIV response. It must be noted that while entities such as the Jamaica Employers Federation (JEF) are involved, there is no sustained and coordinated private sector response through for example Jamaica Business Council on HIV/AIDS (JABCHA), which has not been in operations for a number of years.

Some other activities have occurred since 2014, but a wide range of civil society actors indicate that they have had little impact. They include: capacity building for staff of the MLSS; some engagement of persons living with HIV (PLHIV) to provide administrative support to the Steering Committee and make presentations during sensitization and awareness sessions; voluntary capacity building for trade union delegates around advocacy and policy monitoring; development of an updated HIV curriculum for private sector entities/workplaces to support HIV sensitization in the workplace.

National HIV-Related Discrimination and Redress System (NHRDRS)

Stigma and discrimination perpetrated against people living with HIV (PLHIV) continue to be a challenge. Between 2005 and 2016, a total of 267 reports of HIV-related discrimination were recorded through the National HIV-Related Discrimination and Redress System (NHRDRS). Unfortunately, actual redress for these complains remains largely to be seen. One of its greatest weaknesses the NHRDRS faces is that it is led by a non-governmental organization, the Jamaica Network of Seropositives (JN+), and not the government of Jamaica. This severely hampers its ability to facilitate redress in a more meaningful and consistent way, and limits the extent to which it represents fulfilment by the State party of the obligations imposed by the Covenant.

According to JN+, the system has some value but its effectiveness is hindered by the lack of adequate redress partners, and entities empowered to mandate redress for discrimination. While there have been a few success stories, the vast majority of cases remain unresolved. For example, JN+ recently received a report of male teacher who is allegedly being treated unfairly at his workplace after information about his HIV status was shared without his consent.
Awareness of the NHRDRS is also low. The fact that very few people are actually aware that it exists continues to constrain its prospective efficacy. Greater awareness raising is needed to encourage persons to use it. Credible information suggests that a Redress Directory and low-literacy flyer are currently being developed to promote the system, but stakeholders fear that the lack of redress partners will continue to be a bottleneck. The system has been noted as lacking an institutional home, sufficient human resources, and adequate technical capacity.  

**Stigma and discrimination in the larger context**

The four key areas in which HIV-related discrimination is noted to occur is within access to essential services, equality of PLHIV in public life and private life, key populations and access to justice.

Stigma and discrimination meted out to key and vulnerable populations such as gay, bisexual and other men who have sex with men, sex workers and transgender people, continue to impact on access to and uptake of HIV and other health services. While there have been a number of initiatives by state and non-state actors, efforts to reduce stigma and discrimination under the framework of the National Integrated Strategic Plan for HIV and SRHR continue to be weak. Stigma and discrimination in health facilities and across the Jamaican society continue to be a major issue which affect the success of the national response.

There have been noticeable improvements but programmes and initiatives to create a more enabling environment and promote human rights continue to be one of the most underfunded components of the national HIV response. The vast majority of initiatives are centred around the Greater Involvement of People living with HIV/AIDS, and Positive Health Dignity and Prevention Programmes (PHDP). There is also a dearth of organisations with specific focus on addressing stigma and discrimination and improving the human rights situation.

The government must however be commended for its willingness and continued strong partnerships with key population organisations such as J-FLAG which it has been working with for a number of years. While the partnerships between the government and civil society have been yielding positive results, no systematic changes have been made with regards to policy and law. Similar efforts need to be explored with other entities, including greater attention to strengthening their role in the response for there to be much more success.

**Recommendations**

The Committee should state that the lack of legal protection against HIV/AIDS-related discrimination conflicts with the State party’s obligations under the Covenant, and negatively impacts the HIV/AIDS response. It should recommend the following: *establish, in legislation, protection from discrimination based on health status, including HIV/Status, accompanied by a robust enforcement and redress mechanism.*

The Committee should welcome the National HIV/AIDS Workplace Policy, and express concern about the lack of an enabling legislative framework to assure meaningful adherence, and the implementation deficits presently faced by the programme. It should recommend the following: *strengthen the National HIV/AIDS Workplace Policy to, inter-alia, give it the force of law for which formal redress for breaches can be provided; undertake national awareness-raising efforts to promote the National HIV/AIDS Workplace and provide technical support to small, micro, medium and large enterprises to develop their own policies.*

The Committee should emphasize that initiatives to address stigma and discrimination require sufficient budgetary support for them to be effective, and for the State party to fulfil its obligations under the Covenant. It should recommend the following: *expeditiously increase the resources, both human and financial, to initiatives*

---


to address stigma and discrimination, by *inter-alia*, increasing the total budgetary allocation by at least 5% within the next two years.

The Committee should recommend the following: **works with the relevant stakeholders to enhance/improve the National HIV Reporting and Redress System, including undertaking public education programmes to promote its use, and significantly increase the number of people available to document reports and manage each case.**

**GENDER DISCRIMINATION**

**Issue 8 in LoI:** Please provide information on the results of efforts to change entrenched stereotypical attitudes with regard to traditional gender roles and to increase the number of women in decision-making positions in the public and private sectors through the implementation of new practical initiatives. Please provide information on any temporary special measures that the State party has implemented in order to give effect to the provisions of the Covenant (see State party report, para. 108).

**RESPONSE OF CIVIL SOCIETY**

The Government of Jamaica through the adoption in Parliament of private members’ motions have acknowledged the need to take steps to address systemic gender inequalities which limit women’s participation in decision-making. These private motions alongside the draft of the Sexual Harassment Bill and the review of the Sexual Offences Act demonstrate that the Government is slowly taking steps in the right direction towards dealing with gender inequality. However, the Government has failed to implement, in a meaningful way, strategies to remove different structural barriers to women’s participation in decision-making and to gender equality.

**Stereotyped Roles of Women**

While noting that the Government of Jamaica has at times expressed commitments to dealing with the social, economic and political inequality between males and females in Jamaican society, there have been little progress made on a societal level to address these fundamental inequalities. This is further exacerbated by a weak, ineffective, inefficient national machinery commencing with the Bureau of women’s/gender affairs.

A key example is the continued greater burden of unpaid work in the home, communities and in key service sectors, e.g. healthcare that women continue to carry. Conservative estimates by Economic Commission of Latin America and the Caribbean say pay inequity is a norm in the workplace with women getting as much as 20 cents less per dollar.

The Jamaica Survey of Living Conditions [JSLC] 2012 and the Economic and Social Survey [ESSJ] 2014 revealed, among other things, that females accounted for 60.2 per cent of public sector workers while males accounted for 59.5 per cent of the private sector, with the latter offering higher salaries and that women’s unemployment rate is consistently higher than men’s. In January 2016 STATIN reported an overall unemployment rate of about 17% for women and 10% for men with rates for young women 25 and under being 48% to young men’s 33%.

It is acknowledged that the government has amended the Constitution to prohibit discrimination on the basis of being male or female in section 13(3)(i), however the impact of this amendment is yet to be felt. It is unclear to what degree private companies and other non-State actors can be held accountable to this provision. The wording of the provision is also curious. The language of “being male or female” was deliberately used to refer to the discrimination of persons on the basis of biological sex differences. The word “gender” was intentionally avoided and so it is unclear whether this section can adequately discrimination that is the result of stereotypical notions of what men and women should do There is a need for comprehensive anti-discrimination legislation which prohibits discrimination on the basis of sex and gender and provides accessible avenues for redress for different women.
Article 3 and 26 of the ICCPR require more than just formal equality being guaranteed in the Constitution, this Committee in its General Comment 28 indicated that “States parties should review their legislation and practices and take the lead in implementing all measures necessary to eliminate discrimination against women in all fields, for example by prohibiting discrimination by private actors in areas such as employment, education, political activities and the provision of accommodation, goods and services” (para 31). The realities of women’s unemployment indicate that there is no substantive equality and therefore Jamaica is not fulfilling its obligations under Articles 3 and 26.

**Women’s Participation in decision-making**

Despite commitments made by the GOJ to increase and enhance women’s role in Power and Decision-Making, the reality falls way below the promises and even commitments. A review and monitoring of both private sector and public sector leadership yielded the following:

1. The total percentage of women on ten (10) private sector boards for the periods 2007-2008, 2012 and 2015-2016 are 11%, 17% and 17% respectively.
2. As at May 2016, the total percentage of women on forty-seven (47) private sector boards review is 21%, and the total percentage of female chairs on these boards is 6%.
3. The total percentage of women on twenty-six (26) public sector for the years 2008, 2012 and 2016 are 34%, 33% and 39% respectively.
4. The total percentage of women on one-hundred and thirty (130) public boards across eleven (11) ministries is 35%, and the total percentage of female chairs on these boards is 17%.

Note that the particular ten private sector and twenty-six public sector boards in question have been subject to monitoring since 2008.

The review indicates that for private sector between 2008 and 2016, male domination has prevailed and there has been minimal to no significant upward change in the overall average sex composition of the private sector boards on the ‘Watch List’ since 2008. The average female membership across the boards being compared is essentially steady at less than 20%. For the public sector, the percentage of female members has continued to hover under 40% with an average of 35% of the appointees being female, in 2008 and 2016. The highest actual percentage among the twenty-six public boards in 2016 is 39%.

Boards with the highest numbers of females seemed to be closely aligned with what is seen as the traditional work areas of females, such as education, social services, and health to some degree. For example, the Early Childhood Commission, a Board within the Ministry of Education, Youth and Information, has had between 72%-80% female members the last 8 years. At the same time, Boards within particular Ministries continue to show significantly low levels of female memberships, no female chairs or no female members at all. These include Boards with oversight for critical everyday resources for women and their families: Water – NWC; Housing – NHT; Solid Waste – NSWMA; Transportation – JUTC; etc. lack gender parity or balance;

The current percentage of women in Parliament is at its historic highest – 17.5% in the lower house and 23.8% in the upper house, 19.1% overall. The current percentage of women in the executive arm of government is 23%.

**Actions Taken**

The State Party report is correct in stating that the private members’ motion was adopted to convene a Joint Select Committee to “seek to identify, address and correct the systemic gender inequalities which result in women’s under representation in Parliament and local authorities, in the organs of political parties and on public boards, including through the use of ‘temporary special measures.’” The discussion around possible gender quotas did not lead to any positive outcomes for women. In any event, a change in administration has resulted in the dissolution in this Joint Select Committee, with no clear indication of whether it will be reconvened.
Articles 3 and 25 require State parties to “take effective and positive measures to promote and ensure women’s participation in the conduct of public affairs and in public office, including appropriate affirmative action.”\(^{44}\) The poor levels of representation of women on public boards and in government indicate that there is a need to employ temporary special measures as well as continuously challenge patriarchal ideals of leadership which continue to act as a barrier to women’s equal participation. Jamaica has failed to meet the obligations that arise under Articles 3 and 25 in not adequately following up on the private member’s motion.

**Recommendations**

The Committee should emphasize the importance of the Government of Jamaica moving expeditiously to address gender inequality in its various forms. The Committee should recommend the following:

- **Enact comprehensive anti-discrimination legislation to prohibit discrimination on the basis of sex and gender**
- **Implement temporary special measure such as affirmative action to increase the representation of women in Parliament, the Cabinet and public boards.**
- **Review, update and implement legislation such as the Employment (Equal Pay for Men and Women) Act and the Labour Officers’ Act and further enact legislation to provide for paternity leave and guarantee minimum wage for domestic workers.**
- **Conduct gender sensitization campaigns with the public as well as mainstream gender into the secondary school syllabuses across all subject areas highlighting women’s historical contributions to nation building and building an awareness of the importance of gender equality**

C. VIOLENCE AGAINST WOMEN, INCLUDING DOMESTIC VIOLENCE (ARTS. 2, 3, 6 AND 26)

**Issue 9 in Lol:** Please provide information on the status of the comprehensive legislation to prevent and address sexual harassment. Further to the efforts to combat gender-based violence and gender discrimination, please provide information about the impact of such policies (see State party report, paras. 131-137). Please provide information about the level of training of the staff in the Victim Support Unit, the police, and the existence of adequate shelters for victims of gender-based violence, including domestic violence. Please provide information on investigations and prosecutions into cases of violent and deliberate killing of women (femicide/feminicide) and clarify whether such acts are criminalized in the Penal Code.

**Response of Civil Society**

In its November 2011 Concluding Observations, this Committee made the following observation and recommendations to Jamaica:

> The Committee regrets that incidents of rape and domestic violence against women are prevalent in the State party. The Committee further regrets the lack of shelters for victims of domestic violence (art. 7).

> The State party should strengthen its efforts to combat gender-based violence and ensure that cases are dealt with in an appropriate and systematic manner by, inter alia, investigating, prosecuting and punishing the perpetrators. It is encouraged, in particular, to increase the training of the staff in its Victim Support Unit and the Police on violence against

\(^{44}\) Human Rights Committee, General Comment No. 28 (para 29) HRI/GEN/1/Rev.9 (Vol. I)
women, including sexual abuse and domestic violence. Furthermore, the State party should provide adequate shelters for victims of gender based violence including domestic violence.

The legislation which addresses violence against women remains inadequate and there is a clear need for policies and infrastructure to respond to violence against women and girls. The Government has indicated that steps will be taken to amend and supplement these laws and policies however they remain unaddressed.

Legislative Regime

The Sexual Offences Act provides limited protection to women who experience sexual violence. The Act defines sexual intercourse as exclusively penile penetration of the vagina and rape as non-consensual sexual intercourse committed against a woman by a man. Rape has the largest sentence within the Sexual Offences Act but only occurs in limited circumstances. The offence of Incest is similarly limited to sexual intercourse between relatives of a different sex. Under the Sexual Offences Act, marital rape exists where only in instances where divorce proceedings have started, where they have separated, where there is a separation agreement, where a protection order has been issued against the husband and where the husband has an STI.\(^{45}\)

The Domestic Violence Act provides some protection against physical and mental injury caused by intimate partners and family members. However, the Domestic Violence Act does not cover sexual abuse. This means a woman cannot seek protection orders where she has been sexually assaulted by her partner. Her only recourse is the criminal law. The punishment for breaching a protection order has little punitive force and is disproportionate to the violence that women are likely to experience.

The Sexual Harassment Bill has been drafted but has not been tabled in Parliament. The same goes for the review of the Sexual Offences Act and the Domestic Violence Act. The failure to address the gaps within these laws breach the obligation of the state to prevent and provide protections for violence against women under articles 2, 3, 6 and 26.

Institutional Deficiencies

There is only one shelter for victims of gender-based violence. This shelter is located in Kingston and is operated by a non-governmental organization, Woman Inc. The government does provide subventions for the shelter however, the shelter’s locations means that it is largely accessible to women in rural areas. The shelter also operates on limited resources. The Government has failed to create shelters which are accessible to all women who experience violence.

Domestic violence is not a crime, although one may seek protection orders if they experience same. The result therefore is that there is poor data collection on the incidences of domestic violence as well as violence against women generally. National Victimization Surveys, though highlighting who is affected by particular forms of violence, do not address directly gender-based violence. Outside of this, there is a general lack of data collection mechanisms regarding gender-based violence which impacts how policies are implemented regarding gender-based violence.

Actions Taken

The 2011 National Policy for Gender Equality has within its framework the adoption of measures to eliminate violence against women. It mandates, among other things, strengthening the Victim Support Unit, establishing a 24-hour national telephone hotline, conducting an awareness-raising campaign around gender-based violence, integrating gender analyses into data collection methods and providing protection against sexual harassment.

The Minister of Culture, Gender, Entertainment and Sports has indicated her intention to review the Sexual Offences Act, the Domestic Violence Act and other such legislation which impacts gender equality with a view to providing greater protections for violence against women and girls.

\(^{45}\) Sexual Offences Act (2009), s. 5
RECOMMENDATIONS
The Committee should recommend the following:

1. Review and amend the Sexual Offences Act and Domestic Violence Act to better protect against violence and against women and girls.
2. Pass the Sexual Harassment Bill into law and implement its provisions so as to eliminate the occurrences of sexual harassment in employment.
3. Implement the National Policy on Gender Equality, particularly those mandates related to data collection, integrating gender analysis and improving support services to women who have experience violence.
4. Conduct gender sensitization campaigns with the public to raise awareness about the occurrences of gender-based violence and to shift the cultural attitudes that facilitate it.

SEXUAL AND REPRODUCTIVE RIGHTS, MATERNAL MORTALITY AND ABORTION (ART 6 AND 17)

Issue in LoI (2016): Please provide information about the result of the legislation review in relation to sexual and reproductive rights, maternal mortality and abortion as well as the progress of such a review, if it exists. What steps have been taken to articulate a policy for safe reproductive healthcare services? Has the State party considered reviewing and amending, as necessary, the country’s abortion laws? Please indicate what steps have been taken to ensure that reproductive health services are available and accessible to all women and girls as per previous concluding observations.

Issue in Prior Concluding Observation (2011): The State party should amend its abortion laws to help women avoid unwanted pregnancies and not to resort to illegal abortions that could put their lives at risk. The State party should take concrete measures in this regard, including a review of its laws in line with the Covenant. Furthermore, the State party should ensure that reproductive health services are available and accessible to all women and girls.

RESPONSE OF CIVIL SOCIETY
Jamaica has not made any notable progress in relation to sexual and reproductive rights, maternal mortality or abortion. Sexual and reproductive rights, the issue of maternal mortality and the provision of safe legal abortions most directly impact the rights of women and girls in Jamaica and has consistently affected their health and wellbeing. The State has made no serious efforts towards the creation of laws or policies which address sexual and reproductive health and rights and has continued to rely on the savings clause contained within its constitution to preserve laws which speak to the life of the unborn child.

Termination of Pregnancies
The State party report has indicated that “In Jamaica, abortion is permissible on medical grounds.” The basis for this statement stems from a policy which was enacted in 1975 by the then Minister of Health and medical practitioner Kenneth McNeil which allowed for abortion services to be provided in one public health clinic. The policy was refined in 1989 and affirmed by a memorandum which acts as evidence of the position used to govern the Glen Vincent Health care Centre Fertility Management Unit. It outlined the criteria to allow for termination services. Further there were policy papers in the early 1990’s which facilitated termination services at a public

hospital, which was discontinued by the mid 1990’s. Much reliance has also been placed on the common law position which was articulated in the 1939 decision of R v Bourne in which it was determined that an abortion could be considered lawful where “the act was done in good faith for the purpose only of preserving the life of the mother.”

Jamaica’s current legal position on abortion exist in the 1864 Offences Against The Person Act (the Act), section 72 and section 73. Pursuant to section 72, any pregnant women who takes any substance or uses any instrument to procure a miscarriage is guilty of an offence. Notably, the section extends to criminalize the act of any person who unlawfully administers any substance to a woman, or uses any instrument on her, with the intent to procure a miscarriage, whether or not the woman is with child. These offences are punishable by a sentence of life imprisonment.

Section 73 of the Act criminalizes the act of any persons who unlawfully supplies any substance or instrument to a woman, knowing that she intends to use same to terminate her pregnancy. This offence carries a sentence of three years imprisonment.

The absence of legislation to substantiate the State’s assertion that abortions are in fact permissible on medical grounds calls into question the validity of the statement. The policy statement which was written in 1975 and affirmed in 1989 do not amount to a policy and provides no legal protection to medical professionals who are at risk of prosecution if they are found to be in contravention of the Offences Against the Persons Act, which clearly outlines the offence. It is unfeasible and impractical for medical professionals to rely solely on the 1939 common law decision of R v Bourne to determine what can be considered lawful abortion.

The State has noted that “The provisions in the Offences Against the Person Act which relate to the life of the unborn are saved. The Charter of Fundamental Rights and Freedom for Jamaica provides that "nothing contained in, or done under, the authority of any law in force immediately before the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011, [...] shall be held to be inconsistent with or in contravention of the provisions of this Chapter" - and this includes offences regarding the life of the unborn.” In this instance, the savings clause has the effect of preserving laws which are archaic and which lead to adverse health outcomes for marginalised groups of women.

The state party has also noted that “Several advisory commissions have been established to review the laws and articulate a policy for safe reproductive healthcare services in Jamaica, with special emphasis on abortions.” While the establishment of the Abortion Policy Review Advisory Committee in 2005 and the development and submission of a final report in 2007 are commendable, it must be highlighted that in the 9 years that have since elapsed, the state has failed to act on any of the recommendations presented in the report. The state has repeatedly relied on the work which was done by the Committee to indicate that there is an intention to examine the issue, however, the lack obvious lack effort to update the data, review laws or create policy guidelines to protect health care professionals is indicative of a lack of political will to act on data which has been gathered and the expert advice which has been presented within the report.

---

48 Abortion Policy Review
49 R v Bourne [1938] 3 All ER 615 at 617
50 R v Bourne [1938] 3 All ER 615
The emergence and spread of the Zika virus which has been directly linked to microcephaly in babies born to mothers with the virus is a new concern which impacts the reproductive rights of women and which calls for renewed examination of termination of pregnancy issues.

While the creation of laws to facilitate safe abortions is not a requirement for compliance with the Covenant, the high rates of maternal mortality and morbidity stemming from botched abortions, and the impact that absence of such a law has on the reproductive health of women, especially those who are young, single, unemployed or in low paying employment requires that the state take steps to protect the health and wellbeing of women and girls.

**Sexual and Reproductive Health of Women and Girls**

The efforts made to address sexual and reproductive health of women and girls remains dependent on short term programmatic initiatives and are not enshrined in a sexual and reproductive law or policy to ensure accountability and consistency. The State had undertaken the review of the Sexual Offences Act and other related Acts in 2014, however the process was not concluded and since the change in administration, there have been no steps to date to reconvene the Joint Select Committee to allow for the resumption of the review process.

To ensure that there is adequate protection for the sexual and reproductive health and rights of women, there must be a Sexual and Reproductive Health law which will work in conjunction with any HIV or AIDS policies or laws in existence and which will ensure accountability for all entities vested in health. For this to be truly effective it is necessary that the State pass anti-discriminatory laws which protect all persons from discrimination as they seek to access sexual and reproductive information, services and commodities.

The global community has acknowledged the importance of sexual and reproductive health as an aspect of the right to health. Notably the Sustainable Development Goals adopted by the UN General Assembly contains goal 3 which calls on state parties to “Ensure healthy lives and promote well-being for all at all ages” and goal 5 which aims to “Achieve gender equality and empower all women and girls”. While the state has continuously recognised reproductive health, there is need for greater recognition of sexual health for women and girls as a part of complete health and there should be efforts to have sustained state run programs and initiatives focusing on sexual and reproductive health and rights of women and girls.

The state must develop sustained public campaigns promoting the sexual and reproductive health of women including vulnerable women and marginalised women and women including lesbian, bisexual and transgender (LBT) women, women living with HIV, women with disabilities, and women and girls whose engaged in sex work and adolescents. The state must also provide women and girls with sexual and reproductive services and commodities at affordable rates, reduced costs or at no cost, including condoms, including female condoms, and contraceptive pills, and other forms of contraception towards empowering women to take charge of their own sexual and reproductive health. Additionally, there must be greater efforts to research social and cultural drivers which impact women’s sexual and reproductive health. A thorough examination of the role of gender roles, gender based violence including sexual violence and intimate partner violence and its impact on women’s sexual and reproductive health is essential.

**Age of Consent**

The age of sexual consent as outlined by the law in Jamaica is sixteen (16) years old. The presumption which has stemmed from this is that the age at which a child can consent to receiving information, services, treatment and commodities in relation to their sexual and reproductive health and is also at 16 years old. This has acted as a

---

54 General Comment No. 22 (2016)
56 Sexual Offences Act, 2009, section 10
barrier for young persons below the age of 16 accessing relevant information and services towards the protection of their sexual and reproductive health.

While the state notes “The Adolescent Health Unit of the Ministry of Health (MOH), with the support of a multi-sectoral Adolescent Policy Working Group has led the process of reviewing policies that limit adolescent access to Sexual and Reproductive Healthcare Services”, the initial reviews of the Sexual Offences Act and other related Acts by the Joint Select Committee of Parliament in 2014 raised the issue of whether the age of consent should be raised to 18 years old. A main advocate in favour of this position is the Children’s Advocate.

The Jamaica Youth Advocacy Network notes in its rebuttal submission that raising the age of consent would have the effect of further complicating and burdening the criminal justice system by dragging children who engage in sexual relations through a less than perfect justice system and will further drive sexually active adolescents and youth underground, acting as a hindrance for them to seeking important information and services. It was stressed that emphasis must be placed on the importance of culturally sensitive, age appropriate, life-skills based comprehensive sexuality education which also speaks to health promotion and development which is appropriately taught to all learners across the life-cycle, across all educational institutions and in places of safety.57 Raising the age of consent will not stem the ills which have been identified among adolescents namely early age of sexual debut, high rates of teenage pregnancy and a high HIV prevalence rate among young key populations.

RECOMMENDATIONS
The Committee should express concern that the State party has to date not acted on the recommendations made to it by the Abortion Policy Review Advisory Committee which submitted a report 9 years ago and has taken no steps towards amending its abortion laws. It should recommend the following: amend its abortion laws to help women avoid unwanted pregnancies and not to resort to illegal abortions that could put their lives at risk. The State party should take concrete measures in this regard, including a review of its laws in line with the Covenant. Furthermore, the State party should ensure that reproductive health services are available and accessible to all women and girls.

The Committee should, in its open session with the State party, request details about the creation of anti-discriminatory laws and a sexual and reproductive health law or policy towards ensuring that the sexual and reproductive rights of women and girls are protected. The Committee should recommend: the development of a Sexual and Reproductive Health law which will seek to provide guidance, protection and opportunities for redress for sexual and reproductive health issues which are faced by all persons, including women and girls.

The Committee should emphasise the importance of initiatives to tackle sexual and reproductive issues faced by women and girls and the importance of partnerships with non-governmental organisations working with and for women and girls. The Committee should note the need for data on key issues such as abortion and gender based violence. It should recommend the following: increase resources towards research on social and cultural drivers which impact the sexual and reproductive health of women and girls and further ensure that laws which hinder access to sexual and reproductive health services are removed to act as barriers for women and girls seeking to access sexual and reproductive health information, services and commodities.

D. STATE OF EMERGENCY, EXTRAJUDICIAL KILLINGS AND INVESTIGATIONS (ARTS. 2, 4 AND 6)

INDEPENDENT COMMISSION OF INVESTIGATIONS (INDECOM)

**Response of Civil Society**

The State party has not taken sufficient measures to empower the Independent Commission of Investigations (INDECOM) to carry out its functions, both in relation to Committee’s recommendation to bring clarity to INDECOM’s mandate and powers, and the provision of adequate resources. These outstanding issues threaten the State party’s fulfilment of the Covenant’s obligations to ensure effective, impartial investigations, and to provide an effective remedy. While there has been some positive progress in terms of political support, the Committee’s core recommendations remain unaddressed.

**Mandate and powers of INDECOM**

The Committee has expressed keen interest in securing an enabling legislative environment for INDECOM to be effective. However, the State party’s failure to reform the INDECOM Act to address the well-established challenges – despite the formation of a parliamentary subcommittee – continues to threatens this. Since the Committee’s recommendation to “clarify the mandates of INDECOM and the Office of the Director of Public Prosecutions with regard to powers to prosecute law enforcement personnel,” INDECOM has been forced to litigate numerous, costly cases – some of which are still ongoing – in order to secure its authority. Basic powers that are central to any independent investigative mechanism’s functions – to lay charges, arrest suspects, prosecute, and compel information – have been challenged in the Courts by members of the security forces, delaying the realization of INDECOM’s potential effect. Importantly, most court resolutions have been positive. In 2013 the Jamaican Constitutional Court in *The Police Federation and others v The Commissioner of the Independent Commission of Investigations and the Attorney General of Jamaica* held that:

1. The Commissioner and the investigative staff of INDECOM have the power of arrest both under common law and by virtue of the INDECOM Act, having been conferred with the powers of a constable
2. The Commissioner and investigative staff have powers at common law to charge and initiate prosecutions of members of the Police Force
3. There is no requirement for a ruling of the DPP before members of the Police Force are arrested and charged by officers of INDECOM
4. The powers possessed by officers of INDECOM to arrest, charge and prosecute members of the Police Force in no way undermine the constitutional authority of the DPP who still retains the authority to take over and/or discontinue any prosecution where such action is deemed appropriate by the DPP.

Despite the foregoing, this matter was appealed and the decision of the Court of Appeal – which could entirely reverse these gains and invalidate active cases – is still outstanding. The protracted uncertainty and recurring legal challenges has contributed to ambiguity in relation to the mandates of INDECOM and the DPP – which the State party is capable of solving through legislation – and has forced INDECOM to dedicate substantial time, resources and energy to litigating for its survival. Moreover, in the instant matter, the judgment of the Court of Appeal may not even resolve these ambiguities since the Police Federation could also appeal to Jamaica’s final appellate court – the Privy Council.

The State party’s failure to take “all the necessary steps” in this regard, as required by the Covenant, has no reasonable justification. It established and properly dissolved a Joint-Select Committee of Parliament to review the INDECOM Act which made several important recommendations to address the aforementioned issues, and a

---

58 Concluding Observations, 10
59 Para 334
range of others. But it has not acted to reform the law. While the State party has reported that a Cabinet submission has been prepared, this procedural step is no substitute for enactment. Several important legislative measures have languished despite a Cabinet submission being prepared. This should not be one such case.

**INDECOM’s resources**

Fully recognizing the financial constraints within which the State party operates, its financial support for INDECOM has not been adequate. INDECOM remains severely underfunded by the State, and has to devise alternative fundraising strategies. While the State party has reported that INDECOM’s annual budget is “approximately J$300 million,” it is important to note that the vast majority of INDECOM’s funding is provided by international donors. Without grants, the majority of its work would be substantially reduced, and it would have to reduce staff. This fundamentally threatens the sustainability of INDECOM’s work, and its security of independent operations.

**New procedural threat to INDECOM’s independence**

The State party, potentially unwillingly, undermined INDECOM’s independence in its passage of the *Committal Proceedings Act* (2013) by making aspects of INDECOM’s work dependent on police support. The Act is not itself a problem; it abolishes the preliminary examination hearing and introduce committal proceedings. Preliminary examination is a first step in Jamaica’s criminal jurisdiction to determine whether there is sufficient evidence to commit an accused person to stand trial. The Act empowers a Parish Court Judge (formerly Resident Magistrate) to make this determination based on written statements.

The harm arises in section 6 which requires that the written statements to be recorded by a member of the Jamaica Constabulary Force. It excludes INDECOM, and with it the possibility of INDECOM bringing written statements to court for committal proceedings unless such statement is signed by member of the Jamaica Constabulary Force – the same force it investigates and prosecutes. This compromises the independence of INDECOM’s operations on face, and is a retrograde legislative step that has already tangible hampered INDECOM’s work. Parish Court Judges – faced with conflicting legislative signals – have now taken issue with INDECOM’s exercise of its original statutory role in light of the new Committal Proceedings Act, and have rejected their attempts to file statements. As before, INDECOM is now compelled to seek court action to resolve another hindrance resulting from unclear and discordant statutes – and the State party’s lethargy in addressing same.

**Recommendations**

The Committee should express concern about the continued lack of legislative clarity on the interplay between INDECOM and the Office of the Director of Public Prosecutions with regard to the conduct of investigations and prosecutions. (arts. 2, 6 and 7). It should recommend the following: make the necessary amendments to Independent Commission of Investigation Act to clarify the mandate and role of INDECOM with regards to the powers to prosecute law enforcement personnel, to lay written statements in committal proceedings, and to compel written statements from law enforcement personnel.

**E. RIGHT TO LIFE, PROHIBITION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT AND TREATMENT OF PERSONS DEPRIVED OF THEIR LIBERTY (ARTS. 6, 7 AND 10)**

**TREATMENT OF PEOPLE DEPRIVED OF LIBERTY**

---

60 See *Committal Proceedings Act*
**Issue 13 in LoI:** Please provide information on the results of the measures taken to improve the treatment of persons deprived of liberty, in particular steps taken to lower overcrowding in places of detention. Please provide information on the outcome of the review of the detention system carried out by the subcommittee led by the Minister of National Security and the Minister of Justice (see State party report, para. 161). Please provide information on the implementation of the measures outlined in the Administration Policy for Persons Deprived of Liberty. Please also provide information on the use of alternative non-custodial sentences used to alleviate the problem of overcrowding in prisons (ibid., para. 172).

---

**RESPONSE OF CIVIL SOCIETY**

The State party systematically violates Articles 6, 7 and 10 of the Covenant. Jamaica’s places of detention are manifestly cruel, inhumane and degrading. The physical condition of lockups and prisons is indisputably deplorable, the treatment of detainees deeply discomforting, and the State party’s response indifferent. Other reports submitted for this review by members of this coalition and others – all of which this coalition endorses – have sufficiently established the extent of the violations of the Covenant associated with Jamaica’s detention and prison system. And while this report provides a general overview of the challenges that persist, multiple reputable bodies, including the Inter-American Commission on Human Rights (2015), INDECOM (2012-2015), Amnesty International (2014-2016), and the UN Special Rapporteur on Torture (2010-2011) have authoritatively described the grave situation facing any person deprived of liberty in Jamaica.

**Gaps in legislative framework**

As this Committee has recognized numerous times, proper legislative regulation of detention is necessary to protect the rights of persons deprived of liberty. In Jamaica, there is currently no clear statutory framework governing the treatment of persons in pre-trial detention. The majority are held in police lockups – dungeon style areas inside police stations originally intended to be short-term holding areas. Police lockups have become long-term detention environments and incubators for the worst human rights violations, including killings and torture, already established by this Committee in its previous reviews. A previous, archaic, regulatory framework, once existed, but was repealed with the passage of the Corrections Act, which does not regulate police lockups. The State party is in need of some legislative framework in relation to the treatment of persons in pre-trial detention. This can both guide its actors and citizens in relation to the rights of persons deprived of their liberty pending trial.

To the Committee’s immediate concern in its List of Issues, the recently adopted Administration Policy for Persons Deprived of Liberty has no force in law, and can hardly be externally enforced beyond voluntary commitments by the police. It is a – laudably progressive – policy directive based on best practices that, despite its short lifespan, has been systematically breached with little accountability. The lack of a statutory framework governing pre-trial detention enables this.

**General status of conditions and treatment**

No “measures taken to improve the treatment of persons deprived of liberty,” in which the Committee has taken interest in its List of Issues have meaningfully addressed the situation. In the strongest of terms, this coalition condemns the treatment of persons deprived of liberty in Jamaica. Without reservation, nearly all places of detention fall well below international minimum standards, and offend our collective humanity. Widespread unlawful detention exists, places of detention remain overcrowded public health hazards, and officials in charge of places of detention routinely abuse those in their care with impunity. The cascading human rights violations are of such a severity that many detainees and inmates continue to experience severe mental health problems resulting from their incarceration.

**Overcrowding** – Both police lockups and prisons still face chronic overcrowding that make detention situations hostile, unsafe and unhealthy. The Tower Street Adult Correctional Facility in Kingston, for example, continues to operate with an inmate population twice that of its maximum capacity. Numerous credible reports reveal that this has resulted in scores of inmates being crammed into tiny cells – designed in the Colonial era – that lack any basic plumbing, lighting and ventilation.
Health and sanitation – Places of detention are still filthy, unhealthy environments that precipitate health emergencies. At many places of detention and prisons, rats, roaches, lice, and crabs have overrun the facilities. In some instances, police lockups have had to be ordered closed by public health departments, notably the Kingston Central Police Station in 2013. Most cells lack a toilet, and detainees and inmates are usually only released once daily for bathroom and hygienic care. As such, it is standard practice for inmates to urinate and defecate in their cells, normally in lose bags and bottles they have acquired. Unsurprisingly, reports of infections and other sicknesses are high. To exacerbate that situation, prison officials routinely deny detainees and inmates access to medical care – in many cases as a punitive measure,

Treatment – Officials habitually abuse, mistreat and neglect persons in their care. INDECOM has related several deaths in custody, and other actors report frequent beatings, humiliating acts and other forms of degrading treatment. Notably, in its national report, the State party concedes that allegations of torture have been levelled against officials. This situation persists, with near impunity.

Separation – There has been progress to ensure that minors detained are held separately from adults. However, those accused persons are not systematically separated from convicted persons. Numerous complaints of judgment debtors being held in the same cell as persons who have been charged for murder exist, in violation of article 10.

Prevention – No effective, rights-based special training by the State party of officers on the duty to respect the Standard Minimum Rules for the Treatment of Prisoners exists. The State party has facilitated a few training exercises by NGOs like Jamaicans for Justice on this point. This ad hoc training mechanism is insufficient to correct widespread disregard of the Human Rights of persons deprived of their liberty.

Sentencing guidelines
Whilst it is apparent that the State party has taken some effort to implement sentencing guidelines to assist legal practitioners and Judges to be aware of the existences of viable alternatives to imprisonment. These guidelines are not publicly available to legal practitioners and some members of the judiciary report that they have not seen the draft Sentencing Guidelines.

Recommendations
The Committee should express alarm at the longstanding rights violations faced by people deprived of liberty. It should recommend the following: implement, through legislation, comprehensive reform of the system of detention, taking into account international human rights standards for the deprivation of the liberty.

Anti-torture provisions

Issue 14 in LoI: Please indicate the number of cases successfully brought before the courts under anti-torture provisions in domestic law such as those within the framework of the Constitution, and steps taken to define torture as a separate offence in the criminal legislation to comply with article 7 of the Covenant. Please also provide information on any results stemming from the implementation of the memorandum of understanding between the Office of the Public Defender and the Jamaica Constabulary Force which sets out a framework to reduce some of the delays in the investigation of constitutional breaches by members of the Force.

Jamaica still has not defined torture in its criminal law, in accordance with Article 7, nor has it established a sufficient legislative framework for addressing it, despite the assertion that existing oversight bodies are a viable substitute. The State party’s position that there is no need to establish anti-torture provisions in law – beyond a vague, undefined, untested reference in its Charter – is unpersuasive.

---

Mention of torture – without reasonable definition – within a Charter is not an effective measure in the context of the Covenant’s obligations. Yet, on uncertain basis, the State party further asserts that this also “provides for the right to protection from torture or inhuman or degrading punishment or other treatment,” creating a “specific constitutional redress.” Tellingly, despite the widespread reports of torture and other forms of cruel, inhuman and degrading treatment, the State party is unable to provide a single case of this remedy being effectively utilized.

The State party also suggests that existing provisions in its Offences Against the Person Act that criminalize assault and battery are sufficient to cover torture, cruel, inhuman and degrading treatment. This is false. First, the dissimilar objective characteristics of each offense make the coverage dis-analogous. Second, torture etc. exist in non-physical forms that are not covered by assault and battery. This Committee has extensively addressed the various forms of torture and cruel, inhuman and degrading treatment, including psychological and emotional trauma. Despite many reports to that effect, Jamaica lacks any serious legislative framework to address it. The State party systematically defeats its own argument to this effect when it includes seven complaints from inmates “housed at the Horizon Adult Correctional Centre, that they were being tortured physically and psychologically.”

RECOMMENDATION

The Committee should explicitly state that the scope of the Covenant’s obligation to proscribe acts of torture are not fully reflected in the State Party’s laws or the robustness of its preventative mechanisms. It should recommend the following: Establish explicit anti-torture provisions in law that inter alia define torture and other forms of cruel, inhuman or degrading treatment as criminal offenses.

F. RIGHT TO AN EFFECTIVE REMEDY AND FAIR TRIAL (ARTS. 2, 6 AND 14)

JUSTICE REFORM AGENDA

Issue 17 in LoI: Please provide information about the impact of the efforts made to implement the Government’s Justice Reform Agenda aimed at addressing the reported backlog of cases, the reform of the justice system, including its resource constraints, and the enhancement of access to an effective legal remedy (see State party report, paras. 173-178). To what extent have the projects, pilot programmes and provision of pro-bono legal services had a positive effect on the enhancement of speedy and fair trials? Please provide information on steps to amend the Legal Aid Act.

The State party has, regrettably, faced setbacks in the implementation of its Justice Reform Agenda which is reportedly aimed at addressing the reported backlog of cases. Most practitioners see the successful passage of the committal proceedings as a mere transfer of the backlogs from the parish courts to the Supreme Court. There are already well document problems in relation to the progress of matters in the Supreme Court with many matters taking more than three years before trial commence in the Supreme Court. It is the lack of reform of the justice system, including the continued resource constraints which has adversely affected the enhancement of access to an effective legal remedy.

There is no credible evidence that the projects, pilot programs or pro-bono legal services have had a positive effect on the enhancement of speedy and fair trials. In fact, whilst the state has nominally increased the rate offer to Attorney for work on behalf of the indigent, the sum offered for the entire legal representation in most cases is less than US$300. This fee is way below the market rate and members of the public report that the small fees offered to them has resulted in sub-par representation in court. In many cases, we receive reports of legal aid Attorneys simply not appearing for scheduled matters. The poor state of legal aid service has resulted in lengthy trial dates as court dates are often delay by the failure of Attorneys to appear for trial matters.

63 Ibid, para 164
The Coroner’s Court

**Issue 18 in LoI:** Please provide information on the number of inquests made by the Coroner’s Court in addressing issues of excessive use of force by law enforcement personnel and specify the number of prosecutions carried out by the Director of Public Prosecutions concerning extrajudicial killings since the previous review by the Committee in 2011.

The Special Coroner’s Court is still insufficiently tasked to sufficiently address the number of cases entrusted to it. A coroner’s inquest is usually held to determine whether anyone should be held criminally liable for a death in cases where the issue is not clear cut to the authorities or if there is difficulty in determining who should be charged. Evidence is led before a jury which decides on the issue.

The Special Coroner Court has only one Judge. He is required to travel to all 13 court parishes to hear special coroner cases. He notes that he currently has severe resource constraints. In an article in the Jamaican newspaper he outlines the problems faced by his office. The Special Coroner court can only hear a maximum of three to four cases per a month. He however has a backlog of more than 300 – 400 cases. Jamaicans for Justice had approximately more than 495 cases which are awaiting a hearing date from the Special Coroner’s Court. Some of these matter existed before the formation of the Court but were transferred by Parish Coroner Court to the Special Corner Court upon its formation. In one case, we have client who are waiting more than 13 years for the starting of an inquest by the Special Coroner Court. This client started the case with five civils witnesses to the fatal shooting. The client reports that two of her witnesses have died whilst she awaits the start of the inquest. She is still waiting for the start of this matter.

The Special Coroner’s cannot clear the back log without additional Coroner to assist him to carry out his mandate. The Court is an essential element of the investigation of police fatal shooting.

G. Rights of the Child (Arts. 9, 10, 14 and 24)

**Issue 19 in LoI:** Further to the current review and revision of the Child Care and Protection Act (see State party report, para. 182), please provide information on the time frame for its amendment, in particular its paragraph 24, which would remove the possibility of incarcerating a child on the basis of being beyond parental control. Please provide information about the number of persons that have been issued correctional orders under paragraph 24 of the Act over the past two years.

Three companion reports from members of this coalition authoritatively address this issue, the nature of the violations, and the required recommendations. This coalition unreservedly supports those expert reports. With regard to the status of reforms, the State Party has failed to deliver on the changes to the Child Care and Protection Act that it has promised reforms for over a decade. It’s commitments to this Committee are not new, and its assertion that a reform proposal is “under review,” has little value. The possibility of incarcerating a child on the basis of being beyond parental control exists in Jamaica, and is still being utilized.

While the Cabinet took a decision to phase this out, and correctional orders from judges have almost ended, a review of the weekly station logs by Jamaicans for Justice reveals that many children are still detained in police lockups by officers for being “uncontrollable,” often for illegal periods and in inhumane settings.

**Issue 20 in LoI:** Please provide information on steps that have been introduced to remove minors from police lock-ups and to provide alternative arrangements to detention in line with the Covenant. Please provide disaggregated

---

64 Jamaica Observer,” Case overload choking Coroner’s Court,” May 10, 2016
data on the number of children detained in police lock-ups. Please provide information on the status of the Child Diversion Policy and its implementation.

Three companion reports from members of this coalition authoritatively address this issue, the nature of the violations, and the required recommendations. This coalition unreservedly supports those expert reports. With regard to the status of removing minors from police lockups, the State party continues to detain children in these settings. A review of police station logs by Jamaicans for Justice from 2014-2016 reveal that many children are still detained in police lockups, with almost all of them in custody for over 24 hours. Many had been detained for questionable reasons such as “indecent language.”

The Child Diversion Bill is being drafted.

**Issue 22 in LoI:** Please indicate the impact of the safe school policy on the promotion of non-violent forms of discipline as alternatives to corporal punishment (see State party report, para. 141). What steps are being taken to prohibit corporal punishment of minors in educational institutions and family settings?

Corporal punishment of children in educational institutions and family settings is still lawful. The State party has resisted addressing this violation of its obligations both under this Covenant and a range of other instruments.

Under the common law in Jamaica, there is a right to inflict “reasonable and moderate” punishment on a child. The *Child Care and Protection Act* punishes “cruelty to children” inclusive of assault and physical or mental ill-treatment “in a manner likely to cause that child unnecessary suffering or injury to health”, but it does not prohibit all forms of corporal punishment and allows by inference, the infliction of “necessary” suffering. Furthermore, while it outlaws corporal punishment for early childhood education facilities and for government institutions such as children’s homes and places of safety, public schools are not included. This inherently creates ambiguity among Ministry of Education, Youth and Information officials and local school personnel as to acceptable forms of discipline. The failure of the State Party to take corrective legislative action leaves important gaps in the fulfilment of its international obligations.

The State party alleges the creation of a School Safety Policy which expresses a clear position on Corporal Punishment. This is factually disputable, but irrelevant. A Safe Schools Policy has no force of law and is silent on corporal punishment in family settings. **Law reform to prohibit corporal punishment should aim to ensure that children are legally protected from assault just as adults are.**

**Impact of the Safe Schools Policy**

The State party indicates in its National Report that it has established a Safe School Policy for Jamaican schools which includes provisions to abolish corporal punishment and the promotion of positive and progressive forms of discipline and intervention alongside support for children experiencing social and emotional behavioural problems. This is not the case. No truthful reading of that document could suggest that.

A part of their mandate is a comprehensive document detailing security and safety policy guidelines. However, within that medium, the common law position is reaffirmed. It reads that “a principal or teacher may be justified in committing a trespass against a student where the action in question is reasonably necessary for the maintenance of discipline or for preserving that student’s welfare. The authority of the schoolmaster is, while it exists, the same as that of the parent. A parent when he places his child with a schoolmaster delegates to him all his own authority so far as it is necessary for the welfare of the child.” This position, though addressing the powers of search in an educational institution, indirectly transcribes the common law powers of a parent concerning the management and corrective discipline of a minor.

---

65 Ryan v Fildes and Others [1938] 3 KBD
Furthermore, while the theoretical position of the State party appears to be one towards the dismantling of corporal punishment, it is to be noted that in public schools, corporal punishment is in fact lawful. There is no provision in the Education Act 1965 or Education Regulations 1980, but under the common law, a teacher may be justified in administering “moderate and reasonable” punishment.

While the State has been adamant in their position to abolish corporal punishment in schools and has instructed schools to do it, there has been no legislative reform and therefore no weight and authority of the law in support of such a position.

Currently, corporal punishment of children in Jamaica is unlawful in the penal system, alternative care settings and early childhood institutions, but is not prohibited in schools nor the family setting. Furthermore, despite the State’s assertion that Corporal Punishment is limited to specific levels of the Jamaican School System, reports of abuse continue to be widespread. Students are still subjected to traditional means of discipline contrary to General Comment No 8. Students are still forced to stand for prolonged periods of time, slapped with sticks, belts, canes and rulers among other things as a form of punishment. Furthermore, the definition of Corporal Punishment recognizes that there are non-physical forms of punishment that are also cruel and degrading and therefore incompatible with the Convention on the Rights of the Child. Punishment\textsuperscript{68} which embarrass, belittle, humiliate, denigrate, scare or ridicule a child should also be explicitly prohibited. Violence against children in the education system and elsewhere cannot be abolished whilst some levels of it remain legally and socially accepted.

Effects of Corporal Punishment
The effects of corporal punishment can impair a child’s lifelong physical and mental health. Physical punishment, however mild or light, also carries an inbuilt risk of escalation. This risk of escalation is oftentimes increased by the fact that adults who inflict physical punishment are angry.\textsuperscript{69} Furthermore, mentally, corporal punishment is an emotionally daunting method of correction and its connection to a child experiencing poor mental health is clear. The reality of corporal punishment is often associated with a decline in a child’s mental health which usually has the child exhibiting clear signs of behaviour disorders, anxiety, depression and hopelessness.\textsuperscript{70}

Corporal punishment breaches a child’s right to physical integrity, respect for their human dignity and equal protection under the law. Whilst discordant policy statements have been made from time to time discouraging corporal punishment, these are undermined by a legal standard which condones it, absent corrective legislation.

RECOMMENDATIONS
The Committee should express concern about the serious delay in amending the Child Care and Protection Act to better comport with the provisions of the Covenant by \textit{inter alia}, by prohibiting corporal punishment, removing the possibility of incarcerating a child in adult institution or on the basis of being "beyond parental control." It should recommend the following: \textit{expeditiously amend the Child Care and Protection Act to \textit{inter alia} fully comply with international standards for juvenile justice}, \textit{repeal the common law right to inflict “reasonable and moderate” punishment, and explicitly prohibit all forms of corporal punishment.}

H. FREEDOM OF EXPRESSION AND HUMAN RIGHTS DEFENDERS (ARTS. 6, 19 AND 22)

\textsuperscript{68} Committee on the Rights of the Child, General Comment No 8 2006 para 11 (supra)

\textsuperscript{69} Durrant, J. E. et al (2004), Joint Statement on Physical Punishment of Children and Youth, Ottawa: Coalition of Physical Punishment of Children and Youth

The State party has instituted a commendable law. Regrettably, its officials continue to undermine its potential national impact by systematically breaching its provisions. Access Officers habitually violate the Act’s provisions regarding timelines and manner for response to requests. Moreover, in this coalition’s collective experience, they exhibit alarmingly low knowledge of the Act’s provisions, despite being responsible for administering them. Furthermore, the Appeals Tribunal, is an inaccessible procedure faced with inordinate delays that effectively frustrate any attempt to hold public authorities accountable for breaches.

The State party engaged in a lengthy review of the Act, via parliamentary committee on which it is yet to act. Many of the changes contained in the Joint-Select Committee to Review the Access to Information Act, would vastly improve the national implementation of the Act, and deepen the access of persons to seek and receive information.
Human Rights Violations
Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Jamaica: A Shadow Report

Submitted for consideration at the 118th Session of the Human Rights Committee
October 2016, Geneva

Submitted by:

J-FLAG
Women’s Empowerment for Change (WE-Change)
The Colour Pink Foundation
TransWave
Center for International Human Rights, Northwestern Pritzker School of Law of Northwestern University
Global Initiatives for Human Rights of Heartland Alliance for Human Needs & Human Rights

September 2016
Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender People in Jamaica: A Shadow Report

I. Introduction

This shadow report on violations of the human rights of lesbian, gay, bisexual, and transgender (LGBT) people in Jamaica is submitted to the Human Rights Committee (“Committee”) in anticipation of the Committee’s consideration at its 118th Session of Jamaica’s compliance with the International Covenant on Civil and Political Rights (“Covenant”). This report is submitted by the following organizations: J-FLAG;1 Women’s Empowerment for Change (WE-Change);2 The Colour Pink Group Foundation;3 TransWave;4 the Center for International Human Rights of Northwestern Pritzker School of Law; and the Global Initiatives for Human Rights of Heartland Alliance for Human Needs & Human Rights.

The purpose of this report is to draw the Committee’s attention to the ongoing violations of the Covenant rights of LGBT individuals in Jamaica. These violations include, in particular, the following:

** While Jamaica has taken an important step forward by developing a new policy to guide police response to violence based on sexual orientation and gender identity, more needs to be done to prevent, prosecute and punish violent attacks, including mob violence and sexual assault against LGBT individuals, and including cases where the police themselves have stood by or been the perpetrators;

** Jamaica has not taken sufficient measures to respect and ensure the rights of individuals to equality and non-discrimination regardless of their real or perceived sexual orientation and gender identity; and

---

1 J-FLAG is the foremost organisation in Jamaica advocating for, and working to improve the human rights situation of, lesbian, gay, bisexual and transgender (LGBT) persons. The organisation promotes social change by empowering the LGBT community, building tolerance for, and acceptance of, LGBT people, and creating a foundation for policy and legislative reform.

2 Women’s Empowerment for Change (WE-Change) is a rights-based, women-led, community-based advocacy group committed to increasing the participation of lesbian, bisexual and transgender [LBT] women in social justice advocacy in Jamaica and the Caribbean.

3 The Colour Pink Foundation is a nongovernmental organization in Jamaica, focused on reaching Gay, bisexual men, and other Men who have sex with men (MSM), and Transgender persons, who are homeless or displaced. CPG focuses on providing education, life skills, and linkages with healthcare providers in order to provide clients with the necessary tools, and empower them, to rise out of poverty and to positively contribute to the Jamaica society

4 TransWave, a Jamaican NGO founded in August 2015, promotes transgender health and well-being through advocacy and visibility. TransWave highlights and shares stories of transgender and gender nonconforming Jamaicans while educating the wider society about issues faced by the community. In addition, it focuses on building the capacity of the community to increase their involvement in advocacy and social justice.
**Jamaica has failed to develop a legal system that is responsive to and inclusive of the rights of LGBT persons by repealing laws that violate their rights, amending laws to equally protect LGBT persons, and creating legislation to address the various challenges they continue to experience.**

In its November 2011 Concluding Observations, this Committee made the following recommendations to Jamaica:

“The State party should amend its laws with a view to prohibiting discrimination on the basis of sex, sexual orientation and gender identity. The State party should also decriminalize sexual relations between consenting adults of the same sex, in order to bring its legislation into line with the Covenant and put an end to prejudices and the social stigmatization of homosexuality. In this regard, the State party should send a clear message that it does not tolerate any form of harassment, discrimination or violence against persons for their sexual orientation, and should ensure that individuals, who incite violence against homosexuals, are investigated, prosecuted and properly sanctioned.”

Regrettably, as our report will show, Jamaica has not amended its laws to prohibit discrimination on the basis of sex, sexual orientation and gender identity. Nor has Jamaica repealed its laws which criminalize same-sex sexual relations between consenting adult males. While, as will be noted, the State has taken some measures to promote tolerance and respect for sexual and gender minorities, much more needs to be done.

Our report will conclude with proposed questions to be asked during the Committee’s dialogue with Jamaica, and proposed recommendations to be made to Jamaica at the conclusion of the Committee’s review.

II. Failure to adequately prevent, prosecute and punish violent attacks, including mob violence and sexual assault against LGBT individuals, and including cases where the police themselves have stood by or been the perpetrators

Violent attacks and threats of violence perpetrated against sexual and gender minorities have been all too frequent in Jamaica. LGBT individuals have been attacked, and sometimes killed, by mobs. Lesbians have been raped in what is perversely viewed as “corrective rape,” in the belief that intercourse with a man will “cure” a lesbian of her sexual orientation. Frequent threats of violence have led LGBT individuals to live in fear and, in some cases, to flee their homes. The State has failed in its obligation to take appropriate measures to prevent these attacks and to vigorously investigate and prosecute the attackers. On some occasions the police themselves have attacked victims or have stood by during attacks by private actors.

These attacks and threats, examples of which are provided below, violate rights protected by Articles 6 (life), 7 (torture and cruel, inhuman, or degrading treatment), and 9 (security of person).

---

Jamaica’s failure to take adequate measures to respect and ensure these rights violates its obligations under Article 2(1) (obligation to respect and ensure, without discrimination) and 26 (equal protection of the law). The attacks on teens under the age of 18 additionally violate article 24, which recognizes that every child has the right, without discrimination, to special measures of protection on the part of the child’s family, society and the State. The sexual attacks against lesbians additionally violate Article 3 (equality of women and men).

A. Violent attacks

During interviews conducted by Human Rights Watch in April and June 2013 with 71 self-identified LGBT Jamaicans, twelve of the people interviewed reported that “they knew of a friend, partner, lover, or associate who had been murdered because of their real or perceived sexual orientation or gender identity.”

In a 2015 J-FLAG survey of 316 LGBT Jamaicans, 43% of respondents reported receiving threats of physical violence in the last 5 years, and 18% reported being threatened with sexual violence. On average, these individuals received two or three such threats each.

Unfortunately, this violence continues. From January to June 2016, 23 individuals reported to J-FLAG that they had been physically assaulted or attacked due to their sexual orientation or gender identity.

The following are examples of violent attacks due to sexual orientation or gender identity:

Dwayne Jones, a sixteen-year-old teen, was murdered by a mob in Irwin, a town in St. James on 21 July 2013. Dwayne had attended a dance party wearing women’s clothing. The teen was viciously attacked when people at the party realized that Dwayne was biologically male. Dwayne was stabbed, beaten, shot and run over by a car before his body was dumped in the bushes by the side of a road. No one has been brought to justice for this crime.

A gay man from Montego Bay and a group of his gay male friends were attacked around 6:00 p.m. one evening in March 2013 by a mob of about ten men. The attackers, armed with machetes, stones and other weapons, came at them yelling “Battyman fi dead.” “Battyman” is a derogatory term for a man who has sex with men, and “fi dead,” in Jamaican, means “should be dead” or “must

---

10 HRW 2014, supra note 6, pp. 24-25.
While the victims were able to escape, one had his nose broken by the mob. That victim went to the police that evening, but, he said, “the police didn’t make any effort.”

On 6 October 2013 in New Kingston, a gay man was severely beaten in the parking lot at his workplace by three male co-workers. This attack continued for fifteen minutes in the presence of the company’s security guard. Despite several cries for help, the guard made no effort to assist the abused victim. The attackers taunted the individual with homophobic slurs, such as “Battyboy fi dead!” The victim suffered severe muscle damage in his right eye causing his vision to significantly deteriorate. Out of fear of further public shaming and ridicule, the victim has never reported this incident to the police.

On 15 June 2014, a transgender teen, who was in the process of transitioning her appearance, was attacked when she attempted to purchase lip gloss at a store in May Pen, Clarendon. Local People had become suspicious because of her androgy nous appearance. When she was seen in the store, a rumor went around that “There is a Battyman in the store.” An aggressive mob gained momentum outside the store entrance, chanting “Kill her, mek wi kill her! Mek wi light har on fire!” Even after the police arrived, the violent mob was unstoppable. The teen narrowly escaped with the help of store workers and the police (two of whom went beyond the call of duty to make sure she was safe).

On 6 March 2016, a transgender woman was severely beaten and left for dead in a gully. After attending an event at the National Stadium in Kingston, the victim and her friends had stopped at a gas station in New Kingston. As they left the gas station, a vehicle carrying a group of men stopped in front of them, blocking them from driving off. Almost immediately, another vehicle blocked them from behind. The men in the front car alighted from their vehicle and pulled the transgender woman from her car. They beat her severely, then took her to an inner city community where she was beaten again. The attackers then threw her body in the Sandy Park Gully in St. Andrew and left her for dead. Fortunately, the victim was spotted by a man who called the police, and the woman was taken to a hospital. The beatings left her with a fractured right arm and wounds on her face, arm, hips, and back.

B. Sexual assault

On 22 August 2014, two men broke into the Portmore home of a 37-year old lesbian and raped, beat, and stabbed her. Prior to that night, many people in the victim’s neighborhood, having seen her female partner visiting her home, had yelled “sodomite” and threatened her. On the night of the attack, the woman was awakened by the intruders’ shouts of “sodomite, lesbian, dirty girl, we have come for you.” The men took turns raping her. They beat her severely, breaking her arm, and stabbed her in the stomach with a 12-inch knife. She was hospitalized in critical condition.

---

11 Id., Note on Jamaican Language, p. III.
12 Id., at 25.
13 Incident reported to J-FLAG on 30 Sept. 2014.
14 Incident reported to J-FLAG on 27 Mar. 2015.
16 Incident reported to J-FLAG on 4 Nov. 2015.
On 15 July 2015 in Rockfort, Kingston, a group of men approached a lesbian and threatened to rape her, telling her that after sexual intercourse with a man, a lesbian would be “cured” of her homosexuality. The woman also received several death threats such as “lesbian fi dead” from people in her neighborhood. These ongoing threats forced the woman to move from Kingston to another part of Jamaica.\(^\text{17}\)

In September 2015, a lesbian who lived with her female partner in St. Andrew reported being continually subjected to rape threats by neighborhood men. Neighborhood men perceived her as being masculine and “edgy” because she dressed like a man and had a short buzz cut hairstyle. She was repeatedly subjected to homophobic slurs and threats of rape, such as: “You Sodomite, we will straighten you out. All you need is a big cocky in you. Sodomite fi dead.”\(^\text{18}\)

A 26-year-old lesbian, who was subjected to “corrective rape” as a child, continues to face death threats and threats of rape even today. At the age of twelve, she was raped by her own relatives and other men from her neighborhood to “cure” her of her homosexuality. After facing continuous abuse, threats and remarks because of her sexual orientation, she left her neighborhood to live “in the bushes,” i.e., in the undeveloped areas of rural Jamaica. As a result of these ongoing abuses, she tried to leave Jamaica and obtain asylum in the Netherlands.\(^\text{19}\)

Gay men as well as lesbians have been victims of sexual assault. For example, on 9 February 2015, a 22-year-old gay man suffered a brutal sexual assault. When the victim and his friend arrived at the friend’s home for the night, three men were waiting for them armed with machetes. Saying, “Batty man love do nastiness, so you don’t mind doing it to us,” one of the assailants forced the victim to perform oral sex and then anally penetrated him. The victim experienced heavy anal bleeding and passed out. Later, he learned that he had contracted two sexually transmitted infections from his assailant.\(^\text{20}\)

C. Attacks and inaction by police

1. Police as perpetrators

On some occasions, the police themselves have been perpetrators. For example:

In January 2013, a gay man who had been beaten by a large crowd was handcuffed by the police and placed in a police car. While the man was handcuffed in the car, a police officer hit him with his baton, saying, “Hey, you’re a fish [a pejorative term in Jamaica for men who have sex with men], and you are a battyman.” At one point the police stopped the car and the two officers continued to hit him. At the station, another police officer told him, “Fish don’t last long in St. Ann,” and “Everyone who comes in comes out dead.” He was held in handcuffs overnight, and released in the morning with the admonition that he should go to church.\(^\text{21}\)

\(^{17}\) Incident reported to both J-FLAG and the NGO Aphrodite’s P.R.I.D.E Jamaica on 20 Aug. 2015.

\(^{18}\) Incident reported to J-FLAG on 24 Sept. 2015.

\(^{19}\) Incident reported to J-FLAG on 7 May 2015.


\(^{21}\) HRW 2014, supra note 6, p. 34.
Late in the night on 21 July 2015, a young woman was walking to her home in Kingston. A police officer came up to her and told her to take another route instead of walking the way she was going. She said no, and told the police officer that the other way was not safe for a woman walking by herself. The officer pulled her pants and pepper sprayed her three times. He then told her, “You’re acting like a man so he’s going to treat her like a man.” The officer also popped off her chain and broke her phone during the interaction. The woman believed she was targeted by the police officer because she was perceived to be dressed like a tomboy, which made the police officer assume she was gay.22

In October 2015, a masculine-expressing lesbian was subjected to homophobic slurs, abusive treatment and arbitrary detention at a police station in St. Andrew. The police called her a “sodomite” and threatened to take her to another location where she would be beaten. Although she was never charged with any crime, she was remanded for almost four months.23

2. Police failure to intervene to stop an attack

The Jamaican police have made efforts to encourage reporting of crimes against LGBT persons and to intervene when such crimes occurred.24 For example, on 22 August 2013, five men thought to be gay were trapped in their house in Green Mountain by a mob attack until the police escorted them to safety.25 However, there have been other occasions when the police have refused to intervene when a crime against an LGBT individual was in progress. For example:

In January 2013, the police watched and did nothing for about twenty minutes while a mob of about 30 people attacked a gay man. Armed with knives, machetes and sticks, the attackers shouted homophobic insults as they beat the man. When the police finally intervened and placed the victim in a police car to separate him from the mob, they handcuffed and beat him.26

3. Inaction and abuse by police when LGBT individuals attempt to report crimes

On other occasions, the police refused to take action when LGBT individuals attempted to report crimes, and instead subjected the LGBT crime victims to verbal abuse. For example:

When, in August 2012, a lesbian couple went to the Greater Portmore police station to report that they had been raped, they were verbally abused by the police. When the women had returned home one night, two men accosted them, forced them into their house at gunpoint and raped them, saying “You not with nuh man.” When the women reported the crime, the police officer asked if they were related. The women said that they were “just friends, sharing the place.” The police officer responded, “You’re sodomites, look at her, a sodomite them, why did you come to the police

22 Incident reported to the NGO Aphrodite’s P.R.I.D.E. Jamaica.
26 HRW 2014, supra note 6, p. 27 (this incident was also referenced in prior section on violence by the police).
station? A fuck you want, a fuck you get.” According to the women, the police did not take any action.  

In February 2013, a gay 17-year-old was beaten severely by his brother because of his sexual orientation. When he went to the Montego Hills police station to report the crime, he was made to wait for four hours, and even then, the police did nothing, saying “That’s the reason he is being beaten. He’s a battyman, a fish.”

In another February 2013 incident, when a homeless gay youth went to the New Kingston police to report having been chased by a mob of construction workers, the police officer on duty would not let him use his pen to sign the complaint: “You are battyman. We don’t want battyman to use our pen.”

Moreover, it is noteworthy that the perception of a significant number of Jamaicans is that the police treat LGBT persons worse than heterosexual persons. According to the 2012-2013 Jamaica National Crime Victimization Survey, 46.5% residents in Kingston reported that they feel that the police treat homosexuals worse than heterosexuals. The percentages in other parishes were: St. Andrew (16.5%), St. Thomas (19.1%), St. Mary (31.8%), St. James (32.3%), Clarendon (28.2%), St. Catherine (22.3%) and Trelawney (28.3%).

4. Unwillingness of LGBT crime victims to report crimes against them, due to police attitudes

It is important to note that in an effort to improve public confidence in the police, in 2011 the Jamaica Constabulary Force issued a Policy on Diversity with the aim to “effectively transform the negative aspects of police culture manifested in the scant regards paid to reports made by members of diverse groups, as it relate to the incidence of crimes committed against them.” According to the policy definitions, diverse groups comprise, among others, persons of various sexual orientations. In addition, the police have undergone a number of human rights-related capacity building and sensitization workshops. For example, in September 2015, two-hundred and thirty (230) police officers participated in a two-day training which “focused on the safety and security of women and girls, persons living with disabilities, marginalised youth, and members of the lesbian, gay, bisexual or Transgendered (LGBT) community.” However, as J-FLAG stresses, “much more work needs to be done to ensure that all Jamaicans are protected and where their rights are infringed, they are treated equally before the law.”

---

27 Id., pp. 29-30.
28 Id., p. 33. “Fish” is another pejorative term used in Jamaica for men who have sex with men. Id. at III.
29 Id., p. 34.
31 Id., p. 262.
33 Id., p. 2.
35 J-FLAG 2013, supra note 24, p. 4.
Negative police attitudes towards LGBT persons persist and as a consequence, many LGBT crime victims do not even attempt to report crimes to the police. For example:

In August 2014, a young man rented two rooms for himself and his partner in St. Catherine. He told the landlady that the partner was his cousin. The landlady would watch them and peep through the door. Once, when the young man was traveling, upon his return home he found his partner sitting outside crying and shaking. The partner told the man that their landlady had brought someone with a gun and had threatened them and said they had to get out, saying that the Holy Spirit had told her that they were gay. The couple did not report any of this to law enforcement authorities because, in their view, “it doesn't go anywhere.”

This attitude is widespread among LGBT individuals. After interviewing 71 LGBT individuals during April and June 2013, Human Rights Watch reported that “[m]ost of the LGBT people we interviewed said they did not even report criminal acts to the police, fearing they would be unresponsive because of the victim’s sexual orientation or gender identity.” This same view was widely expressed at a focus group held in Kingston in October 2015 with a group of ten homeless gay and transgender individuals. LGBT NGOs in Jamaica report the same, based on their extensive work with LGBT victims of hate crimes.

A 2013 J-FLAG report titled “Homophobia and Violence in Jamaica” indicates that a significant number of incidents perpetrated against LGBT persons were not reported until several months after they occurred. Among the reasons for this late reporting was the fear to be known as part of the LGBT community.

A 2015 study commissioned by J-FLAG (and published in 2016) on “The Developmental Cost of Homophobia” indicates that a large number of LGBT people did not report the last incident of physical or sexual assault that was perpetrated against them to the police. Thirty percent of the persons did not report because they felt the incident was too minor to be reported, while 40.5% did not report because they felt the police would not do anything to address the matter. About 1 in 4 (25.5%) feared a homophobic response from the police, and about 1 in 5 (22.9%) did not report because they felt too ashamed or embarrassed and did not want anyone to know what had happened to them.

III. Failure to take appropriate measures to respect and ensure the right of LGBT individuals to equality and non-discrimination

Notwithstanding measures undertaken to address the abuse and reduce stigma against the LGBT population, such as the above mentioned Jamaica Constabulary Force Policy on Diversity and human rights-related capacity building and sensitization workshops for the police, homophobia and transphobia are widespread in Jamaica, leading to frequent acts of discrimination based on

36 Interview with victim, 30 Oct. 2015.
37 HRW 2014, supra note 6, p. 17.
38 Focus group discussion, 28 Oct. 2015.
39 J-FLAG 2013, supra note 24, p. 3.
40 Id.
41 J-FLAG 2015, supra note 7, p. 59.
sexual orientation and gender identity. Regrettably, Jamaica has failed to enact laws to outlaw and sanction discrimination on the basis of sexual orientation and gender identity by private actors. Indeed, by continuing to criminalize male same-sex sexual conduct, Jamaica gives seeming legitimacy to the stigmatization of, and discrimination against, LGBT individuals.

By failing to protect LGBT individuals from stigmatization and discrimination based on their sexual orientation and gender identity, Jamaica has violated its obligations under Articles 2(1) and 26 to respect and ensure the rights to equality and non-discrimination.

In cases affecting teens under age 18, there is an additional violation of the Article 24 obligation to provide special measures of protection to children.

A. Failure to prohibit by law discrimination on the basis of sexual orientation and gender identity

Although Jamaica’s 2011 Charter of Fundamental Rights and Freedoms (Chapter III of the Jamaican Constitution) includes “the right to equality before the law,” this broadly-worded provision is followed by a narrower one on “the right to freedom from discrimination.” By its terms, this latter provision applies only to discrimination based on certain enumerated grounds. There is no catch-all category of “other status,” and neither sexual orientation nor gender identity are among the grounds on which discrimination is prohibited. Indeed, instead of prohibiting discrimination on the basis of “sex” – a form of discrimination that this Committee found in 1994 to include discrimination based on sexual orientation – the 2011 Jamaican constitutional provision prohibits discrimination on the ground of “being male or female.”

B. Pervasive homophobia and transphobia

The examples set out above of mob attacks, rapes, and other acts and threats of violence motivated by the victim’s actual or perceived sexual orientation or gender identity attest to the homophobia and transphobia present in Jamaican society. So, too, do the examples of discrimination discussed below.

43 Id. § 13 (3) (i).
44 The Jamaican Charter guarantees “the right to freedom from discrimination on the ground of – (i) being male or female; [and] (ii) race, place of origin, social class, colour, religion or political opinions.” See Jamaican Charter 2011, supra note 42, § 13 (3) (i).
45 Id.
47 Jamaican Charter 2011, supra note 42, § 13 (3) (i) (i). The Report of the Joint Select Committee on its Deliberations on the Bill Entitled An Act to Amend the Constitution of Jamaica to Provide for a Charter of Rights and For Connected Matters shows that this Joint Select Committee advised that the word “sex” be used as meaning male or female in order to ensure that “sex” is not interpreted to include “sexual orientation.” See Report of the Joint Select Committee on its Deliberations on the Bill Entitled An Act to Amend the Constitution of Jamaica to Provide for a Charter of Rights and For Connected Matters, § 13(2)(j) (20 July 1999), available at http://jis.gov.jm/media/charter-of-rights1.pdf.
A 2015 survey of 942 members of the Jamaican general public, which was commissioned by J-FLAG, confirmed the magnitude of homophobia in Jamaica. Sixty-five percent of respondents said that gay people should not be allowed to work with children. Only 36% of respondents said they would allow their gay child to continue living in their home, and 43% of respondents said they would not let a gay child be around his or her siblings. Sixty-five percent of respondents said they avoid gay people, and 75% agreed that gay sexual behaviour should be illegal. Fifty-nine percent of respondents reported that they would physically hurt a gay person who approached them, and 58% have used terms like “faggot.”

In June 2014, an estimated 25,000 Jamaicans rallied in the heart of Kingston to “resist the homosexual agenda” and oppose repeal of the laws criminalizing male same-sex sex. The mass rally was organized by Jamaica CAUSE (Churches Action Uniting Society for Emancipation), a coalition of religious groups formed in 2012. The crowd shouted its approval when the chairman of the rally, Alvin Bailey, proclaimed that “our emancipation means standing against the homosexual agenda, emancipation for us means standing up against the repealing of the buggery law.”

Jamaica CAUSE held another mass rally in Kingston on 27 September 2015, ahead of a visit to Jamaica by British Prime Minister David Cameron, to urge the Jamaican government not to give in to international pressure on Jamaica to decriminalize same-sex sexual acts and to allow same-sex marriage. It was estimated that nearly 20,000 supporters attended the rally. Dr. Everett Brown, president of Jamaica’s largest religious denomination, the Seventh Day Adventists, characterized “same-sex marriages and homosexuality” as “evil” and an “abomination,” and as the “product of minds void of understanding.” Roman Catholic Father Richard Ho Lung “urged attendants at the rally to resist the LGBT agenda, which he said is from the devil.”

A 2015 survey of 316 LGBT Jamaicans found high rates of harassment and discrimination. The survey found that 71% of males who identify as gay had experienced some form of harassment or discrimination in the last 12 months; 59% of lesbians, 35% of bisexuals and 29% of transgender person had experienced same. It is important to note that while there has been considerable progress towards improving the human rights situation of LGBT people in Jamaica, 43% reported being threatened with physical violence in the last five years. While threats might be more frequent than actual occurrence of violence, they create a culture of hostility and fear among LGBT people in the country. Consequently, many LGBT people report avoiding public places like squares and roadways and public transportation, public establishments, and faith-based organizations.

---

Unfortunately, incidents of violence, harassment and intimidation are continuing in the current year. Between January and June 2016, 52 incidents were reported to J-FLAG. These included, among others, 26 incidents of sexual assaults, other physical attacks or arson, and 23 incidents of verbal assaults, threats or intimidation.54

C. Discrimination in access to health care

The 2015 survey of 316 LGBT Jamaicans found that “the experience with healthcare service providers was varied. The majority of the respondents (52.5%) reported being forced to undergo seemingly unnecessary medical or psychological testing. A third (32.2%) also experienced inappropriate curiosity regarding their identity. Approximately 17% felt they had not received equal treatment, and 15% declined treatment because they felt fear or discrimination or intolerance, and 15% also felt the need to change their general practitioner or specialist because of negative reaction.”55

Transgender individuals lack access in Jamaica to hormonal and surgical treatments for their transition process.56 Some, in their desperation, have begun buying hormones online and self-medicating.57 Without the supervision of a trained medical professional these individuals may overdose or underdose, leading to medical complications.58

A second problem in accessing healthcare is the discriminatory treatment LGBT individuals too often receive at hospitals and health centers. While doctors and nurses sometimes discriminate against LGBT patients, the problem lies with non-medical staff such as security guards, janitors, and reception staff as well. Non-medical staff have turned LGBT patients away or treated them in a humiliating manner. On occasion, they have violated patient confidentiality by disclosing to others a person’s sexual orientation or gender identity.

In one case in 2014, the staff member in charge of medical dockets at the Comprehensive Health Clinic disclosed, without permission, the HIV status of a transgender woman to local community members. The woman had to change her healthcare service provider, to avoid further public shaming and ridicule.59

On 24 October 2015, a gay man and an ally were attacked by a violent mob in the Cholera Cemetery area of Kingston. Both men were severely beaten and the gay man’s face was cut and his chest was slashed. When he was taken to Kingston Public Hospital, though he was admitted in critical condition, the non-medical staff refused to assist him, because he identified as a gay man.60

In another case, a homeless gay man who was experiencing extreme pain from a sexually transmitted infection was denied entry to the Comprehensive Health Clinic on Slipe Pen Road in

---

55 J-FLAG 2015, supra note 7, p. 57.
56 Interview with representative of The Colour Pink Foundation, 28 October 2015.
57 Id.
58 Id.
59 Id.
60 Incident reported to J-FLAG on 3 Nov. 2015.
Kingston. A friend of his had arranged financing for the treatment and had offered to accompany him to the clinic, but the man initially refused to go, saying he would rather die than risk his life by going to the hospital. He was afraid of being publicly shamed and ridiculed because of his sexual orientation. His friend persisted and took him to the hospital. Due to his homeless status, the individual was wearing a marina (a vest) and shorts. Although the hospital’s policy is to provide such patients with plastic overalls, the security officer refused him entry into the hospital, unless fully dressed.61

D. Discrimination in employment

In November 2012, a gay man who was employed at the rank of Lieutenant was reportedly dismissed from the Jamaica Defence Force after fifteen years of service because of his sexual orientation. His superior was made aware of his sexual orientation and requested a meeting with the man. The Lieutenant was asked if he was gay, and upon answering in the affirmative, he was asked to leave the force. He became extremely depressed, feeling anger, helplessness and hopelessness, and attempted to commit suicide.62

A transgender woman reported that because of repeated past experiences with employment discrimination, she has stopped trying to find a steady job and only works when she can obtain freelance work for British or American businesses. She related multiple examples of being let go from jobs due to her gender identity.63

In 2012, a gay man was severely beaten by three of his male coworkers in the bathroom of his workplace. The victim’s tooth was broken during the attack. The victim believes he was attacked because he was viewed as effeminate or flamboyant.64

It is noteworthy that data from the J-FLAG 2015 study indicate that persons who tend to be more open about their LGBT status are more likely to be denied a job.65

E. Discrimination in housing and homelessness

LGBT individuals have experienced discrimination by landlords and landladies who refuse to rent to them or force them out of their home because of their sexual orientation or gender identity. In one case, a young man had rented two separate rooms in St. Catherine in 2014 for himself and his partner, telling the landlady that the other man was his cousin. They did not actually need two rooms, but they paid the extra money to rent a second room to maintain the fiction that they were living separately. But his landlady watched them, suspecting they were gay. The men moved out when their landlady, accompanied by someone with a gun, threatened the men and told them they had to get out.66

61 Interview with the friend who had taken the gay man to the hospital, 28 Oct. 2015. Although the friend who was interviewed could not recall the date of this incident, she indicated that it occurred sometime after 2012.
62 Interview with J-FLAG staff, 30 Oct. 2015.
63 Interview with victim, 28 Oct. 2015.
64 Interview with J-FLAG staff, 30 Oct. 2015.
65 J-FLAG 2015, supra note 7, p. 66.
66 Interview with victim, 30 Oct. 2015 (this incident was also referenced in earlier section on violence).
In another case, in 2012, a human rights defender and their friend sought to rent a two-bedroom apartment in New Kingston. They report being asked intrusive questions by the individual responsible for the property about whether or not they were certain they were just friends and about why they wanted to rent the apartment. Their attempt to rent the property failed because, the caretaker reported, the property owner is a Christian and does not desire to rent to homosexuals.67

Homelessness is a very serious problem for many LGBT Jamaicans. LGBT individuals have been forced to leave their homes and communities and live on the streets due to lack of tolerance, violence and threats of violence. Between January 2012 and July 2014, J-FLAG received 61 reports from LGBT persons, including children, who were displaced and denied their right to shelter and a family.68 All of the twelve reports received in 2012 were from boys under 18 years of age.69

One homeless gay man recounted his experience as follows:

“They couldn’t take my ‘lifestyle’. . . . I had to leave from a very tender age. Well I was threatened because of my lifestyle because as I stated that’s the road I chose to travel and they always speak about stuff that they would do and I see them do stuff so I felt threatened about my life and since 14 so I left. My mom has a farm in Golden Spring and so on and off I would go there and I really don’t stay there a lot because I am not originally from there and if where I am from persons will hurt me what strangers would do to me . . . I’ve seen them beat guys, I saw them beat a guy who was not gay but who performs oral sex. I saw them torture him and that is when I left because they would always hit-out against boys like me. They tried to beat me already because of an incident where I got caught with a boy . . ..”70

Life for displaced and homeless LGBT individuals is extremely hard.71 As one gay man put it, “[L]iving on the road for a gay man is very very hard, hard.”72 Another agreed: “[I]t tough out there, it really tough out there.”73 Homeless LGBT individuals live in abandoned buildings, open lots and gullies. They are forced to move frequently, both to avoid the threat of violence and because the authorities constantly chase them away from the places where they have settled. Those who are homeless do not have access to such basic necessities as running water, proper bathroom facilities, a place to shower and facilities for ironing their clothes, with the result that their appearance impedes their ability to get or keep a job.74

---

67 Interview with the human rights defender who was denied the apartment, 28 October 2015.
68 J-FLAG, Recommendations for the 22nd UPR Session of Jamaica.
69 J-FLAG, Presentation for Recommendations for the 22nd UPR Pre-Session of Jamaica.
70 Focus Group Discussion, 28 October 2015.
71 Id.
72 Id.
73 Id.
74 Id.
Homeless LGBT individuals are at great risk of experiencing violence. One homeless individual recounted an incident in October 2015, when he woke up to find himself bleeding because a passerby had dropped a stone on his head.75

Homeless LGBT people are caught in an unending cycle of violence. They have been forced to leave their communities because of the fear and threat of violence, yet they are forced to live on the streets where they are equally faced with physical violence being perpetrated against them.

IV. Failure to create a responsive and inclusive legal system

Jamaica’s legal framework largely reflects heteronormativity and cisnormativity. Constitutional provisions, diverse legislation and principles developed in common law create a legal regime in which lesbian, gay, bisexual and transgender Jamaicans are excluded, discriminated against, denied equal protection and in some instances criminalized. While there are areas which have the potential to protect LGBT persons from violence and discrimination, this piecemeal protection suffers from poor implementation as cultural prejudices against LGBT persons remain popular. This section will consider the laws which have a direct or indirect negative impact on LGBT persons, those which exclude LGBT persons and the gaps in recognition and protection of LGBT persons.

A. Gaps in recognition and protection

The Jamaica Charter of Fundamental Rights and Freedoms guarantees the rights to equality before the law,76 to equitable and human treatment by a public authority in the exercise of any function77 and to freedom from discrimination.78 The freedom from discrimination does not protect against discrimination on the basis of sexual orientation or gender identity. The effect of this is that discriminatory treatment in employment, education, healthcare and housing (as exemplified above) at the hands of non-state actors is allowed to occur with impunity. Jamaica does not have any anti-discrimination legislation and therefore the only protection against discrimination lies within the Charter. This means that LGBT persons have no legal recourse for the different forms of discrimination they face at the hands of private actors. This presents a large gap in the protection of LGBT persons as the stigma and discrimination that is perpetuated in different areas of their lives remains unaddressed. This gap in legal protection allows for violation of their right to equality before the law and non-discrimination under article 26.

Trans persons in particular are confronted with the reality of legal non-recognition. Jamaica has no legislative or policy framework which would allow for trans persons to have their gender identities formally and institutionally recognized through changes on their birth certificates and other forms of identification. The result is that laws which have gender-specific provisions treat them differently. For example, the section 3 of the Sexual Offences Act of Jamaica, 2009 provides

75 Focus Group Discussion, 28 October 2015.
76 Jamaica Constitution, section 13(3)(g).
77 Ibid., section 13(3)(h).
78 Ibid., section 13(3)(i).
that only women can be victims of rape. Trans women are considered men within the law. This means that men who rape trans women cannot be convicted of rape, but only the lesser offence of indecent assault. The sentence for a conviction of rape is fifteen (15) years to life imprisonment while the sentence for a conviction of indecent assault is maximum (15) years imprisonment. This violates the right of trans persons to be recognized everywhere as a person (Article 16) and to equal protection of the law (Article 26).

“Corrective Rape” (as defined above) and other targeted forms of violence against the LGBT community and particularly LBT women are not defined within our criminal laws. The absence of hate-crime legislation means that homophobic and transphobic violence and the incitement of same is not recognized within our laws. Mob violence, “corrective rape”, “gay bashing” and other forms of violence are captured in the generic legal protections available which do not allow for a thorough investigation within the criminal justice system of the specific forms of violence experienced by the LGBT community. This violates the right of LGBT persons to life (article 6) and the right to liberty and security of the person (article 9).

There are no state laws or policies which address explicitly homophobic and transphobic bullying and harassment in schools and the workplace. This means that LGBT Youth have little legal protection against the targeted physical and verbal abuse they have come to experience in schools. Also, negative attitudes towards homosexuality have prevented the implementation of comprehensive sexuality education which would enable LGBT Youth to actualize their sexual and reproductive rights. Both of these issues are compounded with policies and practices within public and private educational institutions which perpetuate stigma around and discrimination against LGBT persons. The failure of the State to implement policies which would protect LGBT Youth from physical and psychological harm is a violation of article 24 which outlines the need to provide special protection for all children.

B. Legal exclusion

Family law legislation such as the Property (Rights of Spouses) Act 2004, The Maintenance Act 2005, The Intestates’ Estate and Property Charges Act 1937, The Inheritance (Provision for Family and Dependents) Act, 1993 exclude same-sex unions from all the legal benefits that are given to both married and unmarried heterosexual unions. Section 18 of the Jamaica Charter of Fundamental Rights and Freedoms prevents these laws from being challenged in court and goes further to prevent the legal recognition of same-sex unions. The result is that persons in same-sex unions are shut out from laws which would give them a fifty percent share in the family home in which they have lived and contributed financially and non-financially, that would give them an entitlement to be maintained by their partners where the need exists, that would give them entitlements on the death of their partner whether they die intestate or if they die with a will.

---

79 The UK case of Corbett v Corbett [1970] 2 All E.R. 33 established that sex, for the purposes of marriage law, is determined by biological sex. The case of R v Tan [1983] QBD 1053 expanded this principle in Corbett to be applicable to all areas of life. There is no Jamaican legislation or case law to rebut the applicability of these cases.

80 Indecent assault captures all forms of touching that is done for a sexual purpose without the consent of the person being touched and is prohibited under section 13 of the Sexual Offences Act.

81 The Property (Rights of Spouses) Act (2004), s. 6.

82 The Maintenance Act (2005), s. 4.

83 The Intestates’ Estates and Property Charges Act (1937), s. 4.
which fails to adequately provide for them. Persons in same-sex unions, because of their inability to marry, are also excluded from those legal benefits that have been accorded to married couples. This means that a lesbian woman cannot pass Jamaican citizenship to her same-sex foreign partner because they cannot get married. This family law exclusion is a violation of the right to equality before the law and equal protection of the law (Article 26).

The Sexual Offences Act of Jamaica, 2009 governs the legal regime for protection from sexual violence. The Act defines sexual intercourse as only occurring where the penis of one person penetrates the vagina of another. The impact of this definition is that rape only occurs where a man penetrates the vagina of a woman without her consent. All other forms of non-consensual penetration are treated differently. Intimate partner sexual violence within same-sex unions can only give rise to lesser offences such as “grievous sexual assault”, indecent assault, or sexual touching (if it involves a minor) whereas intimate partner sexual violence within heterosexual unions can give rise to offences such as rape and sexual intercourse with a person under sixteen which carry heavier sentences.

The Domestic Violence Act of Jamaica, 2005 also fails to equally protect LGBT persons in same-sex unions from other forms of intimate partner violence. The Act allows persons in married, unmarried, cohabiting and non-cohabiting heterosexual unions to seek protection from physical and mental violence experienced at the hands of their partners. The Act’s definitions of “spouse” and “visiting relationship” are exclusively heterosexual. The effect of this is that LGBT persons in same-sex unions may only seek protection if they cohabit with their partners. They can apply for protection as “members of the household” of the abuser. Persons in non-cohabiting same-sex unions cannot seek protection under the Act.

This results in unequal protection for LGBT persons within these unions and amounts to a violation of the right to liberty and security of the person (article 9) and equality before the law and equal protection of the law (article 26).

C. Laws with negative impact

Section 10 of the Offences Against the Person Act provides for the defense of “excusable homicide” on a charge for murder. The section reads as follows:

No punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any other manner without felony.

---

84 The Inheritance (Provision for Family and Dependants) Act (1993), s. 6.
85 The Jamaica Constitution (1962), s. 3(1) provides that citizenship may be passed through marriage. Marriage as defined in common law which has been applied in Jamaica is the voluntary union of one man and woman for life to the exclusion of all others. (Hyde v Hyde (1866) LR 1 P&D 130, 133). In fact, section 4(1)(d) of the Matrimonial Causes Act makes marriage to a person of the same-sex a ground for seeking a nullity of same. Section 4(3) of the same Act indicates that these marriages are not valid even if a decree of nullity has not yet been awarded.
86 Sexual Offences Act (2009), s. 2.
87 Ibid, s. 3.
88 Ibid, s. 4.
89 Ibid, s. 8.
90 The Domestic Violence Act (2005), s. 2.
As it relates to “any other manner without felony,” the common law recognizes a ground for this defence which is homophobic and transphobic. Homicide is excusable or justifiable if it is committed in the prevention of a forcible and atrocious crime. Case law has established that “an attempt to commit sodomy on the person of another is an attempt to commit a forcible and atrocious crime.” This allows persons to respond with fatal violence to sexual advances by persons of the same sex and by extension, allows persons who commit homophobic and transphobic killings an avenue to escape punishment by claiming the individual tried to have same-sex sexual relations with them.

Section 6 of the Offences Against the Person Act establishes that “provocation” is a partial defence to murder. Where an individual demonstrates that they were provoked to kill by words or actions or both that would have caused a reasonable man to respond similarly, then he/she shall only be convicted of voluntary manslaughter – a lesser offence. Case law has established a homosexual advance is a ground for provocation. This also justifies persons who have been propositioned by persons of the same sex for a date or intercourse responding violently. Persons are also able to rely on this defence to escape punishment for homophobic and/or transphobic violent acts committed by them.

These legal principles violate the rights to life (article 6), liberty and security of the person (article 9) and to equality before the law (article 26) by providing legal justification for acts of violence committed against LGBT persons. These laws facilitate the commission of homophobic and transphobic acts of violence with impunity. They limit the effective participation of LGBT persons in public life as their inherent human dignity is devalued.

Sections 76 and 77 of the Jamaican Offences Against the Person Act characterize male same-sex sexual conduct as an “unnatural offence” and an “abominable crime.” These sections read as follows:

Unnatural Offences

76. Whosoever shall be convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall be liable to be imprisoned and kept to hard labour for a term not exceeding ten years.

77. Whosoever shall attempt to commit the said abominable crime, or shall be guilty of any assault with intent to commit the same, or of any indecent assault upon any male person, shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be imprisoned for a term not exceeding seven years, with or without hard labour.

---

91 R v Bartley (1969) 14 WIR 407 (CA, Jamaica).
92 Marvin Marcano v The State Cr. App. No. 2 of 2002 (July 26, 2002) (CA, Trinidad and Tobago).
94 Id.
Under the heading “Outrages on Decency,” section 79 of the Offences Against the Person Act additionally criminalizes “any act of gross indecency” by one male with another, whether the conduct takes place “in public or private:”

79. Any male person who, in public or private commits, or is a party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the court to be imprisoned for a term not exceeding two years, with or without hard labour.95

These laws are specifically protected by the Constitution. In April 2011, Jamaica amended Chapter III of the Constitution with the adoption of a new Charter of Fundamental Rights and Freedoms (“Charter of Rights”).96 The Charter of Rights declares that, with limited exceptions, “Parliament shall pass no law and no organ of the State shall take any action which abrogates, abridges or infringes” the rights enumerated in the Charter.97 Among the enumerated rights are the following:

(g) the right to equality before the law;

(h) the right to equitable and humane treatment by any public authority in the exercise of any function;

(i) the right to freedom from discrimination on the ground of –

(i) being male or female;

(ii) race, place of origin, social class, colour, religion or political opinions;

(j) the right of everyone to –

* * *

(ii) respect for and protection of private and family life, and privacy of the home.98

Unfortunately, section 13(12) of the Charter of Rights restricts the application of these rights to the LGBT community by sheltering Jamaica’s criminalization of same-sex intercourse from any constitutional challenge:

95 Id., § 79.
96 THE CHARTER OF FUNDAMENTAL RIGHTS AND FREEDOMS ACT [CONSTITUTIONAL AMENDMENT] 2011, preamble, §§ 1-2 (Jam.).
97 Id. § 2, setting out the new Sub-section 13(2) of the Constitution.
98 Id. § 2, setting out the new Sub-section 13(3) of the Constitution.
Nothing contained in or done under the authority of any law in force immediately before the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, relating to –

(a) sexual offences;

* * *

shall be held to be inconsistent with or in contravention of the provisions of this Chapter.  

Jamaica’s continued maintenance of criminal laws against same-sex sexual conduct violates the Covenant rights to equality, non-discrimination, and privacy. As this Committee has repeatedly recognized, laws that criminalize private, adult, consensual same-sex sexual conduct violate the right to equality and non-discrimination enshrined in Articles 2(1) and 26. Such laws also violate the Article 17 right to protection against arbitrary or unlawful interference with privacy. It has long been the jurisprudence of this Committee that “adult consensual sexual activity in private is covered by the concept of ‘privacy.’”

V. Proposed questions for Jamaica

1. What measures has Jamaica taken, and what additional measures will it take, to prevent acts of violence motivated by prejudices against vulnerable and marginalized groups within the Jamaican society, including those perpetrated because of an individual’s real or perceived sexual orientation or gender identity of the victims? What additional measures has Jamaica taken to ensure such incidents are promptly and fully investigated, prosecuted, and punished, so that perpetrators are held accountable?

2. What additional measures will Jamaica take to stop police violence against and verbal abuse of citizens, including LGBT individuals, and to ensure that police officers treat LGBT individuals with respect, including in situations when LGBT individuals report crimes that have been perpetrated against them?

3. What measures has Jamaica taken, and what additional measures will it take, to promote tolerance and respect among members of the Jamaican public for LGBT individuals? Will Jamaica, as one such measure, enact enabling laws such as comprehensive anti-discrimination legislation and amend existing laws so as to create a legal system that is more inclusive of and responsive to the challenges faced by vulnerable and marginalized groups?

4. Do sections 13(3)(g) and (h) of the Jamaican Charter of Rights and Freedoms (Chapter III of the Jamaican Constitution) provide protection against sexual orientation and gender identity discrimination within the law and at the hands of a public authority in the exercise of its functions,

99 Id. § 2, setting out the new Sub-section 13(12) of the Constitution.
respectively? Will Jamaica amend this Charter to include sexual orientation and gender identity among the grounds in section 13(3)(i) upon which discrimination is prohibited?

VI. Proposed recommendations for Jamaica

The Government of Jamaica is urged to move expeditiously to implement mechanisms to improve the human dignity and access to justice for LGBT Jamaicans. These include:

1. Enacting comprehensive anti-discrimination legislation to prohibit all forms of discrimination, inclusive of discrimination on the basis of sexual orientation and gender identity. This legislation should prohibit discrimination at the hands state and non-state actors in all areas of life, including but not limited to housing, employment, education and provisions of services. Additionally, this legislation should establish a body to receive and investigate complaints and conduct hearings where necessary.

2. Modifying existing laws and enacting legislation so as to eradicate legal and policy barriers, such as the non-recognition of the identities of transgender persons and laws justifying homophobic and transphobic violence, which prevent LGBT Jamaicans from fully participating in all areas of public life on an equal footing with cisgender heterosexual Jamaicans.

3. Improving the country’s strategy to address displacement and homelessness, including increasing the number of shelters and temporary housing facilities and ensuring that staff and other persons living at the facility are sensitized to enable them to foster an LGBT-friendly environment. This is necessary due to the high homophobic environment of Jamaica leading to displacement of LGBT persons, particularly children, adolescents and youth who are or are perceived to be LGBT.

4. Conducting a national human rights public education campaign to encourage the public to engender a culture of respect for the rights of all persons particularly vulnerable and marginalized groups, including LGBT persons; specifically targeting families, employers, community members and state actors in an attempt to reduce discrimination and violence as well as the number of displaced LGBT persons.
TAB 21
This week the president of the Jamaica Association for Guidance Counsellors in Education (JAGCE) revealed that some homophobic school counselors completely shun LGBT students. She explained, "we have counsellors who are of the Christian faith who will not…look at those students at all."

In response to the revelation—and to calls to train counselors on working with LGBT students—the head of Jamaica's teachers union Norman Allen brandished the sodomy law as a shield to justify this discrimination. Allen said that the Jamaica Teachers' Association cannot call for counselors to be trained to work with LGBT youth because sodomy is illegal in the country. Allen went even further, implying that LGBT students should be reported to government agencies.

This is one of many examples of the ways my country's sodomy law, which criminalizes all forms of intimacy between men even in private, is used to justify the daily violence and discrimination that LGBT people face in Jamaica. In this case, the law is exacerbating the rejection vulnerable Jamaican youth suffer. LGBT youth—like many other LGBT Jamaicans—experience violence, discrimination in access to services, and bullying in schools. And in addition to facing rejection from their peers, many of these students are also rejected by those officially designated to support them through a developmentally crucial and difficult time.

Jamaica is failing its vulnerable youth, and defending this failure with a law that, at its very core, infringes upon the rights of Jamaica's LGBT population. In November 2015, I filed a constitutional challenge against Jamaica's sodomy law, citing the law's violation of the protections outlined in Jamaica's Charter of Fundamental Rights and Freedoms. These include the rights to liberty and freedom of the person, freedom of expression, privacy and family life, and freedom from inhuman or degrading punishment or other treatment, among others.

This is just one of the many efforts that I and other members of Jamaican civil society are undertaking in order to transform society and make our country one that fully respects the rights and freedoms of all. It is my hope that this constitutional challenge will eventually lead to a decision that prioritizes the fundamental rights and freedoms of all Jamaicans, including our LGBT youth.

Maurice Tomlinson is a Jamaican attorney and human rights activist currently with the Canadian HIV/AIDS Legal Network. As part of his activism, he acts as counsel and/or claimant in cases challenging anti-gay laws before the most senior tribunals in the Caribbean, authors reports to regional and UN agencies on the human rights situation for LGBTI people in this region, conducts judicial and police LGBTI and HIV-sensitization trainings, and facilitates human rights documentation and advocacy capacity-building exercises. In 2012, Maurice received the inaugural David Kato Vision and Voice Award, which recognizes individuals who defend human rights and the dignity of LGBTI people around the world.
“Human Rights First is a premier institution devoted to the noblest of all causes.” — Senator John McCain (R-AZ)

Protecting our Allies

We fought to save the Special Immigrant Visa program, a lifeline for Afghans under threat from the Taliban because of their work with the U.S. military, and we won.

Keeping the Door Closed on Torture

With military leaders we successfully blocked the Trump Administration’s attempt to reopen black sites and revive the torture program.
TAB 22
HOMOPHOBIA and TRANSPHOBIA in CARIBBEAN MEDIA

A Baseline Study in BELIZE, GRENADA, GUYANA, JAMAICA, SAINT LUCIA
Homophobia & Transphobia in Caribbean Media

A BASELINE STUDY FROM

Belize, Grenada, Guyana, Jamaica and Saint Lucia

© 2015

INTERNATIONAL GAY AND LESBIAN HUMAN RIGHTS COMMISSION (IGLHRC)

and

UNITED AND STRONG

in collaboration with

GROUNDATION GRENADA, GUYANA RAINBOW FOUNDATION, J-FLAG, PETAL, AND UNITED BELIZE ADVOCACY MOVEMENT
# Table of Contents

Executive Summary ........................................................................................................... 1

Recommendations ............................................................................................................... 3

Rationale ............................................................................................................................. 5

Methodology ......................................................................................................................... 6

Key Findings: Sexual Orientation and Gender Identity in Caribbean Media .............. 7

Media Environment and Consumption in the Caribbean .............................................. 15

Country Information and Findings ............................................................................... 19

Belize ................................................................................................................................. 19

Grenada ............................................................................................................................. 14

Guyana ............................................................................................................................... 18

Jamaica .............................................................................................................................. 22

Saint Lucia ......................................................................................................................... 27
Executive Summary

These groups monitored the media in five countries—Belize, Grenada, Guyana, Jamaica, Saint Lucia. The results of the monitoring show that many media outlets reinforce negative stereotypes that can lead to violence against LGBTI people. Stories of importance about this community—policy issues and concerns about exclusion—or those that should depict them engaged in positive activities, were largely ignored by the media. Overall, the media coverage created an unbalanced, inaccurate and largely unflattering picture of the community.
Recommendations

To the Governments of the Caribbean

» Protect freedom of expression without restrictions, other than those necessary to prevent incitement to violence or discrimination.

» Engage actively to counter misinformation about LGBTI issues in the public space, including by issuing public statements with scientifically accurate, evidence-based, information about issues related to sexual orientation and gender identity.

» Mandate comprehensive sexuality education, including scientifically accurate, evidence-based, information about the diversity of human sexuality and gender identity.

» Actively engage LGBTI organizations and activists in the design, implementation, evaluation and monitoring of policies that affect them.

» Repeal all criminal laws that penalize consensual adult same-sex relationships, or that are used to penalize such relationships.
To the Associations of Caribbean Journalists Across the Region

» Promote self-regulation among media groups to advance ethical and fair-minded media coverage.

» Ensure accountability for unethical and unbiased media coverage.

» Issue a joint public statement condemning reporting that is biased against gay, lesbian, bisexual and transgender individuals or presents them in a way that reflects prejudicial attitudes based on sexual orientation or gender identity.

» Provide training for journalists on how to ethically cover LGBTI-related events, with meaningful participation and leadership by LGBTI activists and organizations.

» Promote the voices of LGBTI activists and organizations in media coverage that affect the community.
Rationale

“Free expression is both a vital pillar and by-product of a liberal democracy. It serves as a self-propagating instrument of social change and its protection can contribute to the building of platforms for good governance, democracy and the consequential benefits of human and social development. The media, as one formal manifestation of this freedom, can serve as interlocutors between the powerful and the powerless, with a role as independent watchdogs on the exercise of both state and private power.”

– Wesley Gibbings – General Secretary and Immediate Past President of the Association of Caribbean Media Workers (ACM). ¹

The English-speaking Caribbean has a vibrant and diverse media; its journalists are crucial to shaping public opinion on lesbian, gay, bisexual, transgender, and intersex (LGBTI) issues. As such, monitoring and engaging media are key to advocacy around LGBTI issues; news coverage especially informs and influences public opinion.

This report is intended to help guide journalists toward more fair, informed and sensitive coverage of LGBTI and related subjects in

the Caribbean. It draws on the results of a media-monitoring project conducted in 2014 in Belize, Grenada, Guyana, Jamaica and Saint Lucia. The study identified key problems with media coverage of LGBTI issues and people and seeks to broaden understanding while encouraging coverage of high journalistic standards in a socially and politically charged atmosphere.

Fair coverage is essential to the safety and security of LGBTI people especially when public opinion and understanding of this community may be polarized. Uninformed reporting can reinforce negative stereotypes and compromise the lives and livelihoods of LGBTI people and advocates. Informed media can shed light on issues, create open and progressive public debate, and help to ensure the safety and security of LGBTI individuals.

Established mainstream media face great challenges as a result of the rapid rise of Internet news outlets and social media. While these Internet news outlets are entitled to freedom of expression some are operated in a manner that seems to indicate they are not compelled to honor high standards of professional journalism.

In a 2014 report on world trends on freedom of expression and media development, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) noted that while women’s perspectives are increasingly more widely included—in particular due to the growth of online media—there is insufficient data about the state of discrimination against LGBTI people in the media. This environment demands greater self-regulation and high journalistic standards that protect the rights of all citizens.

Activists around the region are committed to working with journalists to develop more informed coverage in the belief that doing so will prevent biased and prejudiced portrayals of LGBTI people, which can lead directly to violence against the community. One example of successful

---

advocacy in this regard followed an arson fire that ruined the newly acquired safe space of United and Strong, in Rodney Bay Saint Lucia, in October 2011. United and Strong proactively engaged journalists about their dissatisfaction with the media coverage and the police investigation of the fire. Although it was a major fire in an upscale neighborhood, it went unreported except by one media house and under-investigated by police and fire officials. The proactive activist engagement with the media kept the issue alive in the media, drew attention to the threats LGBTI face in organizing generally, and to the group’s lack of access to justice and security. As a result, some media outlets on the island reported in depth on the risks faced by human rights defenders. This report represents an aspect of a commitment to creating this type of change.


Methodology

In July 2014, United and Strong monitored media reports in collaboration with Groundation Grenada, Guyana Rainbow Foundation, J-FLAG, and United Belize Advocacy Movement. A first in the English-speaking Caribbean, the project explores local news coverage of issues affecting the lesbian, gay, bisexual, transgender and intersex community and of LGBTI individuals in Belize, Grenada, Guyana, Jamaica and Saint Lucia.

Through the month-long study, the groups documented the frequency of mainstream media reporting on LGBTI-related issues and the representation of LGBTI people in the coverage. Activists noted the use of words, phrases, graphics, images and videos that contribute to public perception of LGBTI people and how these reflected or resembled anti-gay rhetoric. Though the media monitoring took place only in July, news coverage of some stories continued over several months. Therefore, this report references coverage outside the month of July 2014, to make sense of the overall coverage on specific news items.
Key Findings: Sexual Orientation and Gender Identity as Presented in Caribbean Media

The evidence shows that reporting on lesbian, gay, bisexual, transgender and intersex people often is sensationalized and demeaning or LGBTI persons are ignored completely by the media. Reporting was also inaccurate with sexual orientation and gender identity regularly conflated. Developments that might have created a more balanced picture were absent in the coverage.

The Caribbean countries covered in this report maintain criminal law provisions penalizing “offenses” labeled “sodomy,” (or “buggery”) “gross indecency,” “unnatural crimes” and so on.” This fact has raised serious, repeated concerns at the Inter-American Commission on Human Rights, in part because these criminal provisions result in the general perception that “the right of association for purposes of promoting and defending the rights of LGTBI persons are prohibited, the argument being that their organizations and activities are ‘illegal’.”

Furthermore, the generalized ridicule of LGBTI persons, in combination with threats and violence against LGBTI activists and
supporters, lead to a limited pool of spokespersons—that is, individuals willing to be publicly associated with promoting non-discrimination and an end to violence. As a result, the public draws a distorted view of lesbian, gay, bisexual, transgender and intersex individuals and the erroneous belief that not many people are willing to publicly stand up for their equality and rights.

This situation has a direct impact on the safety and security of LGBTI people. The fact that prejudice is entrenched against a marginalized group combined with the perception that no one will protect or uphold their rights contribute directly to an environment that encourages discrimination and violence.

The project revealed different levels of engagement with LGBTI-related issues across the countries surveyed. Jamaica, and to a somewhat lesser extent Guyana and Saint Lucia, showed a more frequent level of engagement with the issue in the media, though often treated in a highly detrimental way. Sensationalist coverage is frequent in these countries, despite the presence of more fair-minded voices in both broadcast and print media. Jamaican media is the most likely to refer to the “gay agenda” (mostly undefined) along with the “threat” of recruitment and spread of sexual orientation, as if it were an unsavoury political ideology or illness.

In Belize, the ongoing Supreme Court challenge to the country’s criminal code provisions on consensual same-sex relationships changed the nature of coverage on LGBTI issues. Where before it had been centered on violent crimes and sensationalism, it became more focused on policy and legal issues. Even so, references to a “gay agenda” and the links between HIV/AIDS and men who have sex with men were recurring themes. Other than news related to the court challenge—and to a controversy surrounding one of the expert witnesses in the case, which reverberated across the region—the Belize media was to a large extent silent on LGBTI-related stories. This is true in Grenada as well.

The absence of stories about LGBTI people in the media is not necessarily positive for them or for society as a whole. As has been documented elsewhere, the continued criminalization of
A consensual adult same-sex relationship across the region leads to discrimination and violence against gender non-conforming persons. Criminalization results in discrimination, which affects society as a whole. Excluding a sizable part of the population—LGBTI people are estimated at 5 to 10 percent of people everywhere—has negative consequences, economically and socially.

It is in the public interest to explore the cost of discrimination against the LGBTI population. This is a subject that the media could and should pursue. The fact that LGBTI people remain largely invisible in the media can lead to violence against them or those who are perceived to be lesbian, gay, bisexual, or transgender (including intersex persons who often are perceived to be lesbian or gay); and the invisibility and bias against them heightens the risk of facing retribution if they complain.

At times, where coverage of LGBTI-related issues is more frequent, it also becomes more nuanced, with both positive and negative references. As an example, even though Jamaica's media coverage can be biased and sensationalized, the monitoring found fair-minded and balanced reporting, too, along with letters to the editor, commentary and other support for LGBTI safety and equality, in direct response to the biased coverage or opposing views. This was true, to some extent, in Saint Lucia. Positive media coverage anywhere in the region was found to be more directly linked to a concerted effort from civil society groups, than to organic reactions from society overall.

In a positive and beneficial development for democratic societies, news outlets across the region print opinion pieces on their debate pages both in support of and in opposition to the right to non-discrimination on the basis of sexual orientation and gender identity.


Unnuanced Reporting

Many Caribbean media outlets conflate sexual orientation with gender identity, reducing all issues related to any aspect of these two categories to one thing: gay men, and more specifically, gay men engaging in anal sex. Transgender women are often wrongly referred to as gay men, and lesbians, bisexuals, and intersex persons hardly mentioned. Calls for non-discrimination and equality based on sexual orientation and gender identity are regarded as the “gay agenda” rather than an “LGBT agenda” or “LGBTI agenda,” and men dressed in traditional female clothing are referred to as gay, without reference to the fact that they might self-identify as transgender, transvestite, heterosexual, cross-dressers, or any combination thereof. The project identified a big gap to fill with correct information about the various aspects of LGBTI identities and lived experiences.

Gratuitous Focus on Sexual Orientation and Gender Identity

In much of the reporting involving gender non-conforming persons, journalists pay more attention to perceived sexual orientation or gender identity, and to bodily diversity, rather than the story itself. In reporting about an intersex person who was murdered in Saint Lucia, media clips highlighted whether the victim was “really” a woman or a man, than to any investigation of the crime. 11 In the case of the stabbing deaths of two people in Guyana, media coverage included sensationalist references to the “secret” sexual identity of the alleged perpetrator. 12

Injurious Speech

Caribbean media often include demeaning references to gender non-conforming persons. This occurs in several ways. First, media outlets often enthusiastically and somewhat uncritically quote outrageously homophobic statements made by public officials, often without debunking stated misinformation. Second, media outlets themselves at times use degrading language when

referring to LGBTI persons; in particular conflating gay men and trans women, which are treated as one and the same. Lastly, public figures may be accused of being gay or lesbian – as an insult that potentially can lead to injurious or slanderous actions. 13

**Homosexuality Presented as a Disease or Unnatural Practice**

Caribbean media will often cite opinions from individuals who refer to homosexuality as a disease or an unnatural practice, without any scientific basis. When this happens, the opinions are rarely, if ever, debunked in the media. Instead, they are allowed to stand as "expert" testimony, regardless of the expertise of the speaker. Gender identity or intersex status are hardly dealt with at all in the media, but instead subsumed under the general category of (predominantly male) “homosexuality.”

**Conspiracy Theories**

In many countries in the region, politicians and faith-leaders refer to calls to overcome entrenched inequality and violence against LGBTI people as the “gay agenda.” This phrase is construed to mean a global gay conspiracy, with a strategy to overtake the world. Even more dominant in the media is the notion that LGBTI people are destroying the nation and, in particular, the family. LGBTI people are seen as purveyors of moral decay. These unfounded conspiracy theories are reflected and reinforced uncritically by journalists, quoting homophobic officials or by editors who write value-based headlines that refer to the so-called “gay agenda.”

**Homosexuality vs. Privacy and Publicity**

News coverage can have specific and legitimate relevance to LGBTI individuals; for example, coverage of policy debates that might have an important impact on lesbians, gay, bisexual,
transgender, or intersex individuals. But such coverage is quite rare in the region. The lack of coverage may be related to the conflation of anything involving sexual orientation, gender identity, or bodily diversity to sex overall, which, when not sensationalized, is viewed as a private matter in conservative societies.

**Homosexuality Presented as Exotic, Strange, Scandalous**

Many media reports focus on stereotypical aspects of the public’s perception of homosexuality; for example, frequently using images from gay pride parades, cross-dressers, or transgender women wearing make-up. This happens even where the news item has nothing to do with gay pride parades, cross-dressing, or transgender identity; for example, images such as these are used when reporting on a crime or a political development. Likewise, media reports will often contain veiled allegations that homosexuality is imposed from elsewhere—that it is exotic and foreign. In these cases, media reports trivialize and “sexualize” serious incidents, like a political event or a crime, and reinforce negative views.

**Homosexuality Linked to Criminality**

Stories about people perceived to be gay often refer to criminal environments and threats of crimes, such as robbery or more violent crimes. In reporting on gender non-conforming homeless youth in Jamaica they were linked to crime and danger, as were two individuals killed in Guyana. By making this link, news coverage reinforces prejudices that LGBTI people present a danger to society. This false view can negatively impact the safety and security of LGBTI individuals. News articles also conflated homosexuality with pedophilia, a thoroughly false accusation that has been debunked repeatedly by research.14

---

Media Environment and Consumption in the Caribbean

The media environment in the Caribbean to some extent mirrors the government structures and their relationships—or not—to former colonizers. For the most part, the British- and Dutch-dependent territories and semi-autonomous states depend heavily on overseas content, with a relatively small independent media market. The 13 independent states in the Caribbean operate with their own media laws and markets, producing—or at least adapting—much content at home.

News consumption varies across the region. A survey conducted in 2010 found that while almost 80 percent of the surveyed population in Jamaica and Suriname said they consumed news media daily, the percentage is closer to 65 percent in Trinidad and Tobago and Guyana, and down to 50 percent for Haiti. Media is also increasingly consumed on the Internet, though to varying degrees. In the countries surveyed, Internet penetration rates were by far the highest in Saint Lucia, at 87 percent, followed by Jamaica at 54 percent, with rates ranging from 32 to 35 percent for Belize, Guyana, and Grenada.

Internet consumption rates and penetration are relevant to this project, as Internet content, in general, is subject to less control and self-regulation than broadcast and print media. News consumers are encouraged to comment on news stories online, which can leave some readers unable to distinguish between accurate and legitimate commentary and bigoted comments, which derive legitimacy from being published online.

---


16 See below under each country.
The International Press Institute (IPI), a global network of journalists based in Vienna, Austria, has noted several recurring problems affecting free press in the Caribbean. Among the most important is state interference with independent media; criminal defamation laws inherited from former colonizers; commercial interests affecting content; and prevailing self-censorship.

Defamation Laws and Hate Speech

The active use and implementation of ancient defamation provisions in criminal laws have often been highlighted as a key threat to free press in the Caribbean. Media associations in the region have—with success in some cases—advocated for the repeal of these provisions. In Grenada, the defamation provisions were repealed in mid-2012, in Jamaica in 2013, and Trinidad and Tobago repealed the offense of malicious defamatory libel in early 2014. At the time of this report, there were initiatives underway to partially repeal defamation provisions in the criminal code in the Dominican Republic, Antigua and Barbuda.


18 Defamation may be understood as a communication (usually an allegation or accusation), either written or spoken, containing a statement that harms the reputation or honor of the subject of the communication, generally by identifying a negative character trait or course of action that exposes the subject to hatred, contempt, or ridicule. Under common law, statements must also be false and malicious to constitute defamation, though not all defamation laws in the Caribbean include the defense of truth or of innocent distribution. Libel refers to defamation expressed through the written word, while slander indicates oral defamation.


20 Ibid.


Bahamas, Barbados, Belize, Cuba, Dominica, Dominican Republic, Guyana, Haiti, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Suriname. Some of these laws allow for the defense of truth or innocent distribution, but they most likely have a chilling effect on reporting.

The United Nations Human Rights Committee has been very clear that defamation laws—in particular criminal defamation laws—must be crafted carefully to be compatible with the right to freedom of opinion and expression. In particular, the Committee has noted that laws must include the defense of truth, avoid penalizing untrue statements made in error, cap fines at reasonable amounts, avoid prolonged pre-trial periods, and never apply prison sentences for defamation.25

Most defamation laws in the Caribbean do not adhere to these guidelines. Most, if not all, impose prison sentences for those convicted of malicious defamation. This persistent threat of criminal prosecution for defamation continues to have a chilling effect on media.26 Moreover, in some countries physical threats against journalists exist.27

News consumers are encouraged to comment on news stories online, which can leave some readers unable to distinguish between accurate and legitimate commentary and bigoted comments, which derive legitimacy from being published online.


While states appear reticent to repeal criminal defamation laws, Caribbean countries have conversely not shown much appetite for providing effective protections against hate speech. The discrepancy between state action to block legitimate opinions about politicians and other decision-makers and their reluctance to protect, among others, lesbian, gay, bisexual, and transgender individuals against hate speech—or indeed hate crimes\(^28\)—is all the more glaring because due to widespread prejudice an accusation of homosexuality can ruin reputations—and thus, are potentially libelous. The Office of the Special Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights repeatedly has noted that “hate speech directed against individuals on the basis of their sexual orientation or gender identity that constitutes the incitement of violence is not protected by freedom of expression.”\(^29\)

---


The main LGBTI-related topic in Belize’s media over the summer of 2014 was the Supreme Court challenge to the country’s criminal code provisions prohibiting consensual adult same-sex sexual conduct. Belize’s Criminal Code, in its section 53, criminalizes “carnal intercourse against the order of nature” as an “unnatural crime” with a potential prison
sentence of 10 years. This provision has been interpreted to criminalize sexual relationships between consenting adults of the same sex, generally, though more specifically it is thought to criminalize anal sex between men. The constitutionality of this section has been challenged in Belize’s Supreme Court by Caleb Orozco, executive director of the United Belize Advocacy Movement (UNIBAM); at the time of writing this report, a notice to the decision is still pending.

In April 2013, the U.N. Human Rights Committee asked Belize to review its laws, generally, to ensure that they do not contain provisions that discriminate on the basis of sexual orientation or gender identity. In October 2013, during the U.N. Human Rights Council’s review of Belize’s human rights record, several states, including the United States and the United Kingdom, asked Belize to reform all laws that are used to discriminate on the basis of sexual orientation or gender identity. In November 2014, the United States Embassy issued a statement on the occasion of the International Day of Tolerance, calling upon Belize to “repeal the anti-sodomy laws, provisions of which are inconsistent with Belize’s obligations with respect to privacy rights protected by Article 17 of the ICCPR.”

Media in Belize did not cover the Human Rights Committee’s recommendations but did give modest attention to both the Human Rights Council review as well as the Ambassadors’ statement. The coverage prompted the Belize Association of Evangelical Churches to issue a counter statement defending Section 53, and calling for other countries to bow out of Belize’s sovereign affairs. Some media outlets also commented on financial support from the United

33 Belize Criminal Code, as amended in 2000, Section 53.
States to the organization involved in the case. \\(^38\) Ironically, Section 53 is a hold over from colonial British law, and the most vocal supporter of Section 53 in Belize is a U.S. citizen, pastor Scott Stirm, who is the vice president of the Belize Association of Evangelical Churches. \\(^39\)

Media attention to Section 53 challenge flared up earlier in 2014, when Brandon Bain, a professor from the University of the West Indies and director of the UWI’s Caribbean HIV/AIDS Regional Training Programme (CHART), issued an expert report before the Belize Supreme Court. The report said countries that have repealed buggery laws have seen an increase in HIV/AIDS rates among the population of men who have sex with men (MSM), \\(^40\) and that the high rate of HIV/AIDS and other sexually transmitted diseases among gay men is an economic scourge, creating “significant and avoidable financial costs” to citizens and governments. \\(^41\) Professor Bain was subsequently fired from CHART, as the University noted he had lost the confidence and support of a significant sector of the community that the CHART programme is expected to reach. \\(^42\) This news reverberated throughout the region, and received particular attention in Jamaica, where it spurred a demonstration and sustained media attention throughout the summer and into the fall. \\(^43\)

July 2014 also saw some media comment on whether or not a transgender woman, Vanessa Champagne, should be placed in a male or female prison after assault charges. Journalists

---


\\(^40\) “MAJ supports UWI professor, Dr Bain, who gay groups want fired,” May 20, 2014, ChattyChatty (online) at http://chatychaty.com/2014/05/05/maj-supports-uwi-professor-dr-bain-who-gay-groups-want-fired/ (accessed on April 21, 2015).


\\(^43\) See below.
routinely used male gender pronoun to refer to her.\textsuperscript{44}

In mid-July, there was limited media coverage of a small protest against Belize’s foreign minister, after he declared Belize would support the principles of the Organization of American States, including the principle of non-discrimination (including on the basis of sexual orientation and gender identity).\textsuperscript{45}

**Media Environment and Legal Protections of Free Speech**

Freedom of expression is protected by Belize’s Constitution,\textsuperscript{46} although this document provides several broad exceptions to protect national security, public health, safety, order and “morality,”\textsuperscript{47} along with the “reputation of others.”\textsuperscript{48} Belize also criminalizes defamation as well as offending public morality, both with a potential prison sentence of up to two years. In April 2013, the U.N. Human Rights Committee asked the government to Belize to provide information on the impact of the libel law on freedom of expression in the country.\textsuperscript{49}

Despite the restrictions, both Freedom House\textsuperscript{50} and the BBC\textsuperscript{51} have given Belize a relatively high score for press freedom. News is consumed through broadcast media, or one of several weekly papers. Internet penetration is relatively low for the Caribbean, at 32 percent, although neighbors Guatemala and El Salvador have even lower rates.\textsuperscript{52}

\begin{itemize}
\item \textsuperscript{44} “Transgender women, Vanessa Champagne, is charged and behind bars,” July 1, 2014, News5 at http://edition.channel5belize.com/archives/100900 (accessed on May 19, 2015).
\item \textsuperscript{46} Belize Constitution of 1981, Article 12(1).
\item \textsuperscript{47} Ibid., Article 12(2)(a).
\item \textsuperscript{48} Ibid., Article 12(2)(b).
\item \textsuperscript{49} Human Rights Committee, “Concluding observations on Belize in absence of a report,” CCPR/C/BLZ/CO/1, April 26, 2014, para. 21.
\item \textsuperscript{52} Internet World Statistics, “Central America Internet usage and population statistics,” at http://www.
The media monitoring showed that issues related to sexual orientation, gender identity, and bodily diversity seldom are highlighted in Grenada’s media. Commentary at times flares up in response to specific events. For example, in May 2013, the then-leader of the 13-seat Senate, Senator Dr. Lawrence Joseph, argued for decriminalization of


consensual adult same-sex relationships to avoid international condemnation (and potential sanction) and to follow the “modern trend” of acceptance. His article generated much debate, including accusations that Senator Joseph probably is gay, that he is in the pocket of the World Bank or the International Monetary Fund, that institutions that endorse non-discrimination are really pushing immorality, and that the African ancestors of the island’s population would not approve of homosexuality.\textsuperscript{57} The published comments exposed a high level of acceptance of homophobic language in media commentary. Dr. Joseph responded in a second article making it clear that while he supported decriminalization for politically expedient reasons, he personally “abhorred” homosexuality.\textsuperscript{58}

In public discourse, there is considerable gender-based bias against both women and anyone who does not adhere to gender norms, which the government has failed to combat. The Committee on the Elimination of Discrimination against Women, in its 2012 review of Grenada, expressed deep concern with the persistence of gender stereotypes and attitudes concerning the “roles and identities of women and men in the family and society …”.\textsuperscript{59} Such stereotypes are at the root of discrimination against lesbians, gay, bisexual, transgender and intersex persons, and others who are not seen to be following traditional roles for what men and women are supposed to do and be. The Committee noted that the government should adopt a comprehensive strategy to overcome these stereotypes, including a broad awareness-raising component that includes the media.\textsuperscript{60}


\textsuperscript{60} Ibid., para. 20.
A media uproar occurred in October 2014 over a public presentation by Groundation Grenada and GrenCHAP as part of a national constitutional reform debate. Groundation Grenada wrote a detailed paper to the Constitutional Reform Advisory Committee, calling for the addition of sexual orientation and gender identity as prohibited categories of discrimination in the Bill of Rights; the public presentation made a similar point.\(^\text{61}\) The event was live broadcast across Grenada and the diaspora, and the Grenada Broadcasting Network (GBN) featured a newsclip with the audio of a reporter discussing the presentation while video images showed a man dressed in a drag costume, patterned after the Grenada flag. Also, in a Facebook clip, later removed, the caption referred to Groundation as a ‘small but highly unpopular group.’ The following week a pastor wrote a letter to the editor in one of the major weeklies calling for Grenada to reject Groundation Grenada’s proposals and referring to them as agents of Satan.\(^\text{62}\)

Grenada criminalizes consensual same-sex relationships with a prison term of up to 10 years. The Criminal Code Section 431 (under “Public Nuisances”) establishes criminality for “unnatural connexion” between two persons, along with bestiality.\(^\text{63}\) Section 290 of the Criminal Code notes that “unnatural connexions” are on a par with felonies that carry prison sentences of 7 years or more (that is, somewhat serious felonies), and defines this group of crimes as “infamous offences.”\(^\text{64}\) It should be noted that while the Criminal Code provision is gender-neutral, the provision is commonly understood to apply to men only. In 2009, the U.N. Human Rights Committee expressed concern over the continued criminalization of consensual adult same-sex conduct in Grenada,


\(^\text{62}\) On file with Groundation Grenada.

\(^\text{63}\) Grenada Criminal Code, as amended in 1987, Section 431: “If any two persons are guilty of unnatural connexion, or if any person is guilty of unnatural connexion with any animal, every such person shall be liable to imprisonment for 10 years.”

\(^\text{64}\) Grenada Criminal Code, as amended in 1987, Section 290.
and recommended to the State that the relevant legal provisions be repealed.\textsuperscript{65} Similar recommendations were made at Grenada’s Universal Periodic Review (UPR) at the United Nations in 2010 and again in January 2015.\textsuperscript{66}

**Media Environment and Legal Protections of Free Speech**

Though several commentators consider the U.S. invasion of Grenada in 1983 the origin of restrictions on media access to battlefields,\textsuperscript{67} Grenada’s own press has been declared generally free by both Freedom House\textsuperscript{68} and the BBC.\textsuperscript{69} There are no domestic daily papers but there is a substantial number of weeklies. Daily news is consumed through foreign papers or, more commonly, radio or television news. The Grenada Broadcasting Network—a public-private partnership with the minority stake owned by the government—operates the main radio and television stations.\textsuperscript{70} Increasingly, people are also accessing news and information through the Internet (access to which is largely uncensored). The Internet penetration rate is at 43.5 percent, compared to 87 percent in Saint Lucia and 54 percent in Jamaica.\textsuperscript{71}

Grenada’s 1973 Constitution protects the right to freedom of expression broadly, including the right to share information and ideas publicly.\textsuperscript{72} The Constitution also allows for broad


\textsuperscript{72} Grenada Constitution of 1973, Section 10(1).
restrictions to this right, as long as these are provided for by law and are “reasonably required” to protect public morality, the reputations of others, and other stated purposes that are viewed as reasonably justifiable in a democratic society.73

International human rights law allows for some restrictions to the right to freedom of expression, including for the purposes of the protection of public morals and the rights of others. However, it requires such restrictions to be “necessary” to protect these purposes.74 The Human Rights Committee has insisted on a strict test of necessity in this regard, noting that a particular restriction is not necessary “if the protection could be achieved in other ways that do not restrict freedom of expression.”75

In 2012, Grenada became the first country in the Caribbean to decriminalize criminal libel, which until then had carried a potential prison sentence of 6 months to 2 years.76 Grenada still criminalizes seditious libel (insulting the government) or insulting the monarch, subject to 2 years of prison, or as a misdemeanor, respectively.77

73 Ibid., Section 10(2).
74 International Covenant on Civil and Political Rights, Article 19.
77 Grenada Criminal Code, as amended in 1987, Sections 327 and 328.
News related to sexual orientation and gender identity in Guyana is generally focused on either violence against persons perceived to be gay—and for being gay—and accusations that some one or another is gay or lesbian. July of 2014 was no exception.

One story that captured the media—making the news around the
region"81 and farther afield, including the United Kingdom—was the stabbing murder of two sex workers, described as “gay.”83 The victims were described in the press as men wearing women’s clothing and engaging in sex work,84 and the potential murder motive and personal details of the victims were spelled out in great detail, seemingly to titillate readers.85 Some news reports recounted the reluctance of police and bystanders to get involved, due to fear of being robbed,86 while others emphasized the distress of the family of the perpetrator over his perceived sexual orientation.87 The elaboration on the victims’ and perpetrator’s presumed sexual orientation appeared gratuitous, in particular since very little was reported on investigations and other elements more directly related to the crime.

There was wide coverage in the news media of a $15million law suit by the female deputy major regarding “defamatory” statements on the subject of her sexuality by another female government official.88

News coverage repeatedly used disparaging words such as “unnatural”, among others. While there were queries as to “what constitutes libel and what constitutes defamation” there was no suggestion that being LGBT in and of itself should not be grounds for insult or considered an “attack” on an individual’s character. The subject of the action was reported as saying in her defense, “I never said

---

84 Ibid.
that she was gay.” Further, the media made light of comments by the government official “that in light of recent events involving LGBT persons she would have to seek protection on the issue.”

There was wide but not extensive coverage of a call by Guyana’s non-governmental organization Society Against Sexual Orientation Discrimination (SASOD) for the recall of Junior Finance Minister as a member of Parliament and his removal as a Government Minister for hate speech against the LGBT community. The media failed to use the opportunity to expand on SASOD’s submission to the Universal Periodic Review process, which claims breaches to the local constitution and international law. The occasion was however used to repeat the minister’s incendiary and unfounded comments about LGBT persons. The minister’s comments were later alluded to in reports of the murder of two “gay sex workers.”

In one positive note, media covered a human rights award given to Guyana’s non-governmental organization Society Against Sexual Orientation Discrimination (SASOD) for advocacy at the International AIDS Conference in Melbourne in July 2014. This item received very little press, however.

Guyana criminalizes same-sex sexual relationships between men, with a potential prison sentence of 2 years for “gross indecency,” and of 10 years for “indecent assault” between men. Guyana’s criminal law also imposes potentially life imprisonment for “buggery” with another human being “or any other living creature.” Though this latter provision on the face of it is gender neutral and in principle could be applied to heterosexual couples (or to those committing bestiality), it is

92 Criminal Law (Offences) Act of 1893, Section 352.
93 Ibid., Section 353.
94 Ibid., Section 354.
generally understood to criminalize only sexual relations between men. Guyana’s Foreign Minister, Carolyn Rodrigues-Birkett, is cited in the press for having told the Human Rights Council in January 2015, during the country’s UPR that while discussion on sexual orientation has increased over the years, society remains very divided.95

**Media Environment and Legal Protections of Free Speech**

The Guyana Constitution guarantees freedom of expression, though hate speech is excluded along with “other expressions, in whatever form, capable of exciting hostility or ill-will against any person or class of persons.”96 In 2011, Guyana passed the Freedom of Information Act, creating a clearer path for accountability and access to information about government actions for citizens and the press.97

In reality, defamation is the only form of expression “exciting ill will against persons” that is effectively protected in Guyanese law.98 Guyana’s defamation act requires no special damage done to a person’s reputation for accusations of adultery or “unchastity” to be actionable. In other words, innuendo about private legal sexual acts are assumed, *prima facie*, to be damaging to that person’s reputation.99

Guyana’s Internet penetration rate is at 33 percent, which is similar to other South American countries on the Caribbean coast, but lower than both Jamaica and Saint Lucia.100 Even so,
Guyana has a proliferation of Internet news sources.\textsuperscript{101} Broadcast media is both publicly and privately owned. Both Freedom House\textsuperscript{102} and the BBC\textsuperscript{103} rank Guyana’s media as relatively free, with problems related to regulation.

There is very uneven regulation of the media in Guyana, generally, and it is often politically motivated. The government has repeatedly postponed introduction of broadcasting regulations, and a new law that took effect in 2012 has been criticized for consolidating government power over new broadcasting licenses with the result that few licenses are issued to opposition channels.\textsuperscript{104}

A Media Monitoring Unit (MMU) was initially established in 2006 to monitor news coverage of elections according to the Media Code of Conduct and norms associated with international best practices in journalism. The MMU continued monitoring general media content with funding from the U.N. Development Program until mid 2010 when it was shut down by the government. Some commentators have related the shutdown to the lead-up to Guyana’s 2011 elections. In February 2015, the MMU was set to be resurrected in the lead-up to the May 2015 elections.\textsuperscript{105}

The courts have also been used in the tug-of-war between state and opposition media. In 2013, a High Court Judge issued a gag order against the Guyana Times in a case regarding the privatization of a state-owned entity. The Attorney General criticized this gag order.\textsuperscript{106} Freedom House noted that this case led three journalists to resign to avoid reprisals.\textsuperscript{107}

\begin{footnotesize}
\begin{enumerate}
\end{enumerate}
\end{footnotesize}
When it comes to issues related to sexual orientation and gender identity, Jamaica is the most notorious for extremely high levels of violence against persons perceived to be lesbian, gay, bisexual, and


transgender, all frequently conflated as “gay.” Policy makers are highly unwilling to take steps to stop the discrimination and violence. The general anti-gay bias permeates the media, which at times becomes a tool to “out” people, with potentially dire consequences.

Jamaica’s media is often complicit in intimidation and harassment of gays by publishing the names of men charged with consensual buggery and gross indecency, putting them at risk of violence. In 2014, the Special Rapporteur for Freedom of Expression from the Inter-American Commission on Human Rights expressed concern over homophobic and discriminatory language in the media, noting that “some media systematically published articles that could incite violence against LGBTI individuals, by disseminating messages that encourage hatred against the members of that community.”

In addition, politicians and other public figures such as faith leaders use the press to promote a message of intolerance against lesbians and gays. In August 2013, for example, Education Minister Ronald Thwaites stated at a press conference that while new teaching manuals on family life promotes tolerance on all grounds, “We will not be grooming Jamaican children for homosexual behavior.”

During the month of July 2014, the Jamaica Observer and Jamaica Gleaner newspapers, Nationwide 90 FM and Radio Jamaica RJR 94 FM radio stations, as well as Television Jamaica (TVJ) and CVM TV were all closely monitored daily. These six media outlets were chosen because


112 See Inter-American Commission on Human Rights, “Report on the situation of human rights in Jamaica,” OEA/Ser.L/V/II.144 Doc. 12, 10 August 2012 para 286 (citing Jamaica’s refusal to accept recommendations from the UN Human Rights Council to decriminalise consensual same-sex relations, or to even acknowledge that violence against LGBT persons occurs on the island.)


of their wide reach. They influence how Jamaicans perceive the country and minority groups, and their perspective is reflected in Jamaican society. A number of news items related to the rights and concerns of lesbian, gay, bisexual, transgender, and to a lesser extent intersex people resulted in extensive media coverage throughout 2014, peaking over the summer months.

The firing of Professor Brendan Bain as chairman of the Caribbean HIV/AIDS Regional Training Programme at the University of the West Indies (UWI) was widely reported by media. His dismissal—after he testified in favor of the criminalization of sodomy at the Supreme Court of Belize—was seen by pundits as linked to a “gay agenda.” The Caribbean Vulnerable Communities Coalition sent a letter to UWI asking for Bain’s dismissal; the letter then became public. This issue combined in June 2014 with articles written in the nation’s most popular newspapers brandishing gays as ‘thugs’ and ‘rapists’ ensured that the “gay agenda” was at the forefront of everyone’s minds and widely covered in the print and electronic media. Viewpoints debunking the myth of a supposed “gay agenda” were also presented, though to a lesser extent.

Secondly, the media reported on a sexual and reproductive rights pilot program for older adolescents in private children’s homes to be implemented by the non-governmental organization, Jamaicans For Justice (JFJ) from November 2013 to May 2014. The program was criticized in the media for including a reference to anal sex, which again was linked to the “gay agenda.” Many radio talk shows and letters to the editor focused on this controversy. Consequently, much of the

116 See above under Belize.
121 Ibid.
media attention focused more on whether or not Jamaicans for Justice had been infiltrated by gays instead of the appropriate sexuality education programs in the context of high incidents of HIV/AIDS and teenage pregnancy.

During the summer of 2014, a coalition of faith-based groups called Jamaica Churches Action Uniting Society for Emancipation (CAUSE) was established as a response to the dismissal of Professor Bain, and organized an “anti ‘gay agenda’” march on June 29, which, according to media reports drew some 25,000 persons. The organizer defined the “gay agenda” as seeking to “reorganise the society to make all sexual expressions free, and punish those in opposition.”

After June 29, the media was rife with news stories, columns, talk shows, letters to the editor and other commentary about the LGBTI community and its allies in Jamaica and the region. The LGBTI community and allies ensured that their voices were heard as they defended and claimed their right to equality and attempted rebut the notion of a deceptive “gay agenda.” Political and religious leaders used the opportunity to do the opposite. As an example, in July 2014, the Gleaner newspaper published an editorial on Jamaica CAUSE, the organizers of the anti-LGBTI protest, noting that only a broad inclusive agenda is worthy of a modern, functional state. The editorial was immediately countered by Dr. Alfred Sangster, a relative of former Jamaica Prime Minister Donald Sangster, who argued that homosexuality is unnatural and unhealthy.

---


Throughout the late summer, the media focused on robberies allegedly carried out by homeless youth in New Kingston. The youth were generally and gratuitously referred to as “cross-dressers,” and articles on this issue were published throughout the fall.\(^{129}\) This was not the first time “cross-dressers” from New Kingston were highlighted in the Jamaican media as a menace to society, specifically to straight men, for no other apparent reason than their living on the street.\(^{130}\)

Jamaica criminalizes “buggery” with a potential prison sentence of up to ten years.\(^{131}\) The law also penalizes attempted “buggery” with a potential prison sentence of up to seven years, and transfers broad powers to the police to detain, without a warrant, anyone found “lying or loitering in any highway, yard, or other place … between 7 o’clock in the evening and 6 o’clock in the morning … and whom he shall have good cause to suspect of having committed, or being about to commit any felony [including “buggery”].\(^{132}\) In addition, “gross indecency” between two men is considered a misdemeanor, with a prison sentence of up to 2 years, potentially including hard labor.\(^{133}\) Human Rights Watch has noted that it is unclear how often these provisions are effectively enforced, but that they are frequently used to intimidate and harass persons.\(^{134}\)

In late 2011, then opposition leader (now Prime Minister) Portia Simpson-Miller said in an election debate that her administration would promote human rights and that, as part of this, she would promote putting the “buggery” provisions of the penal code to a conscience


\(^{131}\) Offences Against the Person Act, Section 76.

\(^{132}\) Ibid., Sections 77 and 80.

\(^{133}\) Ibid., Section 79.

vote in Parliament.\textsuperscript{135} This election promise has yet to be fulfilled and is frequently highlighted in Jamaican media, usually with reference to the overwhelming support for the “buggery” provisions among the general public.\textsuperscript{136}

On a positive note, in late July 2014, Television Jamaica looked at transgender people living in Jamaica in a special feature on its popular ‘All Angles’ program.\textsuperscript{137} It focused on the murder of Dwayne Jones, a transgender teenager who was murdered by a mob in July 2013. The feature was generally fair and balanced and included comments from Dwayne’s friends, who were there on the night of the incident, law enforcement officers, and Jamaican citizens.

Not all statements made by political leaders in the media are homophobic or negative. Some choose not to answer questions concerning LGBTI issues directly, or said that the issue would be discussed further internally and addressed publicly later. For instance, at a divisional conference held by the People’s National Party (PNP—the ruling political party—in Saint Andrew) many in attendance were concerned about LGBTI people living in their community, the buggery law and the PNP’s stance on the issue. The PNP counselor who spoke on the issue shared fair-minded views about homosexuality, but spoke negatively about cross-dressers, who she suggested knowingly broke the law.\textsuperscript{138}

During the monitoring period, a notable amount was reported on gender identity and same-sex marriage, most of it negative. Coverage of intersex issues, sexual violence and violence against LGBTI people was scant or mentioned only as a smaller part of a report.


\textsuperscript{137} “All Angles,” July 23, 2014, Television Jamaica at http://www.televisionjamaica.com/Programmes/AllAngles.aspx/Videos/36561

Media Environment and Legal Protections of Free Speech

Jamaica’s Constitution protects the right to freedom of expression. This general provision is backed up by a 2004 Access to Information law, which provides broader access to government information upon demand, except for documents related to Cabinet proceedings or materials that could jeopardize national security or legal proceedings. Freedom House has noted that both the print and broadcast media are largely free, though the former has low circulation, and the latter are mostly state owned. Internet penetration is at 54 percent: higher than in Belize, Guyana, and Grenada, but much lower than in Saint Lucia. In late 2013, Jamaica reformed its defamation laws in what the International Press Institute called “a milestone achievement for press freedom in the Caribbean.” The Defamation Act of 2013 eliminates criminal libel and introduces the defense of the truth and innocent dissemination, provisions that are vital to a free press.

In August 2011, the Annual General Meeting of the Press Association of Jamaica adopted a voluntary code of conduct, which states that the media should avoid prejudicial or pejorative mention of an individual’s sexual orientation, and sexual orientation should be mentioned only when it is directly relevant to a specific news story.

---

139 Constitution of Jamaica of 1962, Section 13(b).
In Saint Lucia, news related to LGBTI issues is often about a crime, originating from media work done by local LGBTI representative organization United and Strong, or making news in other parts of the region or world.


Media, particularly broadcast television in Saint Lucia, is guilty of visual conflict when presenting stories of LGBTI Saint Lucians. In a country with the majority of predominantly African-descent, many of the stories feature images of caucasians or individuals in foreign settings. While there is a lack of spokespersons for LGBTI issues due to prevailing fears of discrimination, news outlets have access to a variety of stock footage. This therefore suggests a lack of awareness or deliberate manipulation of, the impact of images to which the average Saint Lucians cannot identify, further alienating the general public from LGBTI Saint Lucians. The repeated use of images from pride parades in news items on a range of LGBTI issues has also been noted.

Reports also indicate a tendency to treat with issues considered sensational and to approach topics from a “moral” angle. In the week just before the start of the media monitoring exercise, Saint Lucia’s media included terms such as “flamboyant,” “people of uncertain gender” and “male prostitute,” when referring to persons perceived to be gay.

In early July 2014, Saint Lucia’s broadcast media, in particular, focused on the murder of Ulanda “Jordan” Frederick, described as a person born with both male and female physical characteristics. The coverage focused a great deal on whether the victim had “really” been a man or a woman, although this was never presented as relevant to the motive for the murder or to the investigation.

Broadcast media also widely covered the case of a Catholic priest who was removed from his duties on July 5, 2014, because he was rumored to have had an “inappropriate”


relationship with a man.\(^{153}\) For several days, opinion articles and reports speculated on where the alleged physical relationship took place and whether it was inappropriate.\(^{154}\) Throughout the coverage there was no solid evidence presented or credible source giving truth to the allegations. However the media made mileage of the item, with mainly injurious statements regarding LGBTI persons generally, particularly in unedited reported speech via the broadcast media\(^{155}\). There was no exploration of the deeper issues around the reports, including the implication of the media and public’s interpretation of the innocuous statements by the archbishop who heads the local Catholic Church.

Other items that could have meaningfully expanded the conversation around the issue of criminalization, LGBTI equality in the news, include a statement by the president of the influential Hotel and Tourism Association urging the tourism industry to actively cater to same-sex couples to grow tourism;\(^ {156}\) efforts by the Ministry of Gender Affairs to reduce sexual violence during carnival,\(^ {157}\) including sexual harassment, and rape; and United and Strong’s distribution of safer sex commodities to mitigate unsafe sexual practices prevalent\(^ {158}\) during this same time.\(^ {159}\)

Another story of potentially great import that however received very little coverage was a statement by Saint Lucia’s Prime Minister to Saint Lucians in the diaspora, seeking advice on same-sex marriage. Reported as the first occasion on which Saint Lucia’s current prime minister had ever spoken publicly about the issue, the statement


\(^{155}\) “Man to Man,” July 8, 2014’ DBS Television at https://youtu.be/Hu62QFkBv9


\(^{157}\) “Division of Gender Relations issues a Carnival Advisory,” The Scoop, Radio Saint Lucia, RSL97, [Castries] Radio

\(^{158}\) Ibid.

has direct implications for the country’s foreign policy, and cast a negative light on
donor countries and agencies as well as established international processes. The prime
minister’s statement also begged analysis, as it highlighted same-sex marriage while
ignoring existing barriers that preclude any discussion on same-sex marriage in Saint
Lucia, namely laws that criminalise same-sex intimacy between consenting adults. The
statement was carried by one news outlet, with no analysis.\footnote{160}

Saint Lucia criminalizes “gross indecency,” with a potential prison sentence of up to ten
years,\footnote{161} as well as “buggery” (defined in law as anal sex between two men), with a potential
prison sentence of up to ten years (life sentence, if non-consensual).\footnote{162} The law specifies that
penalties be waived for “gross indecency committed in private between an adult male person
and an adult female person, both of whom consent.”\footnote{163} The law, as written, criminalizes
consensual same-sex sexual relations for both men and women, with specific penalties applied
for anal sex between men.

**Media Environment and Legal Protections of Free Speech**

Saint Lucia’s Constitution protects the right to freedom of expression, subject to limitations
to protect the rights and freedoms of others and the “public interest.”\footnote{164}

There have been several calls for a Freedom of Information Act, most recently in April 2015,
when a member of the government told a gathering of non-governmental organizations that
a bill will be drafted this summer.\footnote{165}


\footnote{161} Criminal Code of Saint Lucia of 2014, Section 132. Gross indecency is defined here as “an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organs for the purpose of arousing or gratifying sexual desire.”

\footnote{162} Criminal Code of Saint Lucia of 2014, Section 133.

\footnote{163} Ibid., Section 132 (2).

\footnote{164} Constitution of Saint Lucia of 1979, Article 1.

\footnote{165} “Strengthening our advocacy rights,” April 9, 2015, Saint Lucia Times at http://stluciatimes.com/article/
Evaluations by Freedom House and the BBC found the right to freedom of expression was largely upheld in practice.\footnote{Freedom House, “Freedom of the World 2014: Saint Lucia,” at https://freedomhouse.org/report/freedom-world/2014/st-lucia#.VTjwxqAloco (accessed on April 23, 2015); and BBC News, “Saint Lucia country profile,” at http://news.bbc.co.uk/2/hi/americas/country_profiles/1210491.stm (accessed on April 23, 2015).} But the Media Association of Saint Lucia (MASL) in May 2014 said media freedom has been compromised and to some extent weakened by the combination of political use of the media and by greater demands on journalists for commercial success of the industry.\footnote{Media Association of Saint Lucia, “Country Report on the State of the Media in Saint Lucia for the period 2012 to 2014,” May 19, 2014, at http://www.masl.lc/content/country-report-state-media-saint-lucia-period-2012-2014 (accessed on April 23, 2015).} MASL also raised concerns about intimidation as a result of lawsuits against media that criticize government figures and the criticism of traditional media generally found on social media and the Internet.\footnote{Ibid.}

Saint Lucia operates with some of the most stringent and detailed criminal provisions on libel in the region. The Criminal Code continues to penalize seditious libel,\footnote{Criminal Code of Saint Lucia of 2014, Sections 304 and 305.} intentional and negligent libel,\footnote{Ibid., Sections 313–328.} and defamation of the Crown,\footnote{Ibid., Section 329.} with potential penalties of between two and five years. Though the law provides for the defense of truth or of good faith, the International Press Institute characterizes these provisions as “particularly troubling.”\footnote{“Criminal defamation laws remain widespread in the Caribbean,” February 12, 2013, The New York Carib News (online) at http://www.nycaribnews.com/news.php?viewStory=3503 (accessed on April 23, 2015).} In September 2013, a cabinet minister announced a defamation suit against a journalist for specific statements that were never mentioned further in the press.\footnote{“Minister LaCorbiniere takes legal action against Timothy Poleon and RCI,” September 27, 2013, Saint Lucia News Online (online) at http://www.stlucianewsonline.com/breaking-news-minister-lacorbiniere-takes-legal-action-against-timothy-poleon-and-rci/ (accessed on April 23, 2015).} Another two government officials sued the same journalist in October 2013, reportedly for reading an online article that had been published by a media outlet based in the United States. The
journalist read an apology on the air in November 2013 to avoid charges.  

The print media in Saint Lucia consists of a number of privately owned weeklies and two papers published three times a week. Broadcast media are both private and publicly owned. Internet penetration is one of the highest in the region, at 87.5 percent.


TAB 23
NOT SAFE AT HOME
Violence and Discrimination against LGBT people in Jamaica
Not Safe at Home
Violence and Discrimination against LGBT People in Jamaica
Human Rights Watch is dedicated to protecting the human rights of people around the world. We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. We investigate and expose human rights violations and hold abusers accountable. We challenge governments and those who hold power to end abusive practices and respect international human rights law. We enlist the public and the international community to support the cause of human rights for all.

Human Rights Watch is an international organization with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, London, Los Angeles, Moscow, Nairobi, New York, Paris, San Francisco, Tokyo, Toronto, Tunis, Washington DC, and Zurich.

For more information, please visit our website: http://www.hrw.org
Not Safe at Home
Violence and Discrimination against LGBT people in Jamaica

Glossary .................................................................................................................................................. i
Note on Jamaican Language .................................................................................................................... iii
Summary ................................................................................................................................................... 1
Key Recommendations ............................................................................................................................. 6
Methodology .............................................................................................................................................. 8

I. Public Attitudes towards Homosexuality ............................................................................................. 10
   Criminalization .................................................................................................................................... 10
   Homophobic Discourse ...................................................................................................................... 11
   Mistrust of Police ............................................................................................................................... 17
   HIV and Homophobia ....................................................................................................................... 18

II. Violence against LGBT People ........................................................................................................... 21
   Physical Abuse .................................................................................................................................... 21
   Verbal Abuse ...................................................................................................................................... 26

III. Police Failures to Act ......................................................................................................................... 27
   Failure to Intervene, Investigate, and Arrest ......................................................................................... 27

IV. Police as Perpetrators .......................................................................................................................... 33
   Verbal Abuse .................................................................................................................................... 33
   Physical Abuse ................................................................................................................................... 34
   Sexual Abuse .................................................................................................................................... 35
   Extortion ............................................................................................................................................ 36

V. Public and Private Sector Discrimination .............................................................................................. 39
   Health Care Discrimination ................................................................................................................. 39
   Employment Discrimination ............................................................................................................. 42
   Housing Discrimination .................................................................................................................... 43

VI. Government and Police Response .................................................................................................... 48
Police .............................................................................................................................................. 48
Positive Police Behavior ..................................................................................................................... 52
Government Ministries ...................................................................................................................... 55

VII. Civil Society .................................................................................................................................. 61

VIII. Regional and International Stakeholders ...................................................................................... 65

IX. International Human Rights Law .................................................................................................. 67
  Non-Discrimination ............................................................................................................................ 67
  Right to Privacy ................................................................................................................................. 69
  Right to Protection against Violence .................................................................................................. 69
  Economic and Social Rights, including the Rights to Health and Housing ......................................... 71

Recommendations .................................................................................................................................. 73
  To the Prime Minister ......................................................................................................................... 73
  To the Ministry of National Security .................................................................................................. 73
  To the Jamaican Constabulary Force ................................................................................................. 73
  To the Ministry of Health .................................................................................................................... 74
  To the Ministry of Justice .................................................................................................................... 74
  To the Ministry of Education ............................................................................................................. 74
  To the Ministry of Youth and Culture ................................................................................................. 75
  To the Ministry of Local Government and Community Development .............................................. 75
  To Parliament ....................................................................................................................................... 75
  To International Donors .................................................................................................................... 76

Annex I: Information Request Regarding the JCF’s Policy on Diversity ............................................. 77

Annex II: Correspondence with the JCF Regarding Site Visits to Police Stations around the Country .................................................................................................................................................. 79

Annex III: Information Request – JCF’s Violence Attribution Assessment Form ............................. 80

Annex IV: JCF’s Incident Assessment Form .......................................................................................... 81

Annex V: JFLAG Record of Homophobic Discrimination and Violence, 2009-2012 ........................ 82

Annex VI: Association between HIV and Vulnerability among 201 MSM in 4 Parishes, Jamaica, 2007 ................................................................................................................................................................. 85

Acknowledgements .................................................................................................................................. 86
Glossary

**Bisexual**: Sexual orientation of a person who is sexually and romantically attracted to both women and men.

**Butch**: Masculine gender expression; a popular term within lesbian and transgender communities to describe lesbians whose gender expression is masculine.

**Gay**: Synonym for homosexual in many parts of the world; in this report, used primarily to refer to the sexual orientation of a man whose primary sexual and romantic attraction is towards other men.

**Gender Expression**: External characteristics and behaviors that societies define as “feminine,” “androgynous,” or “masculine,” including such attributes as dress, appearance, mannerisms, hair style, speech patterns, and social behavior and interactions.

**Gender Identity**: Person’s internal, deeply felt sense of being male, female, both, or something other than male or female.

**Heterosexual**: Sexual orientation of a person whose primary sexual and romantic attraction is toward people of the other sex.

**Homosexual**: Sexual orientation of a person whose primary sexual and romantic attractions are toward people of the same sex.

**Homophobia**: Fear and contempt of homosexuals, usually based on negative stereotypes of homosexuality.

**Lesbian**: Sexual orientation of a woman whose primary sexual and romantic attraction is toward other women.

**LGBT**: Lesbian, gay, bisexual, or transgender; an inclusive term for groups and identities sometimes also associated together as "sexual and gender minorities."
**Men Who Have Sex with Men (MSM):** Men who engage in sexual behavior with other men, but do not necessarily identify as "gay," "homosexual," or "bisexual."

**Out/To be Outed:** To be in a position where one’s sexual orientation is openly known and acknowledged, to have one’s sexual orientation revealed (perhaps inadvertently) through words or actions, or to be exposed as homosexual or bisexual by another person without one's consent.

**Sexual Orientation:** The way a person’s sexual and romantic desires are directed. The term describes whether a person is attracted primarily to people of the same or opposite sex, or to both.

**Transgender:** Adjective used to describe the gender identity of people whose assigned gender (the gender they were declared to have upon birth) does not conform to their lived and/or perceived gender (the gender that they are most comfortable with expressing or would express, if given a choice). A transgender person usually adopts or would prefer to adopt a gender expression in consonance with their preferred gender, but may or may not desire to permanently alter their bodily characteristics to conform to their preferred gender.

**Transphobia:** Fear and contempt of transgender people, usually based on negative stereotypes about transgender people.

**Women Who Have Sex with Women (WSW):** Women who engage in sexual behavior with other women, but do not necessarily identify as “gay,” “homosexual,” “lesbian,” or “bisexual.”
Note on Jamaican Language

Many Jamaicans speak “patois” or Jamaican Creole in addition to Caribbean Standard English. The following patois words and phrases appear in this report:

**Battyman/Battybwoy:** “Batty” is a slang term for “buttocks.” Battyman or Battybwoy is a pejorative term for men who have sex with men, as anal sex is seen as the act that defines them.

**“Battyman fi dead”**: Gay men should be dead/killed; gay men must die.

**Fish**: Effeminate man who has sex with men.

**Sodomite / Sodomite gal**: Derogatory term for a woman who has sex with women.
Summary

On July 21, 2013, 16-year-old Dwayne Jones attended a dance party in Montego Bay, Jamaica, dressed in women’s clothing. When partygoers at the bar in Irwin, St. James, realized she was biologically male, they subjected her to almost every form of physical violence imaginable—beating, stabbing, and shooting her before running her over with a car. No one helped her during the assault. When police arrived, they found her body dumped in bushes along the main road. Dwayne had been homeless since age 12, rejected by her family because of her gender identity. Her family initially refused to claim her corpse from the morgue.

Dwayne’s murder received national, regional, and international media attention, and served as a catalyst for public debate. Justice Minister Mark Golding condemned the brutal murder, calling on the police to “spare no effort in bringing the perpetrators to justice.” A small public protest against the killing took place in Kingston’s Emancipation Park. The police interviewed witnesses and provided information about the murder investigations to Jamaica’s preeminent lesbian, gay, bisexual, and transgender (LGBT) rights organization, J-FLAG. At time of writing, however, no one had been arrested or charged.

***

The story of Dwayne Jones lies at one extreme end of a continuum of violence experienced by Jamaicans who identify as lesbian, gay, transgender, or bisexual. Nevertheless, the circumstances of her murder provide a snapshot of the current situation facing many LGBT people in Jamaica: a high risk of violence, vulnerability heightened by poverty and family rejection, and mixed responses from both the authorities and the public.

This report builds on previous research published by Human Rights Watch in 2004, Hated to Death: Homophobia, Violence and Jamaica’s HIV/AIDS Epidemic. Documenting human rights violations carried out against LGBT persons in Jamaica between 2006 and 2013, it focuses on the intolerable level of violence, physical and sexual, perpetrated based on actual or perceived sexual orientation or gender identity. Second, it documents discrimination LGBT people face from government institutions, including health care facilities, as well as in the private sector. The report then turns to the state’s responsibility
for this abuse, considering legislation that facilitates abuses by private and public actors (such as “buggery laws” that outlaw anal sex and all male homosexual conduct), and government efforts to protect the rights of LGBT persons, including police investigation of homophobic and transphobic violence.

High levels of violent crime, public mistrust of police, low levels of crime reporting, low prosecution rates, and a perception that the criminal justice system is skewed against the poor are widespread in Jamaican society. However, LGBT Jamaicans—especially those who are poor and unable to live in safer, more affluent areas—are particularly vulnerable to violence. Many live in constant fear. They are taunted; threatened; fired from their jobs, thrown out of their homes; beaten, stoned, raped, and even killed.

Between 2009 and 2012, J-FLAG, a Jamaican LGBT rights organization, recorded 231 incidents of attacks against LGBT people, including home invasions, physical assaults, and mob attacks.

Human Rights Watch conducted five weeks of field research in Jamaica in April and June 2013, interviewing 71 LGBT people as well as state officials and other stakeholders. Of those interviewed:

- More than half (44) said they had been victims of some form of violence based on their sexual orientation or gender identity, some more than once;
- Nineteen had reported these crimes to the police, who only took formal statements in eight cases;
- Victims were aware of arrests by police in only 4 of the 56 cases of violence that Human Rights Watch documented;
- Twenty-six of those who had experienced violence said they did not report crimes due to fear of retaliation from the perpetrators or because reporting a homophobic or transphobic hate crime would “out” them to broader society.

In recent years, the police have taken some steps to address homophobic and transphobic violence. In 2011, the Jamaican Constabulary Force launched a Policy on Diversity, developed in consultation with J-FLAG, which requires police to ensure that LGBT people and other vulnerable groups can safely file police reports. The policy establishes a
mechanism to monitor police non-compliance, although Human Rights Watch has not been able to ascertain whether any police have been held accountable for non-compliance, despite a formal request for this information (see Annex I).

The Ministry of National Security has also developed tools to monitor experiences of crime, including the Violence Attribution Assessment Form. This specifically mentions “hate crime” as a cause of violent crime, lists “sexual orientation and gender identity” as one possible motivation for hate crime, and requires that police conduct immediate assessments to determine whether a hate crime has indeed occurred. (The definition of “hate crime” is not provided, however, potentially complicating the work of the police.)

In March 2012, the Inter-American Commission on Human Rights’ (IACHR) “Report on the Situation of Human Rights in Jamaica” found that discrimination based on sexual orientation, gender identity, and gender expression is widespread and entrenched in Jamaican state institutions. Following the report’s release, Justice Minister Mark Golding acknowledged the need for targeted anti-discrimination legislation to address violations against certain groups in society, although he did not specifically mention LGBT people.

Nonetheless, police protection remains inadequate, and is among several factors that contribute to the specific vulnerability of LGBT people. Families and neighbors often drive LGBT people from their homes and communities; landlords refuse to rent to LGBT persons, denying them housing; health providers stigmatize them when they seek services; and employers arbitrarily fire them.

Many LGBT Jamaicans become effectively homeless, forced to flee their homes and sometimes the country, and denied full citizenship rights. Among the most vulnerable are dozens of gay and transgender Jamaican children and young adults who have been rejected by their families and are living on the streets, where they face violence and harassment by police and the public.

The negative public discourse about LGBT people, who are referred to in the most derogatory of terms in public spaces, combined with the risk of physical violence, can have

---

1 Human Rights Watch wrote to Assistant Commissioner of Police Kevin Blake in October 2013 to request the data collected since the implementation of this assessment form. Blake had not sent any further information at time of writing, despite an undertaking in November 2013 that his department would try to furnish Human Rights Watch with the data (see Annex III).
severe psychological implications. A 2007 study of LGBT Jamaicans found that they had disproportionately higher rates of mental health issues, and many interviewees said they constantly struggle with the stress associated with keeping their sexuality hidden in order to stay safe from harm. Some spoke of wanting to commit suicide.  

Given the risk of violence and discrimination, many LGBT people remain closeted in order to protect themselves. But in the last three years, a number of LGBT activists have come out publicly, in media or as lawyers or litigants in two major court cases challenging anti-gay discrimination. LGBT people are also increasingly reporting incidents of hate crime: in 2012 J-FLAG found that almost half of the 63 reports it received were also reported to police. J-FLAG, with funding from the Caribbean Vulnerable Communities Coalition, launched a social media campaign, “We are Jamaicans,” in which LGBT persons and allies speak out online about sexual orientation and gender identity, including their own experiences.

Despite these public and private initiatives, the Jamaican government still offers little in practical terms to prevent and protect against violence and discrimination, or to punish the perpetrators of crimes against LGBT people. Jamaica has neither comprehensive anti-discrimination legislation, nor specific legislation prohibiting discrimination on the grounds of sexual orientation or gender identity. Serious rights abuses based on sexual orientation and gender identity continue, and justice for these crimes remains elusive.

International law and standards require Jamaica to prohibit discrimination on the basis of sexual orientation. Jamaica’s sodomy laws violate those international standards, as do the abuses documented in this report, including police failure to address violence against LGBT people.

In December 2011, Prime Minister Portia Simpson Miller pledged that, “No one should be discriminated against because of their sexual orientation,” and at the same time called for the legislature to revisit Jamaica’s buggery laws. However, on April 3, 2014, she stated in

---

2 For example, Anne I., a transgender woman who has survived several brutal attacks, including rape, and has been regularly subjected to humiliation, including at the hands of hospital personnel, told Human Rights Watch she had tried to kill herself by overdosing on Panadol just two weeks before we interviewed her in April 2013. It was not her first attempt. Human Rights Watch interview with Anne I., Kingston, April 5, 2013.

an interview that repealing the law would have to be “based on the will of the constituents,” and that repeal was not a “priority.”

Meaningful progress will require a deeper commitment to equality on the basis of sexual orientation and gender identity, particularly by the police. Progress will also require strong leadership from Jamaica’s government in the face of intense public resistance to any type of legal reform that would uphold the rights of LGBT people.

In order to translate words into action and ensure the equal rights of all persons regardless of their gender identity or sexual orientation:

- Prime Minister Portia Simpson Miller, parliamentarians, and other leaders should consistently condemn violence and discrimination.
- Police should undertake rigorous investigations into all allegations of anti-LGBT hate crimes, improve monitoring of the Policy on Diversity, and strengthen police training on LGBT rights, in collaboration with LGBT civil society groups.
- Parliament should strike down all discriminatory laws and replace them with laws that protect Jamaicans from discrimination on the grounds of gender identity and sexual orientation.


Key Recommendations

To the Prime Minister

• Uphold your election campaign pledge that “no one should be discriminated against because of their sexual orientation,” and translate it into concrete policy by proposing comprehensive anti-discrimination legislation that prohibits all forms of discrimination, including on the grounds of sexual orientation and gender identity, in all areas of life governed by law.

To the Ministry of National Security

• Closely monitor implementation of the Jamaica Constabulary Force (JCF) Policy on Diversity, and issue regular, public reports on its implementation.

• Strengthen monitoring and reporting mechanisms to better document incidents of hate crime against LGBT people, ensure accurate reporting and collation of information, and identify patterns of crimes.

To the Jamaican Constabulary Force

• Undertake prompt, independent, and effective investigations into all allegations of acts of violence, including those that may be motivated by sexual orientation or gender identity.

• Build a stronger working relationship with Jamaica’s leading LGBT organizations, including J-FLAG and Quality of Citizenship Jamaica. Work consistently and systematically with these organizations to develop sensitization and human rights training, and collaborate with them to identify and document incidences of violence.

To the Ministry of Justice

• Work with police, prosecutors, health care providers, and other social service agencies to develop an integrated approach or protocol to deal with LGBT people who are victims of violence.
To the Ministry of Youth and Culture, Ministry of Local Government and Community Development

- Develop an inclusive, non-discriminatory homelessness policy that explicitly commits to addressing the needs of LGBT homeless people, including children and young adults.

To Parliament

- Repeal Sections 76, 77, and 79 of the Offenses against the Person Act, which criminalize consensual adult same-sex conduct.
- Amend the Sexual Offences Act 2009 to remove the gender-specific definitions of sexual intercourse and rape.
Methodology

This report is based on information collected during five weeks of field research conducted in Jamaica in April and June 2013, as well as prior and subsequent desk-based research.

Two Human Rights Watch researchers conducted 71 interviews with self-identified lesbian, bisexual, gay, and transgender people, including 3 LGBT children (i.e., under 18 years old). These interviews took place in Kingston, Manchester, St. Ann, St. James, St. Catherine, and St. Andrew.

All persons interviewed provided verbal informed consent to participate and were assured that they could end the interview at any time or decline to answer any questions. These interviewees have been given pseudonyms and in some cases other identifying information has been withheld to protect their privacy and safety. No one was compensated for their participation.

Most interview subjects were identified with the help of Jamaican nongovernmental organizations (NGOs) that provide services to people living with HIV, men who have sex with men (MSM), women who have sex with women, transgender people, and sex workers.

Many interview subjects told Human Rights Watch they were victims of violence based on their sexual orientation and gender identity. Such accounts were often difficult to independently verify. Most victims were alone when they were attacked, and many did not file police reports, for reasons discussed in Section II. We were able to corroborate 11 out of 56 reported incidents through police receipts documenting the incidents, court proceedings, or letters and incident reports from J-FLAG. In terms of the types of physical assaults documented, the information that we garnered closely paralleled the yearly incident reports that J-FLAG collated.

Human Rights Watch also interviewed representatives of government agencies, United Nations (UN) officials, representatives of NGOs specializing in HIV/AIDS or human rights, academics, health care workers, and members of Jamaica’s police force.
On October 30, 2013, Human Rights Watch wrote to the Commission of Police requesting information about the JCF’s Policy on Diversity and its implementation as well as its impact (see Annex I). The letter further asked for information on how the JCF monitors crimes against sexual minorities, and for information about specific cases and their outcomes. At time of writing, we had not received a response.

All documents cited in this report are publicly available or on file with Human Rights Watch.
I. Public Attitudes towards Homosexuality

Criminalization

Jamaica’s anti-sodomy or “buggery” laws that prohibit same-sex conduct between consenting adult males date to 1864 when Jamaica was a British colony. Sections 76 and 77 of the Offences Against the Person Act make “the abominable crime of buggery” punishable by “imprisonment and hard labor for a maximum of ten years,” while an “attempt” to commit buggery is punishable by seven years’ imprisonment. Section 79 prohibits "acts of gross indecency" (generally interpreted as referring to any kind of physical intimacy) between men, in public or in private. The Sexual Offences Act of 2009 requires men convicted of the “abominable crime of buggery” to register as sex offenders.5

Prosecutions under these laws are rarely pursued. Nevertheless the laws have a real and negative impact. Criminalizing sexual intimacy between men offers legal sanction to discrimination against sexual and gender minorities, and in a context of widespread homophobia, gives social sanction to prejudice and helps to create a context in which hostility and violence is directed against LGBT people.

The laws have been used by police to extort money from adults engaged in consensual homosexual sex; by public television stations to justify refusal to air public service announcements making positive statements about LGBT persons; and by landlords to justify refusal to rent apartments to them. Though those arrested are rarely if ever prosecuted, gay men who are “outed” through arrest risk violence and other abuse by community members.

While the law does not directly reference transgender people, transgender women and homosexuals are often conflated. Gender non-conforming Jamaicans, especially transgender women and gender non-conforming gay men who are publicly visible, are most likely to suffer violence and discrimination.

Same-sex relations between women are not criminalized in Jamaica. However, lesbians and bisexual women are stigmatized and subjected to violence, including sexual violence, as discussed in Section III.

In contrast, the Sexual Offences Act narrowly defines rape as the non-consensual penetration of a vagina by a penis, with a maximum penalty of life imprisonment. Accordingly, the law does not recognize male rape, only “buggery,” with perpetrators facing a significantly lower penalty. Anal rape of females is also classified as “buggery.” The gender-biased, inadequate definition of rape in the Sexual Offences Act leaves several categories of victims of sexual violence, including male victims of rape and female victims of anal rape, unprotected by the law.

**Homophobic Discourse**

Anti-LGBT public rhetoric continues to be fueled by some elements of the religious, media, music, and political establishments.

**Religious**

Religion, particularly protestant Christianity, has strong influence in Jamaica. Politicians often describe the country as a “Christian nation” and Jamaicans as “a God-fearing people.” Some Christians combine religious rhetoric with homophobia. The Jamaican Coalition for a Healthy Society (JCHS)—an evangelical Christian network with the stated vision that a “healthy Jamaican society” is based on the Bible—has been proactive in lobbying the government to preserve Jamaica’s sodomy laws. Established in January 2012, the JCHS has risen to some public prominence in Jamaica through an aggressive media campaign, public protests, and rallies.

In response to the International Day against Homophobia and Transphobia (IDAHOT), celebrated by LGBT rights activists around the world each May 17, JCHS produced, in 2013, a poster misusing HIV statistics to condemn “homosexual behavior,” and claiming that the voices of those who oppose such “behavior” are being silenced.

---


7 The poster’s fine print states, “JCHS condemns all acts of violence against all persons,” perhaps acknowledging that LGBT people are frequent victims of violence.
In June 2014, an ad-hoc coalition of religious groups, Jamaica CAUSE (Churches Action Uniting Society for Emancipation), organized a mass rally, estimated at 25,000-strong, in Kingston against “the homosexuality agenda” and the repealing of the buggery law.  

Media

Media reflect and fuel widespread homophobia in Jamaican society. Broadsheets publish cartoons that stereotype, ridicule, foment hate against, and demonize LGBT people.

Sensationalist and homophobic articles have also appeared under headlines such as, “Gay men, bystanders in missile-throwing brawl during road march” and “Stand your ground against homosexuality.” Some of these types of headlines and associated links to the cartoons have since been removed from online editions after the papers received complaints.

The Jamaica Observer did not grant Human Rights Watch permission to reproduce several cartoons that illustrate the stereotyping of LGBT people. However, they can be accessed on the newspaper’s website: http://www.jamaicaobserver.com/tools/cartoons/.

---


For example, a cartoon published in the *Jamaica Observer* in January 2013 depicts the Jamaican prime minister clutching a copy of the buggery law and being pulled in two different directions by a cleric and a gay man. The gay man, wearing a pink purse and made up in white face, tries to disrobe her. “Tek it off!” he exclaims, conveying a message that LGBT people are both dangerous and want “special rights.”

Another *Jamaica Observer* cartoon published in March 2013 depicts gay men as criminals, shattering shop windows and hurling stones at figures representing “police” and “public,” as gay rights groups, portrayed as a nonchalant Uncle Sam, whistle and look away.

A cartoon published in the *Jamaica Observer* in December 2012 shows a child unperturbed by men dressed in intimidating traditional holiday costumes, while in the next panel he flees in terror from a gay man in stereotypical dress. Another *Jamaica Observer* cartoon from July 2011 mocks Jamaicans for Justice (JF) former Executive Director Carolyn Gomes, and ridicules J-FLAG with a stereotyped image of gay men responding to the head of the Organized Crime Investigation Division (OCID), Senior Superintendent Fitz Bailey, who accused gay men of being behind a form of organized crime known as “lottery scams.”

In November 2012, after University of Technology security guards were filmed beating two men for being gay and encouraging a mob to “beat the fish,” *Jamaica Observer* published a cartoon depicting a fish sitting in a classroom, reinforcing derogatory slang for gay men as “fish.”

Both *The Gleaner* and the *Jamaica Observer* published editorials in 2012 in support of LGBT rights and the repeal of the buggery laws. However, this has not prevented them—

---

particularly the *Jamaica Observer*—from also publishing homophobic rhetoric.

Such articles and cartoons may breach guidelines laid out in the professional code of practice for Jamaican journalists and media organizations, ratified on August 8, 2011:

> The media should avoid prejudicial or pejorative reference to a person’s race, color, religion, sex or sexual orientation or to any physical or mental disability or handicap. The media should avoid publishing details of a person’s race, color, religion, sex or sexual orientation, unless these are directly relevant to the story.\(^\text{17}\)

### Music

A number of popular Jamaican musicians perform and produce music that contains inflammatory lyrics with regard to LGBT people. Emblematic of this genre is dancehall artist Capleton’s 1990 hit “Bumbo Red,” which remains popular and calls for gay and lesbian people to be shot in the head:

> Lick a shot inna a battyman head! Lick a shot inna a lesbian head! All sodomite dem fi dead, all lesbian dem fi dead.\(^\text{18}\)

Capleton and other dancehall artists who have a history of making homophobic comments or delivering anti-LGBT rants from the stage during performances—including Sizzla Kalonji, Buju Banton, Beenie Man, and Vybz Kartel—signed a 2007 agreement called the “Reggae Compassionate Act,” in which they promised not to promote hatred and violence towards LGBT people in their music.\(^\text{19}\) Despite this, Sizzla Kalonji, Capleton, and other reggae

---


performers, continue to perform anti-gay songs or promote homophobic ideology. On December 26, 2013, Sizzla Kalonji sang the following at the Sting Music Festival in Jamaica:

I don’t care who want vex, Jamaica no support no same sex …
I don't care who want vex, Africa no support no same [sex] …
Them say, “Sizzla, you sing too much anti-gay lyrics.”
Me just read the bible and get away with lyrics….
Burn out the lesbian, burn out the gays with the lyrics.
I don’t care who want vex, rastaman no support no same sex.
Dem a tell me bout “free speech,”
so me tell de raper man dem fe leave de beach.
And me tell the pedophile dem flee the creech.
Tell de lesbian dem flee de street
and the battyman [screaming].

Some artists have increasingly refrained from using homophobic lyrics at their concerts and have issued personal letters of apology following poor publicity and cancelled concerts abroad, although some of them have since denied apologizing. Beenie Man issued a video statement in 2012, saying, “...I have nothing against no one. I respect each and every human being regardless of which race or creed, regardless of which religious belief ... regardless of which sexual preference you have including gay and lesbian people.”

A small but growing number of Jamaican artists are openly supportive of LGBT rights, including Mista Majah P (based in California) and Tanya Stephens.

---

Politics

Homophobic rhetoric is not limited to the cultural sector. During his term as prime minister from 2007 to 2011, Bruce Golding of the Jamaica Labour Party (JLP) publicly expressed homophobic views on several occasions. For example, in a 2008 BBC interview, Golding said he would not allow gays in his cabinet. In 2010, Golding stated, “The encouragement or recognition of the appropriateness of the homosexual lifestyle is going to undermine the effectiveness of family ... and, in that process, undermine the basic fabric of a society.”

A year earlier, in 2009, Ernest Smith, a JLP member of parliament (MP), claimed that LGBT people are merely “seeking publicity” when they report cases of violence. He said:

> We’re not saying that gay people should be obliterated from the face of the earth ... but because your behavioral pattern is in breach of all decency ... do not try to impose your filth on others, don’t force others to accept you and your filth.

In August 2013, Education Minister Ronald Thwaites said at a press conference to launch the new *Health and Family Life Education Teachers’ Manual* that while the manual promotes tolerance on all grounds, “We will not be grooming Jamaican children for homosexual behavior.... [W]holesome joyous relationships are between men and women.”

These negative attitudes towards LGBT individuals are reflected in the findings of a 2011 national survey of attitudes towards same-sex relationships in Jamaica, conducted by a University of the West Indies research team, which found that 85.2 percent of participants were opposed to legalizing homosexuality among consenting adults.

---

Political views toward homosexuality are not monolithic. Then-opposition leader Portia Simpson Miller disagreed with Golding’s views on LGBT people in a 2011 debate, stating that no one should be discriminated against due to their sexual orientation.\textsuperscript{30} Her opponent in that debate and the current opposition leader, Andrew Holness, said in a May 2014 interview that he, too, opposed discrimination based on sexual orientation and would allow gays in his cabinet.\textsuperscript{31} Despite his homophobic statement above, Minister Thwaites has also spoken in support of tolerance and non-discrimination (see Section VI).

Mistrust of Police

Most of the LGBT people we interviewed said they did not even report criminal acts to the police, fearing they would be unresponsive because of the victim’s sexual orientation or gender identity.

“I’ve heard terrible things about gay people going to the police and police turning on them. I would never dare go to the police,” said Jane, a transgender woman from Kingston.\textsuperscript{32}

Genie O., a potential murder witness, said he did not report the shooting of his friend in Greenpond in 2010 because he, too, feared the consequences:

I didn’t call the police. I know much wouldn’t be done and I didn’t want to get involved. Once you are found to be associated [with gay men], your life would be at risk and you could be stigmatized as one of them. Most times you worry and cry about it and keep it to yourself and move on.\textsuperscript{33}

Winnie R. told Human Rights Watch of her complete distrust of the police after having been groped by a police officer, and on separate occasions, after trying to make criminal reports to the police after being raped and robbed. Winnie R. said:

percent of participants in the study said that male homosexuality was immoral, while 75.2 percent said that female homosexuality was immoral.


\textsuperscript{32} Human Rights Watch interview with Jane B., Kingston, April 5, 2013.

\textsuperscript{33} Human Rights Watch interview with Genie O., Montego Bay, April 10, 2013.
Justice for all, that would be my motto. It doesn't matter about your sexual preferences, it's not about your color, it's not about how much money you make, everyone should be treated equally. When it comes to a crime, it should be dealt with in the correct manner. It shouldn't be that I should be made to [feel] less of a person because of who I sleep with. If I go to a police station and my initial report wasn't given the light of day, why would I ever go to the police station to report a crime? I'm not walking into a station with a gun but I am treated like a criminal. I'm told I deserve to be shot.34

HIV and Homophobia

Jamaica has a high HIV prevalence rate: just under 2 percent of adult Jamaicans (approximately 32,000 people) are estimated to be infected with the virus.35 Within the Caribbean, only the Bahamas and Haiti have comparable rates of HIV infection.

Jamaica has the highest HIV prevalence rate amongst MSM in the Caribbean.36 Within the country, HIV prevalence among MSM remains considerably higher than general population rates—32 percent compared to just under 2 percent in the general population, according to recent data—and has not declined since 2007.37

Among the factors that continue to drive the epidemic in Jamaica amongst MSM are:

- Unemployment: A 2007 survey of 201 MSM found that over 50 percent of these men were unemployed, nearly five times the rate among the general population.38
- Homelessness and physical violence: The study found that MSM of low socioeconomic status, those who had been homeless, and those who had been

---

37 HIV prevalence among women seeking antenatal care (a marker for HIV prevalence generally) has been slowly declining since 1996. Ibid., pp. 17-18, 29. Female sex workers, another most at-risk population, also face high prevalence rates, but these have declined notably from 9 percent in 2005 to 4.1 percent in 2011 due to “decades of sustained interventions with this population.” Homeless people, a population that may include a disproportionate number of LGBT people, also have a higher HIV prevalence rate than the general population, estimated at 8.2 percent in 2011.
victims of physical violence were significantly more likely to be HIV-positive (Annex VI).39

- Lack of funding: Only 1.4 percent of HIV spending in 2010–2011 was allocated to programs focused on key populations, including MSM, although Jamaica is set to increase the amount spent on key populations in the 2012 to 2016 period from 1.4 percent to 6.4 percent.40

Stigma and discrimination are significant drivers of the epidemic, hampering the implementation of services for MSM, and the willingness of MSM to access health care services.41 “There is a fear that they might not be treated, might be looked down at and that people will label them,” Pascal G., an outreach worker with the Jamaican Network of Seropositive (JN+) said.42

Young and homeless MSM are vulnerable to sexual violence, including rape, which increases the risk of infection.43 One homeless male sex worker in Montego Bay told Human Rights Watch that clients pay significantly more for sex without condoms, making it difficult for economically vulnerable individuals to negotiate condom use.44

The emergence and widespread availability of antiretroviral therapy (ART) since 2004 has reduced some of the HIV-related stigma and discrimination that was widespread when Human Rights Watch conducted research in Jamaica in 2004. The individuals we interviewed then emphasized the prejudice they experienced due to noticeable physical changes caused by the illness, and the contempt they endured when attempting to access HIV-related care.

44 Human Rights Watch interview with Shane C., Kingston, April 8, 2013.
Major international donors and multilateral agencies—including the Global Fund to Fight AIDS, Tuberculosis, and Malaria (Global Fund), the World Bank, and the US President’s Emergency Plan for AIDS Relief (PEPFAR)—have invested millions of dollars in financial and technical assistance to address HIV among MSM in Jamaica, including efforts to address stigma.45

However, since the World Bank reclassified Jamaica as an upper middle-income country in 2010, Jamaica is no longer eligible for significant funding and key donors may soon reduce or withdraw financial support. The Global Fund has already significantly reduced funding and is due to withdraw altogether by 2017.46 Government officials, civil society, and donors have expressed concern about the loss of this funding and its impact on most at-risk populations, including MSM, as well as on the HIV response more broadly.


II. Violence against LGBT People

Physical Abuse

Physical and sexual violence, including severe beatings and even murder, are part of the lived reality of many LGBT people in Jamaica. The level of brutality leads many to fear what could happen if their sexual orientation or gender identity is disclosed.

In many cases, perpetrators appear to have been private actors who felt that they had the moral authority to “rid the community” of LGBT people and had no fear of arrest from the authorities. In other cases, police were themselves the perpetrators.

Between April and June 2013, Human Rights Watch interviewed 71 self-identified LGBT people. These interviews elicited 56 accounts of physical violence that took place between 2006 and 2013 experienced by 44 LGBT people, the vast majority of which appeared to be directly as a result of their sexual orientation or gender identity.

Some of the individuals we interviewed had more than one experience of physical violence. These reported acts of violence included rape; being chopped with a machete; being choked; being stabbed with a knife; being shot with a gun; being hit with boards, pipes, sticks, chairs, or brooms; being attacked by groups ranging from 5 to 40 individuals; and being slapped in the face with hands or with guns.

J-FLAG recorded 231 incidents of attacks against LGBT people between 2009 and 2012, including home invasions, physical assaults, and mob attacks.47 This number of homophobic attacks is likely to be underreported. In terms of the types of physical assaults documented, the information that we garnered closely paralleled the yearly incident reports collated by J-FLAG.48


48 J-FLAG documented 28 homophobic incidents in 2009, 49 incidents in 2010, 71 incidents in 2011, and 66 incidents in 2012. (See J-FLAG incident reports, Annex V. These reports document verbal assaults as well as physical assaults. Among the incidents reported in 2012, thirty-six gay men were attacked by mobs, two transgender people were beaten, five bisexual males were beaten and stabbed, eight lesbians were beaten and forced to leave their homes, and two gay men were murdered.) See also: U.S. Department of State, Bureau of Democracy, Human Rights and Labor, “2012 Country Reports on Human Rights Practices: Jamaica,” http://www.state.gov/documents/organization/204673.pdf (accessed July 17, 2014).
The following incidents of violence and alleged attacks, reported during a four-month period in 2013, illustrate the regularity with which such violence occurs:

- **On July 22**, 16-year-old Dwayne Jones, wearing female attire, was stabbed and shot to death and thrown into nearby bushes at a public street-dance near the resort city of Montego Bay (see Summary). At time of writing, no one had been arrested.

- **On August 1**, an angry mob surrounded the home of two gay men in the parish of St. Catherine, “intent on getting rid of the men.” The crowd was yelling, “Dem fi cum out a ya (they must leave our community).” The police intervened to rescue them.

- **On August 22**, community members barricaded five gay men inside their home in the parish of Manchester and threatened them with bats and sticks. The police had to rescue the men.

- **On August 26**, two gay men in the town of Old Harbour had to flee the scene of a car accident and seek shelter at a police station when onlookers realized they were gay and demanded they leave their community.

- **On September 16**, Edwin M., a young gay Jamaican man from Hanover parish, was chased with his friend and stoned by a mob shouting homophobic insults. He suffered head injuries.

- **On October 25**, Keshema Tulloch, a Jamaican lesbian, was punched in the face by a man who called her a “sodomite.” When Tulloch chased her attacker with a knife, police shot her in the arm and chest.

---

49 Email communication from Maurice Tomlinson to SOGI listserv, September 3, 2013, on file with Human Rights Watch.


53 “2 Gay Men Mobbed After Car Crash,” video report, *CMV news*, August 28, 2013, http://www.youtube.com/watch?v=0OXeijWVu4U (accessed March 12, 2014). “Downtown” is known to be a more impoverished part of the capital, Kingston, and is well known to be a high crime area, whereas “uptown” refers to a wealthier part of Kingston where LGBT people might have a better welcome.


Human Rights Watch that Tulloch has since been charged with assault. Her male attacker has not been charged.56

Human Rights Watch interviewed 12 LGBT people who said they knew of a friend, partner, lover, or associate who had been murdered because of their real or perceived sexual orientation or gender identity. Other forms of violence described to Human Rights Watch include arson attacks; mob violence; and sexual, physical, and verbal abuse.

Among the cases that victims described to Human Rights Watch were:

- Ten cases of sexual assault against eight lesbian women, one transgender woman, and one gay man, including cases of rape at knife or gunpoint;
- Ten mob attacks;
- Eighteen cases of serious injuries that included:
  - Shooting injuries, including one that resulted in paralysis;
  - Stabbing injuries;
  - Bruises, cuts, swollen arms, and scars;
  - Broken bones.

In the 56 incidents, the victims themselves told us of the violence they had suffered, and with respect to the experiences of 11 individuals, we were able to examine police receipts documenting the incident, court proceedings, or letters and incident reports from J-FLAG.

In at least two prominent cases, the “gay panic” defense—when a perpetrator claims that an unwarranted homosexual sexual advance resulted in murder—has been used to justify a killing. For example, on November 7, 2010, Kevon Martin was charged with killing Steve Lindo, a gay man, by stabbing him with scissors. The magistrate granted Martin bail, despite his not having a known address, on the grounds that Martin had appeared to be acting in self-defense in response to Lindo’s demands for sex.57 The case was still in progress at time of writing.58

---

Human Rights Watch spoke with LGBT individuals who said that their socioeconomic status was an important determinant in either shielding them or making them more susceptible to physical and verbal attacks. Although no one is immune to negative attitudes or behavior towards LGBT people that permeates Jamaican society, middle-class LGBT people explained that they could afford to live in safer, more affluent areas, drive private vehicles, and access social networks more tolerant of LGBT people than poor and working class Jamaicans, many of whom spoke of being vulnerable to verbal attacks and physical abuse.

Faith M. and Denise C. have been together for over four years. Faith M. told Human Rights Watch that their middle-class backgrounds “protect and insulate” them from attack, while Raheem D., a 20-year-old gay man from a lower-income area in Montego Bay, told Human Rights Watch:

I don’t feel safe walking down the street because people on the street, my neighbors say, “Fish, battyman,” and that I should get out of the community. I am always afraid they could attract a crowd and hurt me.

Among the various types of physical abuses endured, interviewees identified two forms—mob attacks and arson—as notable for being both extreme and targeted at LGBT people.

**Mob Attacks**

Human Rights Watch interviewed 10 people who reported suffering mob attacks because of their sexual orientation. All the accounts involved gay men that were set upon by groups ranging from 5 to 40 men. In some cases, police intervened and saved these individuals from further harm. However, none of the individuals that we interviewed were aware of any investigation or arrests that were made in relation to the mob attacks.

Rahim Q. told Human Rights Watch that in March 2013 at approximately 6 p.m., he and a group of about 14 friends were attacked by a violent mob of about 10 men:

---

58 Human Rights Watch telephone conversation with Tamara Walker-Dewar, court administrator, Resident Magistrates Court, October 1, 2014. According to Tamara Walker-Dewar, if the case is found to have merit at a hearing scheduled for December 4, 2014, it will be referred to the Supreme Court for trial.


60 Human Rights Watch interview with Raheem D., Montego Bay, April 10, 2013.
We were there under the tree socializing and some men came with machetes, stones, [and] other weapons trying to beat us. They called out, “Battyman fi dead.” We saw them coming, so we had a chance to escape…. We had to jump into a pool of water in order to escape.

One if his friends who had his nose broken went to the Cornwall Regional Hospital.

He went by himself because if he went with one of us he would have been stigmatized. Persons would say things, “Those guys are gay,” “Look at those battymen there.” Most of the time we go alone [to avoid this]. Later that evening, I saw him. He went to the police, but the police didn’t make any effort, he told me.61

Arson

Human Rights Watch interviewed one gay man and one transgender woman whose homes were set on fire in attacks apparently motivated by a desire to force them from the community. Three other victims told us that perpetrators threatened to set them ablaze or torch their homes.

Carol C., a 30-year-old transgender woman, told Human Rights Watch that community members had warned her she would be “dead before the year end.”62 Soon after, her aunt called to say her house was on fire.

When I went to the area, I could see from quite a distance the smoke in the air. By the time I got to the house the fire brigade were busy putting out the fire. People were standing outside, some seemed happy. I left and came back the next day and there was still smoke, the older [wooden] part of the house burnt to the ground and the concrete sections remained standing.

Marcello T., a resident of Ocho Rios, told Human Rights Watch that a gay man’s shop in his neighborhood was burned down. He said, “I think it was done on purpose because they were saying he was a funny man and they don’t want no funniness there....”63

Silroy N. and his male partner of 18 years, who had lived in Westmoreland for a year-and-a-half with their 9-year-old daughter, left the area after locals began to speculate they were gay. Silroy told Human Rights Watch:

The physical and verbal threats became unbearable and unavoidable. We even received threats that they [members of the community] would burn down our house: People would say, “Batty boy, why don’t you leave the community. We don’t support them thing. We’re going to burn your house down.”

“That was enough for me to move,” Silroy said. “We have a daughter.”64

Verbal Abuse

At least 48 physical assaults that interviewees described to Human Rights Watch were accompanied by slurs that referred to the victim’s perceived or real sexual orientation or gender identity.

Sexual assaults on LGBT people are frequently accompanied by verbal abuse that suggests the assaults are motivated by homophobia and justified by the perpetrators as an attempt to “convert” the victims to heterosexuality.

In one such case, Patsy B., a 25-year-old college student in Kingston, told Human Rights Watch that a male friend raped her in his house in March 2013:

All of a sudden he jumped on me, “Do you want to know what a real fuck feel like?” He attacked me and raped me. He did what he had to do. I was screaming.... I saw him recently at Half Way Tree (a neighborhood in Kingston). I heard him yelling, “Yo, I fucked that girl, I fucked that girl.”65

63 Human Rights Watch interview with Marcello T., Montego Bay, April 10, 2013.
64 Human Rights Watch interview with Silroy N., Montego Bay, April 9, 2013.
III. Police Failures to Act

The JCF Policy on Diversity, launched in 2011, established “operating protocols ... to be strictly adhered to as soon as it is established that any individual or group was victimized because of their religion, ethnicity, sexual orientation, class, colour, creed or political ideology”—and has resulted in some progress.®

But it was clear from the series of interviews we conducted that, often, policy and practice are far apart. Human Rights Watch interviewed LGBT people who said that when they tried to report a crime, police made derogatory comments and failed or refused to take a report, even well after the Policy on Diversity was established.

The fact that police themselves are sometimes perpetrators of violence and extortion against LGBT people makes LGBT victims even more unlikely to seek police assistance.

Failure to Intervene, Investigate, and Arrest

In some cases, police appear to have failed to intervene, even as attacks were happening.

According to Devon O., in January 2013, police stood by and watched while a crowd of about 30 people—shouting insults regarding his sexual orientation and armed with knives, machetes, and sticks—beat him for about 20 minutes. He said police finally removed him from the crowd and placed him in a police van to protect him from the mob but then handcuffed and beat him (see Section IV).®

In many cases, interviewees described police failing to arrest suspects or investigate homophobic incidents: in only 4 of the 56 cases of violence documented by Human Rights Watch were victims aware of any arrests of suspects by the police.

---


Such inaction is not unique to LGBT cases: Jamaica has one of the highest violent crime rates in the world, and police response is often seen to be lacking. Indeed, a majority of Jamaicans believe that the justice system is corrupt and that “powerful criminals go free”; only 9 percent of Jamaicans believe police “treat people equally”; and only 12 percent believe they show “courtesy to ordinary civilians.”

However, Human Rights Watch research shows that for LGBT crime victims, bias based specifically on gender identity or sexual orientation directly contributes to the inadequate police response.

Anne I., a 35-year-old transgender woman who does sex work, experienced an attempted rape in December 2008 by two men at knifepoint who propositioned her for sexual services. The exchange turned violent when the men realized Anne had male genitals. She told Human Rights Watch:

They placed a cardboard down [on the ground] to feel me up. One of the guys came behind me, while the other man started to take off my pants. He yelled, “You are a batty man.” One of the guys started to choke me, while the other guy started to stab me up. They broke my nose and slashed my throat.

Anne managed to run away, and found a sex worker outside a club who called the police on her behalf. The police took her to Kingston public hospital and recorded her testimony, but to Anne’s knowledge, there was no follow-up. Police did not respond to an inquiry from Human Rights Watch as to whether there had been any progress in the case.

In an extreme case documented by Human Rights Watch, armed men in 2007 attacked Tanasha G. as she sat in her car, shooting her three times in the chest, buttocks, and leg as they called her a “sodomite gal.” Police never followed up.

---

70 Ibid., p. 103.
71 Human Rights Watch interview with Anne I., Kingston, April 5, 2013.
72 See Annex I.
She spent a month-and-a-half in Mandeville hospital, and another month-and-a-half in a rehabilitation center and remains disabled and wheelchair-bound due to the attack. “The police came [to the hospital] the next day and spoke to my mother,” she said. “I never spoke to the police and they never followed up.”

Police also do not appear to have followed up adequately on the July 2013 murder of Dwayne Jones, a gender non-conforming 16-year-old, who was beaten, stabbed, and shot to death in St. James by partygoers when they discovered her biological sex. Although police interviewed witnesses and provided information about the murder investigations to J-FLAG, no one had been arrested for the attack at time of writing.

Human Rights Watch interviewed seven lesbian women, one transgender woman, and one gay man who told us that they were raped or threatened with rape as a result of their sexual orientation or gender identity, in some cases at knife- or gunpoint. Only one of these cases resulted in a police investigation that eventually led to an arrest, prosecution, and conviction, but even then, the accused was ultimately acquitted on appeal.

### FAILURE TO INVESTIGATE: WINNIE AND NADINE’S STORY

On August 10, 2012, Winnie R. and Nadine B.—two lesbians—returned home after a party around midnight. As they got out of the car, two men disguised with bandanas across their faces ambushed them and forced them inside their house at gunpoint. Initially they thought it was a robbery. Winnie R. told Human Rights Watch, “I said that they could take whatever they want. One of the gunmen said, “We’re not here to take your stuff.” The other gunman said, “You not with nuh man [You aren’t with guys].”

---

73 Human Rights Watch interview with Tanisha G., April 8 2013.
Nadine B. said that after raping her, the gunmen forced her to watch them rape Winnie:

He made [Winnie] lie on the bed face down. I realized that he was going to have sex, so I said, “You know, I have condoms, to make sure that she doesn’t get AIDS or get pregnant.” I thought they were just trying to prove a point because she doesn’t dress like a girl. The other guy was there with a gun to my head. He didn’t take his clothes off. He just unzipped his pants and just had sex with her [without a condom].

Afterwards, the men left and threatened to kill the women if they informed the police. Winnie and Nadine did so anyway. But when they went to Greater Portmore police station, Nadine said the police verbally abused them and failed to act. She said:

The police officer [asked] us if we were related, and I said we were just friends, sharing the place. The officer then responded, “You’re sodomites, look at her, a sodomite them, why did you come to the police station? A fuck you want, a fuck you get.” I said, “When I want sex, I know where to get it and who to get it from. I came here to report the crime.” He said, “Look at that one there. She is so pretty. And she a suck pussy?”

I was so upset that I started to walk out.... I was there saying, “This is how you treat people. What if I were your sister? What if I were your mother?”

Those men were in our house for four hours. Imagine having to go through that for four hours and then you go to the police officer and he says, “Sex you want sex is what you get. Dirty lesbian girl deserve what you get.” This is what I get from a police officer who took an oath to serve, protect, and reassure. How was he protecting me? How did he serve me? How did he reassure me?

Winnie and Nadine left the station without being able to file a police report.
Although police are instructed to record hate crimes, they lack a clear definition of what constitutes such a crime, and documenting these incidents appears to be under-prioritized. As one senior police official told Human Rights Watch:

Jamaica doesn’t have a well-developed crime recording system, murder and other crimes. There is a significant underreporting of crime.... Reports are not transmitted [from local police posts] to the central recording/statistics branch. Almost nothing on hate crime is recorded.... Hate crime is not high up on the agenda, guns and other crimes such as domestic violence are.76

Only one case that Human Rights Watch reviewed—that of Kingston University student Jolly K.—resulted in a police investigation and arrest.

Jolly K. told Human Rights Watch that she had agreed to an in-person meeting after chatting online with someone who presented herself as a woman. She soon realized it was a set-up: when she reached the agreed meeting place with a friend, a man wearing a handkerchief across his face held her at gunpoint:

He cursed at us, “Pussyhole.” He put the gun at the back of my head and directed us to hold our hands up and walk.

After robbing them of about J$30,000 (about US$270) and a camera, he forced her to perform oral sex, and to watch as he raped her friend. “She is a butch lesbian and has never been with a man.”77

Jolly K.’s father contacted a senior police officer at Twickenham police training center [Jamaican Constabulary Force Training Branch Twickenham Park], who directed her to the Spanish Town Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA), where she reported the assault to the head of CISOCA. “When she read what happened, she put down the paper,” Jolly K. said, “and looked up, and said ‘Jesus Christ, another one.’”

76 Human Rights Watch interview with senior police officer, Kingston, April 16, 2013.
Jolly K. accompanied CISOCA officials to show them where the incident occurred. Several days later, police arrested a suspect, who was found with Jolly K.’s phone and other stolen items. Jolly K. and her friend returned to the station to provide a positive identification for the suspect, and to identify their stolen items. Tried and convicted, the suspect was sentenced to 29 years in prison on rape, theft, and arms possession charges. However, he was subsequently acquitted on appeal for reasons related to the identification process.\textsuperscript{78}

IV. Police as Perpetrators

While the cases in the previous chapter dealt with police response to violence carried out by private citizens, in some cases the police also directly victimize LGBT people.

Cases of police violence toward LGBT people appear to have decreased in the decade since Human Rights Watch documented such violence in our 2004 report, *Hated to Death*. However, the persistence of even isolated cases is of great concern given the police’s role as a source of protection.

At the root of much police abuse appears to be the same intolerance and homophobia found in Jamaican society more broadly.

For example, Human Rights Watch interviewed a foot patrol police officer in Montego Bay who said LGBT people were criminals, and deserved the violence they experienced. A detective corporal from CISOCA, also in Montego Bay, told Human Rights Watch: “Gay men need to just stop being gay… They are just greedy. I even think that the Police Force Order on Diversity should stop.”

Verbal Abuse

In a homophobic environment, LGBT people are particularly susceptible to verbal abuse from members of the broader public. Police also perpetrate verbal abuse. In several cases, police expressed sympathy for the attackers and support for their homophobic beliefs, and further verbally abused victims who turned to them for help.

After Kevin G., an HIV-positive 17-year-old from Montego Bay, was severely beaten by his brother in February 2013 for being gay, he went to Montego Hills police station to report what had happened to him. “I waited four hours,” he said. “They didn’t do anything. The police said, ‘That’s the reason he is being beaten. He’s a battyman, a fish.’”

---

79 Human Rights Watch interview with police officer, Montego Bay, April 10, 2013.
80 Human Rights Watch interview with CISOCA police officer, Montego Bay, April 18, 2013.
One young homeless gay man, Bryan T., said that New Kingston police promised to investigate an incident in which construction workers chased him in February 2013—but then appear to have failed to do so. He added that he and a friend were told they could not use the police officer’s pen to sign the complaint: “He said, ‘You are a battyman. We don’t want battyman to use our pen.’”  

Cutie G., 18, who had been living on the streets for four years after leaving home, described both physical (including pepper spraying and being hit by batons) and verbal assaults by police. In one incident, he said, he was being chased and ran to the police station for help. “Come out of the station,” he recalled them saying. “We don’t want to help you. Go kill yourself.”

Physical Abuse

Devon O. told Human Rights Watch that after a large crowd beat him in January 2013, police handcuffed and physically assaulted him in the police car and station:

The policeman in front hit me three times with his baton, and said: “Hey, you’re a fish, and you are a battyman.” There were two policemen in the car, one in the front and one beside me. They were hitting me with their elbows. Then, they stopped the van and they continued to hit me. I feel the licks come from the front and the side.

When they arrived at the station, a policeman kicked him out of the car. “Fish don’t last long in St. Ann,” one policeman said inside. “Everyone who comes in comes out dead.”

He was handcuffed the whole night, released the next morning, and told he “should go to church.”

Michael B., a 20-year-old homeless gay man, told Human Rights Watch that abuse at the hands of the police is a regular occurrence. He recalled that one day in the summer of 2011, at around 5 a.m.,

---

84 Human Rights Watch interview with Devon O., Kingston, April 2, 2013.
...The police surrounded us and told us to leave the street because we were loitering. One police officer took out his baton and started beating us one by one. We were up against the wall. Four cops, one beating us, the others standing to make sure we couldn’t leave.85

Michael said that on other occasions, police had used tear gas and pepper spray against him and his friends:

The police would come over and tell us to leave the road, and they would run us with pepper spray, throw stones, and chase us down like dogs. The police don’t like homosexuals.86

Carlton J., 25, told Human Rights Watch that in 2006, he was confronted by a policeman while on the street in Kingston:

The police beat me with a gun in my back, called me battyman. The policeman said “How come mi so nice and turn homosexual [how can someone so good-looking become a homosexual]?” He beat me so that it left a gun mark in my back.87

Sexual Abuse

In a small number of cases victims described sexual abuse at the hands of police.

John B., a 23-year-old gay man, recalled how a policeman kidnapped and raped him at gunpoint in 2007, when he was 17 and homeless. John B. said:

One Sunday evening he called me over, handcuffed me, and told me that I was arrested for loitering. He drove me to a field, pulled my pants down, removed my handcuffs, put his gun to my head, and raped me. I grunted

86 Ibid.
and screamed. When he was finished the police officer said, “If you tell anyone, you’re dead.”

**Extortion**

Another form of victimization is through extortion. Human Rights Watch interviewed five LGBT people who were subjected to police extortion. All were threatened with arrest, and asked to pay a significant sum to avoid imprisonment or the risk of having their sexual orientation or gender identity revealed to media, friends, family, or the broader community.

Sean T. recalled:

> In September 2012 I was in a car with a friend by Emancipation Park. The car was off and the lights were off. The police ordered us out of the car. The guy was married, so he didn't want it to go too far. The police asked for money. The guy found the money and paid them J$50,000 (about $445). Then they demanded more, [and] in the interest of protecting his marriage, he paid more.

On April 9, 2013, police stopped and threatened to arrest Stephen V., a Jamaican man who lives in Canada and was visiting Jamaica. He told Human Rights Watch:

> I was driving to Port Royal to have lunch with my friend. On our way, he wanted to stop to go to the bathroom. I pulled over to the side of the road, close to the bushes so people passing by wouldn't see him.

> My friend came out of the bushes and was pulling his pants up. A police car blocked us, and two police jumped out the car. One of the police officers said to me, “You guys are battymen.... You two were having sex.”

Stephen said that after warning him, “It's my word against yours,” the policeman threatened to arrest and charge him with buggery, and expose him to media and his

---

89 Human Rights Watch interview with Sean T., Kingston, April 9, 2013.
family. “In Canada it may be okay to be gay,” he recalled the policeman saying. “In Jamaica it is not okay.”

When the police officer threatened to take away Stephen V.’s passport and hold him in custody, preventing his return to Canada, Stephen asked the police officer how much money was needed to prevent the arrest. The police officer demanded J$20,000 (about $180). He then escorted Stephen and his friend to an ATM to retrieve the money.

Jolly K. also said that police officers bribed her to avoid arrest when they found her in a parked vehicle with a female friend around midday, in Greater Portmore, in early 2010:

I thought that they were going to drag us into the police station. I wasn’t scared about what the police would do, but what would happen afterward. At that time, I was living with my grandparents.

The police let the two women go after Jolly K.’s girlfriend paid them a bribe of J$5,000 (about $45).

90 Human Rights Watch telephone interview with Stephen V., August 9, 2013.
EXTORTION: LUIS’S STORY

Luis M., the only person whom Human Rights Watch interviewed who was jailed for being gay, was arrested and charged with gross indecency and buggery in Kingston in October 2011. Police extorted him and his partner, Robert U., after they found them parked in a secluded area, where they had been kissing and having sex. Luis told Human Rights Watch that both he and his boyfriend were fully dressed and sitting in the car when three police officers approached and said, “Ah two men in there. It must be battymen them.”

As one police officer pointed his flashlight at them, another began videotaping them with his phone. When Luis and Robert turned their faces away, the policemen ordered them to look at the camera. The officers searched around the vehicle and found two used condoms. They then ordered them out of the car, and according to Luis, said:

“You have money? Because you’re going to need money to get out of this.”

The police ordered Luis and Robert to drive to the police station in their own car as the police officers said they didn’t “want no fish in their vehicle.” The officers continued to demand money from them, asking for J$100,000 (about $890) for each police officer.

Luis and Robert were charged with buggery and gross indecency. J-FLAG secured the services of a lawyer, who came to the police station and recorded their statements. Other inmates verbally and physically attacked them: on one occasion, four men pushed them towards the grill of the cell and punched them. Luis and Robert shouted for help for over 15 minutes, but no one came.

They were released on bail after two weeks in detention and given a court date three months later. The lawyer explained they could either go to trial or accept a plea bargain for gross indecency. They accepted the latter and were offered a choice of a fine of J$250,000 (about $2,225) or six months in prison. Luis took a loan from his mother to pay the fine, which he was still repaying when we interviewed him in April 2013.
V. Public and Private Sector Discrimination

The stigma and discrimination that LGBT people face in Jamaica seeps into everyday activities, such as accessing health care, attending school, going to the movies, shopping, or riding a bus. Human Rights Watch talked to LGBT people who were verbally abused and confronted in public and private spaces about their real or perceived sexual orientation or gender identity.

Health Care Discrimination

LGBT patients faced a combination of ignorance and discrimination in accessing health care, including incidences of homophobia and transphobia among health workers. In some cases, the fear of negative responses from health care providers keeps LGBT individuals from accessing care.

When they do access care, many told Human Rights Watch they are not comfortable sharing information about their sexual orientation or HIV status. Several LGBT people told Human Rights Watch that nurses, doctors, and other staff had disclosed their confidential information to others—a lack of privacy not confined to LGBT people.92

Anne I., a transgender woman, described the level of hostility that she received at Kingston Public Hospital when she tried to access treatment for the knife wounds she received after a vicious attack by two men in 2008:

The doctor asked me what happened. I told him the story. He called the porter and said, “You have to look at this.” He called various people to look at me. He pulled down my pants to look at my sex organ. He said, “You should not let man [men] sex you.” He called about three porters and another man [a patient] to look at me.

When Anne I. returned to the hospital for follow-up treatment, she was physically assaulted by one of the porters to whom she had been exposed. “The porter recognized me and said ‘Who you a look pan [Who are you looking at]?’ He took out a knife and he cut me in my face.”

Two nurses locked Anne into a room, apparently to protect her, and she went without treatment through the night. The next morning, she received treatment for her knife wounds, but was also subjected to further humiliation. Anne explained, “Some guys [auxiliary staff] wanted to know if I was a woman, and for me to let them see my breasts.”

A senior Ministry of Health official shared the case of a gay man who had Human papillomavirus (HPV) that remained untreated until his health seriously deteriorated:

They can't officially turn away people, so what would happen is that he would come in with fever and drainage problems related to HPV lesions [on his anus]. I sent him to dermatology [at a public hospital] but they don't do large lesions. I sent him to surgery with a referral for HPV lesion removal. They gave him medication for fever, and antibiotics, and then ... instead of taking care of him, they discharged him and said to return. This happened six or seven times throughout the year from 2011-2012.

By the time he got surgery at the end of 2012, the official said, the cancer was well established and he had to have almost a total colostomy.

Stigmatizing treatment from health workers can dissuade LGBT people from seeking critical services including HIV testing, as Florio P.’s story demonstrates. Florio said he normally goes for testing every six months at Red Cross or Cornwall Regional, but in 2009, he tried to get an HIV test at St. James Health Department “Type V” Clinic in Montego Bay. He said:

93 Human Rights Watch interview with Anne I., Kingston, April 5, 2013.
94 Ibid.
95 Human Rights Watch interview with senior Ministry of Health official, Kingston, June 19, 2013. Human papillomavirus (HPV) is a common virus that affects both men and women. There are more than 40 types of HPV that are passed on through sexual contact and that can infect the genital areas of men, including the skin on and around the penis or anus. They can also infect the mouth and throat.
I went to make an appointment for an HIV test. The reception asked, “Why are you here? Are you having sex with a man?” [I responded] “Do I have to answer the question?” The receptionist said “Bwoy, do you fuck men? Either you fuck men or not?” I felt so uncomfortable that I left. Other people could hear this. People who were in the front row laughed.96

To avoid the real or perceived stigma and discrimination associated with being identified as gay or HIV positive at a public hospital, they chose to go to pharmacies outside the public health system, or to access services through Jamaica AIDS Support for Life (JASL) or the Red Cross. Even seeing private physicians can pose problems. David M., a psychologist who volunteers with JASL, told Human Rights Watch:

There are some physicians [that] are wary of LGBT in their [private] practice ... my clients have told me this. They [doctors] have no problem seeing them outside of their private practice, [but] they fear that LGBT coming to their practice might turn normal patients away and would rather see them in the public health system or at JASL. The discrimination has to be considered as fear of association.97

Genie O., a 28-year-old gay man from Westmoreland, told Human Rights Watch that he had gone for an HIV test at St. James Health Department “Type V” clinic, but was afraid to disclose his sexual orientation to health workers, whom he saw discussing clients’ confidential information:

Most men who are MSM go to Type V. There is a section that does the HIV test. As soon as you go there you are assumed to be gay.... If you are effeminate there are whispers and shuffling [away from people who are perceived to be gay].

The information is easily accessible and the staff talk, and they would say, “I didn’t know that person had AIDS.” The staff would discuss it in earshot. There is no confidentiality.98

**Employment Discrimination**

The 2004 Staff Orders for the Public Service, which bans discrimination on the grounds of sexual orientation in civil service, is the only legal protection in Jamaica against employment discrimination on the basis of sexual orientation or gender identity.99 There is no equivalent protection for workers in the private sector.

LGBT people in Jamaica face discrimination when seeking and maintaining employment. We interviewed five LGBT people who had lost employment primarily because of their assumed sexuality. Others said they move regularly to protect themselves from violence; the constant movement of homes, or homelessness, also hampers their ability to find and hold a job.

Charles B. told Human Rights Watch he was fired because of his sexuality:

> In 2008 there was rumor going around that I was gay and that the supervisor caught me in the bushes with a guy. The rumors escalated at work. I was later fired based on the fact that I was gay. My manager said that I was bringing the organization disrepute. That incident caused me to become homeless, and I have been living on the street for about three years now.100

Devon O. had a job as a security guard at a large business in Montego Bay. He told Human Rights Watch that in December 2010 his manager called him into a meeting and told him he had to look for a new job. “I heard that you are gay, that you are a battyman,” Devon O. recalled him saying. “We don’t tolerate these things in the company.”101

---

100 Human Rights Watch interview with Charles B., Ocho Rios, April 18, 2013.
Marsha J., a single bisexual mother living in Ocho Rios, told Human Rights Watch that her sister, who is also bisexual, argued with a colleague in February 2012 because of her sexual orientation. Marsha, who witnessed the argument, recalled: “They were up in my sister’s face. They eventually suspended her from work.”

Marsha J. said the father of her baby also lost his job because of his perceived sexual orientation. “People are saying that he is a battyman,” she said.\(^\text{102}\)

None of the individuals we interviewed had attempted to file a complaint or seek redress for wrongful dismissal, stating that there is no legal protection for them.

**Housing Discrimination**

Eviction and homelessness shape the lives of many LGBT Jamaicans. Human Rights Watch interviewed LGBT people who had been forced to move: kicked out of their homes by family members, driven from home by community members who threatened to kill them, and in some cases violently attacked and forced to flee. Some had moved many times, often with short notice.

Winnie R. and Nadine G. were evicted by a homophobic landlord in 2011. Nadine recounted:

> A week after Winnie R. began living with me, I began to experience problems with my landlord. Initially, he would make negative comments when he saw Winnie, such as that she was “too harsh” in appearance, and would complain whenever Winnie parked her car at the house. As time passed, my landlord only became increasingly more hostile, and on multiple occasions he called us “abominations”; told us he did not want “this nasty thing” in his house; and said that he wanted us to leave, claiming that we would bring destruction to his house.

Around January 2011, the landlord called the police, telling them that Winnie and Nadine were abusing their sons. She said:

\(^{102}\) Human Rights Watch interview with Marsha J., Ocho Rios, April 18, 2013.
We were visited the following day by a “child care officer,” who confirmed that the allegations were false after speaking with the children. When we mentioned the problems we faced from the landlord, [the police] said that we should find a new place to live.

Two days later, the landlord padlocked the house.

On the day we moved out, our landlord began yelling outside that we were lesbians, that this was why we were leaving, that we had been there too long, that we were bringing destruction to his house and business.\(^\text{103}\)

Errol S. and his boyfriend had to abandon their home in 2011 due to threats from neighbors. On one occasion he was confronted by neighbors as he walked down the street in his Old Harbour neighborhood. He said:

As I turned the corner, one of the guys said, “Me no want a battyman go by my shop.” He got up and started to flick his knife open. When I ignored him, he said, “You a battyman?” I started to back away and then I just turned and go back by my avenue. The guy yelled, “Leave the community within 24 hours, or else.”\(^\text{104}\)

The next day, members of the community stoned his house for 20 to 30 minutes. “[I] heard them yelling, ‘Battyman them there so. Come out of the community,’” Errol said. He left a week later.

Anne, the transgender woman whose experiences with violence are described in Section III, had to flee her home in St. Mary in 2007:

They surrounded the house—I saw the crowd from 5 p.m. until I left there from 9 to 10 p.m. I called the police, told them that there was a crowd of people at my gate and around the back. The police came with two jeeps. The crowd would say “Jesus God, Jesus God” as they wanted to see what I

---

\(^{103}\) Human Rights Watch interview with Nadine G., Kingston, April 3, 2013.

looked like. [The police] asked me where I could go, and I said I have a sister that lives in the district. I stayed with her for two months before moving again.\textsuperscript{105}

\textit{Homelessness}

According to Ivan Cruickshank of Caribbean Vulnerable Communities, LGBT-identified youth comprise up to 40 percent of the nation’s homeless youth population.\textsuperscript{106} These young men tend to fall through the cracks, as neither government services nor civil society organizations have developed services that can fully address their health or psychosocial needs.\textsuperscript{107} Both in New Kingston and Montego Bay, police evict them from their squatted or makeshift homes.\textsuperscript{108} Living at the margins of Jamaican society, they are vulnerable to rape, violence, and disease.

Human Rights Watch found that many young LGBT people were almost entirely uprooted, having been expelled by their families and forced to move on from each place that briefly became home.

We interviewed 13 gay, homeless youth, including 3 boys under 18 that had been kicked out of their homes in Kingston and Montego Bay. At the time, they were squatting at the former offices of J-FLAG and Jamaican AIDS Support for Life, located in New Kingston. They have few skills and limited access to resources or social support and face constant threat of attacks from both private citizens and the police.

Cutie G., 18, had been living on the streets for four years after leaving home and school due to constant teasing, bullying, and attacks. He lived with grandparents until they chased him away, and was living mostly in a sewer when we interviewed him. Cutie G.

\textsuperscript{105} Human Rights Watch interview with Anne I., Kingston, April 5, 2013.
survives by selling sex in New Kingston. “Sometime we go to a hotel, their houses, on the street,” he said. “If I don’t go on the road to sell my body, I don’t eat.”

Carlton J., 25, said he also began to live on the streets of Kingston after his mother and his aunt cursed him because of his sexuality, which he revealed to them when he was 18:

[My mother] wanted me to be straight, go to church, all that stuff. [She said] “If you can’t change you must leave,” and eventually she kicked me out of the house. I left to stay with friends in Mandeville and then I eventually made it to Kingston to live on the streets.109

In June 30, 2012, Carlton said a car slammed into him on a New Kingston street and dragged him down the road for about a minute as the driver yelled “homosexuals.” Police from New Kingston picked him up and took him to the hospital, but Carlton did not file a complaint and police did not investigate the incident. After a week in the hospital, Carlton returned to his mother’s house, but fled to the streets again after seven months because of constant arguments with her over his sexual orientation. He now does sex work to survive.110

Wayne P. has been living on the streets of Kingston since the age of 16. He told Human Rights Watch that he was kicked out of his home in March 2009 after his mother and aunt found out about his sexual orientation. He went to stay with an uncle, who then forced him into sex: He told me that if I didn’t have sex with him I would have to leave the house.112 After giving in to his uncle’s demands twice, Wayne left his

110 Ibid.
111 Ibid.
uncle’s house in May 2009 and moved to New Kingston because, he explained, “A friend told me that is where the gays live.” He started to beg and do sex work to survive:

I had no money. I had to hustle, beg many people, sell sex ... on the street, in a car or on the road or in an apartment. I always used condoms, [but] not always lubricant.113

Kevin G., age 17, was raised from age 6 to 15 in a children’s home in St. Elizabeth, where he said he was regularly sexually abused by older boys. When he was 15, he said, staff at the children’s home “run me off. They say that I’m acting like a little girl. ‘This is not a girls’ home, it's a boys’ home.’ They strike me with a bottle.” He now lives on the streets.114

Non-governmental organizations such as JASL and J-FLAG have made attempts at developing programs to address the needs of homeless gay and transgender young people. A Safe House pilot project operated briefly in 2009, supported by the Jamaican Red Cross and the Ministry of Health and hosting 11 young gay men and one woman, but it subsequently closed.115

Since 2013, New Kingston MP Julian Robinson and the police have organized a series of town hall meetings, in which LGBT organizations have participated, focused on addressing the needs of homeless gay youth. Participants have called for a project to be established that would provide homeless gay youth with shelter, counseling, and food.116 The project had failed to materialize at time of writing.

In April 2014 Minister of Youth and Culture Lisa Hanna announced that her ministry is developing new services to address the challenges, concerns, and needs of the different types of youth the ministry serves, including LGBT youth.117

113 Ibid.
VI. Government and Police Response

There has been a groundswell of change in Jamaica in the way it is responding to human rights abuses against LGBT people. Senior representatives of the government, including the prime minister and government ministers, have articulated a willingness to partner with civil society, donors, multilateral agencies, and others to push for the legislative and social changes necessary to ensure that LGBT Jamaicans can live free from harm.

Prior to her election in 2011, Prime Minister Portia Simpson Miller called for the legislature to revisit Jamaica’s buggery laws, which criminalize same-sex conduct between men. In June 2013, she indicated that she would call for a parliamentary conscience vote on the buggery laws.118 However, on April 3, 2014, she stated in an interview that “repealing the law would have to be based on the will of the constituents,” and that such a repeal was not a priority for government.119

Public opinion appears to be deeply entrenched against legal reform that would uphold the rights of LGBT people: a 2012 opinion poll indicated that the perception of the government would be negatively impacted if the buggery law were to be reviewed or changed.120

Police

Jamaica Constabulary Force Policy on Diversity

In August 2011, the JCF published the Jamaica Constabulary Force Policy on Diversity (JCF Order # 3351).121 The policy dictates that police, in their professional dealings with members of “diverse communities,” are to treat them with the highest standard of dignity

---

121 According to the policy, “The divisional commanders will cause a record to be made for statistical purposes of all diversity cases reported, the nature of the reports and the outcome of investigations. This data is to be forwarded to the Statistics Unit on a monthly basis.”
and human rights, with the aim of eliminating discrimination and standardizing the treatment people receive regardless of their identity or background. The policy prohibits discrimination and establishes specific protections on the grounds of sexual orientation, as well as religion, ethnicity, class, color, creed or political ideology, physical or mental challenges, and “any other feature that adds variety to mainstream society.” It requires divisional commanders to compile data on cases in which anyone is victimized on the aforementioned grounds.122

In its response to the Inter-American Commission on Human Rights report on Jamaica in 2012, which criticizes Jamaica’s treatment of its LGBT citizens, the Jamaican government highlighted the Policy on Diversity, and its development in partnership with J-FLAG, as an indication of its effort to protect the human rights of LGBT people.123

Human Rights Watch interviewed eight members of the JCF of different levels, including staff from headquarters and local police stations in Kingston, Mandeville, and Montego Bay, all of whom mentioned the Policy on Diversity. They explained the policy was issued as guidance and was distributed to all officers, but that they had not received any formal training regarding the policy or its implementation.

The policy states that diversity must be taught at all levels of the police academy and staff college, but it is not clear that any provisions are in place for officers who have already completed police academy to participate in these trainings. Further, Assistant Police Commissioner John McLean told Human Rights Watch with reference to the Policy on Diversity: “The organization is very weak on follow-up and accountability.”124

Human Rights Watch wrote to Police Commissioner Owen Ellington on October 29, 2013 for additional information regarding the policy’s implementation, impact, and how it is being monitored, as well as the outcomes of any investigations into cases of non-compliance (see Annex I). The commissioner had not responded at time of writing.

124 Human Rights Watch interview with John McLean, Assistant Police Commissioner, April 12, 2013.
Independent Commission of Investigations

In August 2010, in response to public frustration over the judicial system’s failure to investigate and prosecute abusive police officers, the Jamaican government established the Independent Commission of Investigations (INDECOM), tasked with investigating human rights violations or other abuses committed by members of the JCF.\textsuperscript{125}

While the establishment of INDECOM is a welcome step, the IACHR has criticized it for not having sufficient “power and authority” to be truly effective.\textsuperscript{126} Michael B. of Kingston was beaten and teargased by police in mid-2011:

> I’ve been teargased. Police have beaten me with batons. I remember fifteen of us were on the road one evening. We were taking a rest; the police came unannounced and told us to leave the street because we were loitering. One police officer took out his baton and started beating us one by one. We were up against the wall. There were four cops, and one beating us; the others were just standing there to make sure we didn’t leave. This was early in the morning, 5 or 6 a.m. There were no charges.\textsuperscript{127}

Michael told Human Rights Watch he reported the crime to INDECOM and that there was no follow-up, although Human Rights Watch has been unable to confirm whether such a report was formally submitted. A spokesperson for INDECOM explained that it receives complaints from “persons of alternative sexual orientations,” but the complaint form does not include an option to specify sexual orientation. As a result, no formal record is available of the number of SOGI-based complaints.\textsuperscript{128}

Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA)

The establishment of CISOCA, a branch of the JCF with specialized and skilled staff trained to tackle and address sexual offenses, is a positive development in a country where rape is rampant. However, the needs of young homeless MSM, lesbian and bisexual women, and


\textsuperscript{127} Human Rights Watch interview with Michael B., Kingston, April 4, 2013.

\textsuperscript{128} Human Rights Watch telephone conversation with INDECOM, September 10, 2014.
transgender people who have been victims of rape and sexual violence need particular attention by CISOCA.

Human Rights Watch interviewed CISOCA officers in Kingston who were surprised about the fact that LBT women are raped based on their sexual orientation or gender identity, which is a clear indication that the staff employed aren’t sensitized or aware of the needs of LBT women who have been raped based on their sexual orientation or gender identity. The executive director of Quality Citizenship Jamaica shared her experience of reporting an attack to CISOCA in a recent blog: “The first policewomen from CISOCA I reported it to told me that I ‘should leave this lifestyle and go back to church.’”

Similarly, despite news reports of young homeless men living on the streets, the newly appointed deputy superintendent of CISOCA, Veronica Gilzene, claimed in an interview with The Gleaner that she was unaware of the problem.

CISOCA has a unique role to raise awareness, to encourage LGBT victims of rape and violence to come forward, and to ensure that they receive the necessary counseling and these crimes are investigated.

Other Police Policies/Steps
Police have made other notable strides to address the security needs of LGBT people in Jamaica, aided at times by productive working relationships between human rights activists, organizations such as J-FLAG, and individual police officers who are either sympathetic or have become sensitized as a result of human rights training.

Positive steps in recent years include the following.

---

• In 2013, the Ministry of National Security expanded the Jamaica National Crime Victimization Survey (JNCVS) to include questions about crimes believed to result from assumptions about the sexual orientation of victims.\textsuperscript{134}

• The JCF has named sexual orientation as a protected identity in the Police Ethics and Integrity Policy, as part of its effort to raise standards and to comply with the JCF’s code of ethics.\textsuperscript{135}

• Since January 2011 the JCF murder/shooting incident assessment form had included a section on probable cause, in which “hate crimes” can be indicated as a probable cause (Annex IV). The form explicitly states that hate crimes may be crimes based on identities such as ethnicity or sexual orientation.

• Some police stations are now separating detainees to protect those who might be prone to abuse and violence, including LGBT people, according to police and J-FLAG staff interviewed by Human Rights Watch.\textsuperscript{136}

• CISOCA, according to some LGBT victims of sexual assault interviewed by Human Rights Watch, has adequately tended to their needs.

Positive Police Behavior

Such steps have helped to increase awareness about discrimination and violence that LGBT people experience in Jamaica, and resulted in positive behavior on the ground.

Human Rights Watch met with seasoned police officers who said police response to hate-related crimes had improved, and recommended more training and awareness across the JCF. Several LGBT people we interviewed confirmed that they had encountered positive responses from the police.

Ted C. and his boyfriend owned a club that catered to LGBT people, and operated without police interference. While the police “weren’t pleased with the club,” he said, “they aren’t

\textsuperscript{134} Ibid.

\textsuperscript{135} Jamaica Constabulary Force, Ethics and Integrity Policy, April 2011, http://www.acb.gov.jm/pdf/JCF%20Ethics%20and%20Integrity%20Policy%20-%20Final.pdf (accessed October 11, 2014). The policy states in its “Conduct Towards the Public” section: “Members in dealing with members of the public must act fairly and impartially at all times regardless of race, colour, sex, language, religion, political or other opinion, national or social origin / class, association with a national minority, disability, age, sexual orientation, marital or family status, property, birth or any other status. Any difference in treatment shall be required to be justified and proportionate.”

\textsuperscript{136} Human Rights Watch interview with Christopher Murdoch, Island Constabulary Force Commander, Kingston, April 12, 2013.
going to bother us as long as we are complying [with the law].” He recalled that on one occasion the commander called him to say police had received information that an attack was planned on the club and would be patrolling regularly to ensure the club’s safety.\textsuperscript{137}

When, following a fight with a rival club promoter, armed men in police uniforms came to his club and threatened him, Ted C. said he called the commander, who advised him to call if anything happened.\textsuperscript{138} The next day, when he went to file a report at the police station, he overheard the commander say:

> I know they’re homosexuals, but that is not relevant to why I’m meeting with them.

Ted added that the commander said while some members of staff did not agree with his club, he would do his best to protect our rights as Jamaican citizens, as long as we complied with the law. “Clearly he was not going to wave a rainbow flag,” Ted C. said, “but as long as we followed the rules for operating a club, we would not have any problems.”\textsuperscript{139}

Glenroy R., a 25-year-old gay homeless man who occasionally has sex for money, was one of the few LGBT people we interviewed who was satisfied with the police response when in October 2011 he reported an attack by four men who had offered him a ride—which he took to be a solicitation for sex—and then abused him.\textsuperscript{140} The men put a knife to Glenroy’s throat and forced him to perform oral sex on one of them. “They were going to stab me, and I ran away and they said ‘Find him and kill him,’” Glenroy said. He hid, and later walked to New Kingston police station in his wet, torn clothes. When he arrived, police asked him to write a statement. They called his family, drove him around the area of the incident, and referred him to CISOCA for testing and counseling with a police clinical psychiatrist.\textsuperscript{141}

Despite the positive steps that police have taken in recent years, there is room for improvement.

\textsuperscript{137} Human Rights Watch interview with Ted C., Kingston, June 17, 2013.
\textsuperscript{138} Ibid.
\textsuperscript{139} Ibid.
\textsuperscript{140} Human Rights Watch interview with Glenroy R., Kingston, April 8, 2013.
\textsuperscript{141} Ibid.
For example, CISOCA leadership and staff need to be trained to better understand and address the needs of LGBT people in order to assist and promote their right to be free from violence and sexual assault (see above).

In addition, at present, the human rights training of the JCF—part of the basic training of police recruits, supervisors, and corporals—does not specifically address sexual orientation or gender identity, according to police sources. “There is no open discussion [on sexual orientation and gender identity],” Assistant Commissioner of Police Clifford Blake (now deputy commissioner) told Human Rights Watch. “The diversity policy is how it is dealt with in the force.”

Ongoing Challenges

One challenge to facilitating relationships between police and the LGBT community—such as the town hall meetings that police have convened since 2012 with LGBT activists, faith leaders, business community members, the child development agency, and homeless youth to address the growing number of homeless youth in New Kingston—is a lack of consistency, because police force members are often redeployed to other areas.

Commander Christopher Murdoch of the New Kingston police told Human Rights Watch that these relationships are too often fleeting due to personnel moving to other positions, often elsewhere in the country. Ivan Cruickshank, policy and advocacy coordinator at Caribbean Vulnerable Communities (CVC), concurred:

A lot of work has been done in Kingston [and] Ocho Rios. The unfortunate thing we face is that police are very mobile in Jamaica. So you’re always going to have a group of people who are on the move.
Lack of transparency may prove to be another obstacle to progress. Human Rights Watch submitted a request to Deputy Commissioner of Police Delworth Heath in April 2013, asking to visit police stations around the country in order to assess implementation of the Policy on Diversity. After initially agreeing to the request, Heath stonewalled at the last minute, stating that such a request should be made through the Ministry of Foreign Affairs.148

Government Ministries

Some government ministries have been constructive in their actions and responses to LGBT rights, although these have often been inconsistent, and there continues to be considerable room for improvement when it comes to legal reform and ensuring non-discrimination and equal access to social services, including health and education.

Ministry of Justice

Minister of Justice Mark Golding has issued positive verbal responses to calls for stronger legal and legislative protections of the rights of Jamaican LGBT people, but his statements have not been matched by significant action.

In January 2013, in response the IACHR report on human rights in Jamaica, which included abuses against LGBT people in Jamaica, Minister Golding hinted that “legislative intervention” might be required to address discrimination against “minority groups,” but in the year following this statement, he has not introduced comprehensive anti-discrimination legislation.149

In July the same year, Golding eloquently condemned the murder of Dwayne Jones (see Summary)—although Jones’ killers had not been brought to justice at time of writing:

Given our country’s history of brutality and the pluralistic nature of our society, all well-thinking Jamaicans must embrace the principle of respect for the basic human rights of all persons. This principle requires tolerance towards minority groups and non-violence in our dealings with

148 Human Rights Watch email correspondence with Delworth Heath, Deputy Commissioner of Police, Kingston, April 18, 2013 (see Annex II).

those who manifest a lifestyle that differs from the majority of us. Depraved acts of violence against individuals such as Dwayne Jones have to cease. The police must spare no effort in bringing the perpetrators to justice, so that any persons who may be inclined to indulge in such vile brutality will know that they cannot do so with impunity.\(^{150}\)

At the end of 2013, in December, Golding told a Jamaicans for Justice forum that his ministry was working with the United Nations Development Program (UNDP) to formulate the case for legal reform “in relation to acts of intimacy in private among consenting adults” with a particular focus on the “public health disadvantages of the current law in the fight against HIV/AIDS.” However, he noted public opposition to homosexuality:

The government is interested in the protection of the rights of all Jamaicans including sexual minorities. However the fact is the majority of Jamaicans do not approve of the homosexual lifestyle especially where it is expressed publicly and modifying the law would therefore be controversial and we have to acknowledge this.\(^{151}\)

And in January 2014, Golding told Reuters, following up on Prime Minister Simpson Miller’s commitment to hold a non-binding “conscience vote” in parliament on the possibility of ending Jamaica’s sodomy laws, that such a vote would be held before the legislative year in March 2014, opening the door for the laws to be reviewed.\(^{152}\) Simpson Miller retracted her promise in April 2014 to review the sodomy laws, stating it was not a “priority.”\(^{153}\)

---


Ministry of Youth and Culture

On August 6, 2013, reggae musician Queen Ifrica used her performance at a taxpayer-funded national independence celebration to condemn gays, telling a live and televised audience: “No gays around here. Man to woman I say. Where are the straight people?”154 The Ministry of Youth and Culture, which organized the event, issued a statement expressing its “regret” that Queen Ifrica had used the event to express “her personal opinions and views on matters that may be considered controversial.” It called her comments “inappropriate in the setting of a national, state-funded event” with more than 20,000 persons watching in person and online.155

In April 2014, Minister of Youth and Culture Lisa Hanna announced that her ministry would develop projects, programs, and services to address the complex needs of Jamaica’s children and youth who are at the margins of society, including LGBT youth.156 However, at time of writing she had not elaborated on these plans.

Ministry of Health

Jamaica’s health minister, Dr. Fenton Ferguson, publicly spoke out in support of scrapping Jamaica’s sodomy laws in a televised interview in November 2012:

Whatever might be our past in terms of tradition, culture and views, the rest of the world is moving and the Caribbean must also move in relation to recognition of human rights issues...

Jamaicans, he said, must “take decisions that will take us forwards” regardless of their personal opinions.157

In 2012 the Ministry of Health collaborated with Children First Agency, J-FLAG, and other organizations on the Youth MSM Empowerment Project (YMEP), which aimed to tackle homophobia and its impact on HIV vulnerability through interactive drama presentations in high schools, focus group discussions, and training of both health personnel and MSM peer educators. The ministry is also working with J-FLAG on an initiative to further train health personnel in order to make health facilities more welcoming to LGBT people.

While the Ministry of Health has illustrated its leadership by expressing the importance of addressing discrimination and its effects on the HIV response, in particular as it relates to MSM and other LGBT people, it has achieved little political buy-in from other government sectors.

Criminalization of private, consensual, same-sex sexual acts makes it more difficult for key populations to access HIV services, while the absence of needed protections—such as a comprehensive HIV and AIDS law, a general anti-discrimination law, or any legally enforceable laws or policies protecting against HIV-related discrimination—serves as a further impediment to access.

The ministry also needs to address serious gaps in its own service provision—including breaches of confidentiality—and to take further steps to reduce the high rate of HIV among MSM (and, likely, among transgender people). The ministry should articulate how the needs of LGBT people will be addressed systematically in its policy and programmatic responses inclusive of and beyond HIV. It should develop treatment protocols on dealing with victims of sexual violence, including LGBT victims.

The ministry should also publicize and ensure the accessibility of its complaints procedure: its Client’s Charter sets forth a complaints mechanism for victims of abuses within the

---


health care system, but few Jamaicans are aware of its existence, and none of the LGBT people we interviewed had sought redress for discrimination in the health sector.  

**Ministry of Education**

In a 2011 documentary on homophobia in Jamaica, Education Minister Ronald Thwaites said he looked “forward to a day when ... we guarantee the rights of every person, that we don’t discriminate on the basis of gender or sexual orientation or religion....” Thwaites said there was no principle of acceptable behavior, he said, which could accommodate violence against people with whom others disagreed. He said:

> Where there are persons who are homosexuals largely by virtue of how they have been made up, there is no reason and there is no right in prejudicing them, either in terms of their status, their employment, their rights and least of all by violation of their person.  

Thwaites continued to press positive messages on LGBT issues in May 2012, when he participated as keynote speaker in a public forum on homophobic bullying and human rights, organized by J-FLAG. He stated in his remarks, "Persons, whatever their sexual orientation, whatever their race, religion or class must be treated as if made in the image and likeness of the Creator.... The policy of the Ministry of Education is to provide a safe place for all to be educated.”

But completely contradicting these statements the following May, Minister Thwaites told journalists after a parliamentary debate that the nationally implemented Health and Family Life Education Program (HFLEP) curriculum contained sections that "were grooming people towards homosexual behavior. That does not represent the mood of our people and it does

---


162 Ibid.

not reflect the common sense of what is right and moral in Jamaica.”\textsuperscript{164} He also said that “wholesome, joyous relationships are between men and women.”\textsuperscript{165}

The ministry's mixed messages on LGBT rights is also demonstrated by its hesitation to embrace an Anti-Bullying Initiative, proposed in 2011 by the Child Development Agency in partnership with J-FLAG and UNICEF to tackle bullying in schools. The campaign has been significantly delayed as a result of the ministry's hesitation to fully come on board because of the project's focus on homophobic bullying.\textsuperscript{166}


VII. Civil Society

In 2004, Human Rights Watch published a report, *Hated to Death: Homophobia, Violence and Jamaica’s HIV/AIDS Epidemic*, that documented how the legal, social, and cultural environment drove stigma and discrimination and contributed to a climate of violence against LGBT people. The report showed how these factors led to increased vulnerability and fueled the HIV epidemic among MSM in Jamaica.167

The 10 years since the report’s publication have been marked by increased efforts by Jamaican civil society organizations—including J-FLAG, Quality of Citizenship Jamaica, and Women for Women—to challenge government actions (and omissions) that continue to foster a climate of discrimination and violence. J-FLAG’s “We Are Jamaicans” campaign shares the experiences and perspectives of everyday Jamaicans of all sexual orientations and gender identities regarding LGBT human rights.168

Jamaica AIDS Support for Life led a “Walk for Tolerance” in April 2010 to raise awareness about HIV and LGBT rights.169 Jamaicans for Justice, a human rights organization, has taken a lead role in advocacy efforts to combat specific acts of homophobic violence and systemic deficiencies, such as submitting shadow reports on human rights violations against LGBT people in Jamaica to the UN Human Rights Committee.170

In many cases, activists combine their work combatting homophobic violence and discrimination against marginalized populations (MSM, as well as sex workers and people who use drugs) and efforts to address the HIV epidemic in the region. The Caribbean Vulnerable Communities Coalition, a network of frontline service providers working on rights-based programming with marginalized groups across the Caribbean, has played a key role in initiating, sustaining, and supporting advocacy efforts on HIV and human rights in Jamaica and throughout the region.

Jamaicans have also brought legal challenges in Jamaica and before the IACHR challenging Jamaica’s anti-sodomy laws. For example:

- On February 6, 2013, AIDS-Free World, an international advocacy organization, commenced an action before the Jamaica Supreme Court on behalf of Javed Jaghai, a gay Jamaican man who experienced discrimination and hostility in Jamaica and sought to challenge Jamaica’s anti-gay laws on the basis that they foment such hostility and are unconstitutional.171 It was the first-ever domestic legal challenge to Jamaica’s anti-sodomy law. On September 3, 2013 J-FLAG was added to the action as an added claimant. Jaghai discontinued the case in August 2014 citing (in an affidavit dated August 28, 2014) fears for his safety and that of his family as the main reason for his decision.172

- AIDS-Free World is also challenging Jamaica’s sodomy laws before the IACHR on behalf of two gay Jamaicans.173 The organization sees these regional challenges as essential because Jamaica’s Charter of Fundamental Rights and Freedoms contains a provision that laws relating to sexual offenses (including anti-sodomy laws) that were in force before the charter came into effect and acts carried out under them cannot be deemed to be “inconsistent with or in contravention of” the charter.174 This so-called savings clause175 makes it difficult, if not impossible, to reverse homophobic legislation through Jamaica’s courts.176

---

175 The text of the “savings clause” reads: "(12) Nothing contained in or done under the authority of any law in force immediately before the commencement of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2001, relating to – (a) sexual offences; (b) obscene publications; or (c) offences regarding the life of the unborn, shall be held to be inconsistent with or in contravention of the provisions of this Chapter.”
• The Human Dignity Trust, an organization of international human rights lawyers that provides *pro bono* technical legal assistance to people seeking to challenge laws that criminalize homosexuality, has brought a similar case to the IACHR on behalf of Gareth Henry, an LGBT activist from Jamaica and a former program manager with J-FLAG. Henry was forced to flee Jamaica and was granted asylum in Canada in 2008 based on the persecution he experienced in Jamaica due to his sexual orientation and LGBT activism. Several members of his family also faced threats and intimidation and were granted asylum in Canada. In his submission to the IACHR, Henry argues that Jamaica’s laws that render private consensual sexual intimacy between adult males a criminal offense directly enabled the discrimination, threats, violence, and lack of state protection that he faced. Henry has sought a declaration that these laws and the savings clause in the charter violate Jamaica’s legal obligations under the American Convention on Human Rights, to which Jamaica is a party.

• In a third case, also initiated by AIDS-Free World, Jamaican activist and lawyer Maurice Tomlinson filed a legal challenge in 2011 against three Jamaican broadcasters who refused to air a paid 30-second public service announcement

---

177 “End discrimination towards Gays Now,” Editorial, *The Gleaner*, April 1, 2011, http://jamaica-gleaner.com/gleaner/20110401/cleisure/cleisure1.html (accessed March 3, 2014). The editorial states, “We understand why the various commissions, committees and legislators who drafted the charter failed to expressly declare people’s rights to freedom from discrimination based on sexual orientation. It has do with the receding, but still-entrenched homophobia in Jamaica that caused Mr Golding to declare, more than three years ago, that gays would not be welcome in his Cabinet. Politicians fear that any perception that they embrace or are soft on homosexuality will cost them votes and open them to discrimination and stigma. The attitude, we insist, is cowardly, retrogressive, socially dangerous and offensive to human rights.”

called “Love and Respect,” advocating tolerance for LGBT people.179 Tomlinson argued this violated his freedom of expression and the right to “seek, receive, distribute, or disseminate information, opinions and ideas through any media,” which the Charter of Fundamental Rights and Freedoms protects.180 On November 15, 2013, the Supreme Court ruled in favor of the three television stations, Public Broadcasting Corporation of Jamaica (PBCJ), CVM Jamaica, and Television Jamaica (TVJ). The judges said the defendants have the right to determine what they broadcast.181 In a silver lining to the judgment, the Supreme Court did note that the charter is broad enough to protect against discrimination for all Jamaicans irrespective of sexual orientation, although discrimination on grounds of sexual orientation is not specifically mentioned as a protected category that can be used to ground a charter claim.182


180 Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act 2011, sections 13(3)(c)-(d).

181 “The duty of broadcasters, who are granted license to operate, is to cover public issues fairly and accurately but that does not mean they are under a legal obligation to provide anyone who wishes to speak on an issue access to the airwaves.” In the Supreme Court of Judicature of Jamaica, Civil Division, Claim No. 2012 HCV 05676, In the matter of the Constitution of Jamaica and In the matter of an application by Maurice Arnold Tomlinson alleging a breach of his rights under sections 13(3)(c)-(d) of the Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011, between Maurice Arnold Tomlinson and Television Jamaica Ltd, CVM Television Ltd and the Public Broadcasting Corporation of Jamaica, http://www.supremecourt.gov.jm/sites/default/files/judgments/Tomlinson,%20Maurice%20Arnold%20v%20Television%20Jamaica%20Ltd%20and%20the%20Public%20Broadcasting%20Corporation%20of%20Jamaica.pdf (accessed July 17, 2014).

182 Paragraph 28 of the ruling states: “It is perhaps to be recognized that the claimant cannot seek redress for any allegations of discrimination on the grounds of his sexual orientation as the Charter does not afford that protection specifically. This may be viewed as a significant deficiency in this Charter but it is to be noted that the first paragraph of the Charter is comprehensive enough to point to a view that it be interpreted to embrace all the rights and responsibilities of all Jamaicans.”
VIII. Regional and International Stakeholders

Jamaica is part of several regional bodies, including the Caribbean Community (CARICOM), a body aimed at bolstering the economic integration of 15 Caribbean nations, and the Organization of American States (OAS), a larger body of 35 states throughout North America, Central America, the Caribbean, and South America, which has a mandate to promote democracy, human rights, security, and development in the region.¹⁸³

Twelve of the 15 CARICOM member states still criminalize homosexual conduct; the OAS, on the other hand, has become an outspoken proponent of equality.¹⁸⁴ Since 2008 the OAS has adopted an annual resolution on sexual orientation and gender identity. These resolutions, which have been endorsed by every Caribbean state, include calls to adopt public policies against discrimination on the basis of sexual orientation and gender identity.¹⁸⁵

In failing to adequately address violence and discrimination against LGBT people, Jamaica is failing to uphold its commitments as an OAS member.

The IACHR, the human rights organ of the OAS, has been particularly vocal in condemning violence and abuse based on sexual orientation or gender identity, and has urged states to eradicate discriminatory laws and policies—noting that not only do these laws and policies constitute human rights violations, they also fuel HIV in the region. In its report the IACHR stated that LGBT Jamaicans “face political and legal stigmatization, police violence, an inability to access the justice system, as well as intimidation, violence, and pressure in their homes and communities.”¹⁸⁶

Coincidentally, in February 2014, when the IACHR rapporteurship on the Rights of Lesbian, Gay, Bisexual, Trans and Intersex Persons became fully operational, the IACHR designated Commissioner Tracy Robinson, a Jamaican lawyer, as the first rapporteur.

¹⁸⁵ “To encourage member states to consider, within the parameters of the legal institutions of their domestic systems, adopting public policies against discrimination by reason of sexual orientation and gender identity.” Organization of American States (OAS), General Assembly Resolution, AG/doc.5265/12, June 3-5, 2012.
On October 3, 2013, the Pan American Health Organization (PAHO) supported a resolution that called for states to combat and overcome discrimination against LGBT people in the health sector, given its impact on access to health services. The resolution also calls for greater awareness of the diversity of gender expression and gender identity.¹⁸⁷

Key donors, such as the United States and the United Kingdom, have identified violence and discrimination based on sexual orientation or gender identity as a serious concern.¹⁸⁸ Other donors have undertaken efforts to address human rights abuses against LGBT Jamaicans as part of initiatives to confront the HIV/AIDS epidemic, as discussed in Section I.

IX. International Human Rights Law

The protection of LGBT people is part of Jamaica’s binding obligations under international law and standards, which prohibit discrimination on the basis of sexual orientation. Jamaica’s sodomy laws violate these international obligations, as do the abuses documented in this report, including police failure to address violence against LGBT people.

The OAS, of which Jamaica is a member, adopted seven resolutions between 2008 and 2014 condemning “acts of violence and human rights violations perpetrated against individuals because of their sexual orientation and gender identity,” and urging states “to adopt the necessary measures to prevent, punish, and eradicate” discrimination.

The International Covenant on Civil and Political Rights (ICCPR) and the American Convention of Human Rights (ACHR), amongst other human rights treaties to which Jamaica is a party, both place obligations on Jamaican authorities to protect and promote various fundamental rights as well as provide the conditions necessary for the realization of these rights.

Non-Discrimination

Jamaica has ratified international and regional treaties requiring it to protect human rights without discrimination based on sexual orientation and gender identity, including the ICCPR, the ACHR, and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The UN Committee on the Rights of the Child, the international body of experts that monitors compliance with the Convention on the Rights of the Child (CRC), to which Jamaica has been a party since 1991, has also affirmed that all children are entitled to protection against discrimination on any grounds, including sexual orientation. ¹⁹³

Discrimination on the basis of sexual orientation also violates the right to equality and non-discrimination contained in the ACHR. Article 1.1 of the ACHR states that the parties to the convention "undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition." In 2012 the Inter-American Court was very firm in making clear that sexual orientation and gender identity are grounds that fall within "other social condition." The court stated:

Bearing in mind the general obligations to respect and guarantee the rights established in Article 1(1) of the American Convention, ... the Inter-American Court establishes that the sexual orientation of persons is a category protected by the Convention. Therefore, any regulation, act, or practice considered discriminatory based on a person’s sexual orientation is prohibited. Consequently, no domestic regulation, decision, or practice, whether by state authorities or individuals, may diminish or restrict, in any way whatsoever, the rights of a person based on his or her sexual orientation. ¹⁹⁴ (Emphasis added)

¹⁹³ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, acceded to by Jamaica on May 14, 1991; UN Committee on the Rights of the Child, General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, (Thirty-third session, 2003), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc HRI/Gen/1/Rev.9 (Vol.II) 2008), para. 2. “States parties have the obligation to ensure that all human beings below 18 enjoy all the rights set forth in the Convention without discrimination (art. 2), including with regard to ‘race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status’. These grounds also cover adolescents’ sexual orientation and health status (including HIV/AIDS and mental health.”

¹⁹⁴ Inter-American Court Of Human Rights, Atala Riffo And Daughters v. Chile, Judgment of February 24, 2012, Inter-Am. Ct. H.R., (Ser. C) No. 239 (2012), para 91. “Bearing in mind the general obligations to respect and guarantee the rights established in Article 1(1)of the American Convention, ... the Inter-American Court establishes that the sexual orientation of persons is a category protected by the Convention. Therefore, any regulation, act, or practice considered discriminatory
Right to Privacy

International human rights law has long identified that matters of sexual orientation, including consensual sexual relations, are protected under the rubric of the right to privacy and the right to be protected against arbitrary and unlawful interference with, or attacks on, one’s private and family life and one’s reputation or dignity.\textsuperscript{195}

In \textit{Toonen v Australia}, the Human Rights Committee held that laws in Tasmania outlawing adult consensual sexual activity based on sexual orientation or gender identity violated the ICCPR’s guarantee to the right to privacy.\textsuperscript{196} In \textit{Atala Riffo and Daughters v Chile}, the Inter-American Court confirmed that sexual orientation is part of the right to privacy protected under the ACHR, and therefore any interference in it must meet the standards of “suitability, necessity, and proportionality” and cannot be discriminatory.\textsuperscript{197}

The criminalization of same-sex conduct between consenting adults and the failure to protect against discrimination based on sexual orientation therefore violate the right to freedom from discrimination and the right to privacy guaranteed under the ICCPR and the ACHR. The continued existence of Jamaica’s sodomy laws, and the failure to protect in law against arbitrary interference with an individual’s private life based on their sexual orientation, are incompatible with Jamaica’s international obligations.

Right to Protection against Violence

Lesbian, gay, bisexual, and transgender persons in Jamaica continue to be killed, attacked, and threatened with violence. All too often, the police have been complacent, failing to prevent, punish, or even investigate many instances of targeted violence. In so doing, Jamaica has failed to protect the right to life and freedom from cruel, inhuman, and degrading treatment of LGBT people in Jamaica.

\textsuperscript{195} ICCPR, art. 17; ACHR, art. 11.
\textsuperscript{197} Atala Riffo And Daughters v. Chile, paras. 165, 170.
The right to life is guaranteed under article 4 of the ACHR, as well as article 6 of the ICCPR which states that “[e]very human being has the inherent right to life. This right shall be protected by law.” Likewise articles 5 and 7 of the ACHR and ICCPR, respectively, prohibit inhuman and degrading treatment, with the ACHR explicitly providing that “[e]very person has the right to have his physical, mental, and moral integrity respected.”

Jamaica has positive duties to prevent physical, mental, and, in particular, life-threatening violence against LGBT people, to investigate such incidents when they do happen, and to hold responsible those who committed them—whether they are state agents or private individuals. The UN Human Rights Committee, in overseeing states’ compliance with the ICCPR, has been very clear to states that their positive obligations

...will only be fully discharged if individuals are protected by the State, not just against violations of ... rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of ... rights in so far as they are amenable to application between private persons or entities.198

The UN Office of the High Commissioner on Human Rights has noted that:

Hate-motivated violence against LGBT people is typically perpetrated by non-State actors—whether private individuals, organized groups, or extremist organizations. Nevertheless, failure by State authorities to investigate and punish this kind of violence is a breach of States’ obligation to protect everyone’s right to life, liberty and security of person, as guaranteed by article 3 of the Universal Declaration of Human Rights and articles 6 and 9 of the International Covenant on Civil and Political Rights.199

Economic and Social Rights, including the Rights to Health and Housing

The Committee on Economic, Social and Cultural Rights has explicitly stated that article 2.2 of the ICESCR, which prohibits discrimination in the exercise and enjoyment of the rights guaranteed under the covenant, includes discrimination based on sexual orientation. It has also emphasized this in its general comments in relation to the rights to health, work, and water.

Health

In addition to the ICESCR, the right to the highest attainable standard of health is guaranteed under the CRC and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Access to the right to health must be on a non-discriminatory basis and discrimination on the basis of sexual orientation and gender identity is prohibited.

This right imposes an obligation on Jamaica to take necessary steps for the prevention, treatment, and control of epidemics and other diseases. In meeting this obligation, the government should ensure that appropriate goods, services, and information to prevent and treat STDs, including HIV/AIDS, are available and accessible to all Jamaicans.

Housing and Work

The Committee on Economic, Social and Cultural Rights recognizes that discrimination often occurs in the private sphere, and in particular in the private housing sector. It noted that “actors in the private housing sector (e.g. private landlords, credit providers and public housing providers) may directly or indirectly deny access to housing or mortgages

---

200 UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, para. 32.
203 For example, UN Committee on Economic, Social and Cultural Rights, General Comment No. 14, para. 18; UN Committee on the Rights of the Child, General Comment No. 3, HIV/AIDS and the Rights of the Children, UN Doc. CRC/GC/2003/3 (2003), para. 8; General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, UN Doc. CRC/GC/2003/4 (2003), para. 6.
on the basis of ... sexual orientation...” 204 Similar discrimination may take place in the workplace, as has been the experience of LGBT employees and workers in Jamaica.

The committee therefore emphasized that states parties had to “adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.” 205

---

204 UN Committee on Economic, Social and Cultural Rights, General Comment No. 20, para. 11.
205 Ibid.
Recommendations

To the Prime Minister

- Uphold your election campaign pledge that “no one should be discriminated against because of their sexual orientation,” and translate it into concrete policy by proposing comprehensive anti-discrimination legislation that prohibits all forms of discrimination, including on the grounds of sexual orientation and gender identity, in all areas of life governed by law.

- Publicly and consistently condemn violence against LGBT people.

To the Ministry of National Security

- Closely monitor the implementation of the JCF Policy on Diversity and issue regular, public reports on its implementation.

- Until Parliament passes comprehensive hate crimes legislation, develop a clear definition of “hate crime” for the purpose of the Violence Attribution Assessment Form, which includes sexual orientation and gender identity, as well as other possible motives of hate crimes such as religion, gender, race, disability, or ethnicity.

- Strengthen monitoring and reporting mechanisms to better document incidents of hate crime against LGBT people, ensure accurate reporting and collation of information, and identify patterns of crimes.

To the Jamaican Constabulary Force

- Undertake prompt, independent, and effective investigations into all allegations of acts of violence, including those that may be motivated on the grounds of sexual orientation or gender identity.

- Build a stronger working relationship with Jamaica’s leading LGBT organizations, including J-FLAG and Quality of Citizenship Jamaica. Work consistently and systematically with these organizations to develop sensitization and human rights training, and collaborate with them to identify and document incidences of violence.
• Ensure that all police officers are trained and equipped to properly document and efficiently handle cases of sexual violence targeted at LGBT people.

• Broaden access to information and training on the JCF Policy on Diversity to ensure that all staff has full understanding of the policy and the consequences for its violation.

To the Ministry of Health

• Develop guidelines and training on non-discrimination for all state health personnel. Ensure that all staff—not only medical professionals, but receptionists, janitors, and others—are adequately trained and sensitized.

• Scale up training for health care practitioners to understand the health needs and risks for LGBT people in Jamaica, and establish monitoring and evaluation mechanisms to ensure that such trainings contribute to improved provision of services to LGBT people.

• Conduct outreach to LGBT people and to the general public to explain the Client’s Charter, under which victims of discrimination in the health care sector may file complaints and have them independently investigated.

To the Ministry of Justice

• Work with relevant civil society organizations to undertake comprehensive public awareness-raising and sensitivity campaigns on sexual and gender diversity that condemn anti-LGBT violence and promote respect for the human rights of all people in Jamaica, regardless of sexual orientation or gender identity.

• Work with police, prosecutors, health care providers, and other social service agencies to develop an integrated approach or protocol to deal with LGBT people who are victims of violence.

To the Ministry of Education

• Further develop and expand the Anti-Bullying initiative in partnership with the Child Development Agency and J-FLAG to combat discrimination and violence in schools based on sexual orientation or gender identity.
• Ensure that sexuality and sexual health, including LGBT sexual health, are included in Jamaica’s Health and Family Life Education program.

**To the Ministry of Youth and Culture**

• Develop an estimate of the incidence and prevalence of homelessness among LGBT youth.
• Dedicate funds to developmental, preventive, and intervention programs targeted to LGBT youth.
• Establish funding streams to provide housing options for all homeless youth.
• Permit dedicated shelter space and housing for LGBT youth.
• Require that all agencies that seek government funding and licenses to serve homeless youth demonstrate awareness and cultural competency of LGBT issues and populations at the institutional level and adopt nondiscrimination policies for LGBT youth.
• Mandate LGBT awareness training for all Child Development Agency staff who work in child welfare or juvenile justice issues.

**To the Ministry of Local Government and Community Development**

• Develop an inclusive, non-discriminatory homelessness policy that explicitly commits to address the needs of LGBT homeless people.
• Develop shelter space and psychosocial support programs for LGBT homeless people.

**To Parliament**

• Repeal Sections 76, 77, and 79 of the Offenses against the Person Act, which criminalize consensual adult same-sex conduct.
• Amend Section 13(12) of the Charter of Fundamental Rights and Freedoms in Jamaica’s Constitution, which preempts judicial challenge to pre-existing laws relating to sexual offences, including the anti-sodomy law.
• Repeal Section 18 of the Charter of Fundamental Rights and Freedoms, which bans any recognition of non-heterosexual relationships.

• Amend the Charter of Fundamental Rights and Freedoms to include a specific prohibition of discrimination due to sexual orientation and gender identity.

• Amend the Sexual Offences Act 2009 to remove the gender-specific definitions of sexual intercourse and rape, and to include oral rape and other forms of penetration. Ensure that punishments for sexual offenses are equal regardless of perpetrator’s or victim’s sex, gender, sexual orientation, or gender identity.

• Adopt legislation to establish a National Human Rights Institution, mandated to promote and protect human rights of all Jamaicans including LGBT individuals.

• Adopt inclusive hate crimes legislation to identify and prosecute bias-motivated violence on the basis of actual or perceived sexual orientation or gender identity. Clearly define “hate crimes,” and ensure that any rape or sexual assault motivated in part by the victim’s sexual orientation or gender identity be included in that definition.

To International Donors

• In funding public health efforts in Jamaica, ensure that programs aimed at HIV prevention and treatment, particularly those targeting men who have sex with men and transgender people, are adequately funded. Ensure that adequate services are available for victims of sexual and gender-based violence and that they are accessible to LGBT people.

• Fund and implement training for Jamaican police, judges, lawyers, health care professionals, and media professionals on sexual orientation and gender identity.

• Ensure that funding to Jamaican LGBT organizations extends beyond those working on HIV and public health, so that organizations addressing other human rights issues affecting LGBT people are also supported.
Annex I: Information Request Regarding the JCF’s Policy on Diversity

October 29, 2013

Mr. Owen Ellington, Commissioner of Police
Office of the Commissioner
101-103 Old Hope Rd, Kingston 6
Jamaica, W.I.

Sent via email: cpsecretariat@jcf.gov.jm

Dear Commissioner Ellington:

I hope that this letter finds you well.

I am writing on behalf of Human Rights Watch following our previous communication dated May 10, 2013. We continue to be keen to learn more about the work and progress being made by the Jamaican Constabulary Force in protecting the rights of Jamaica’s most marginalized populations.

The JCF’s Diversity Policy has been hailed as a significant achievement in ensuring that members of Jamaica’s varied population receives equal treatment and service from the police. As such, we are would like to learn more about the diversity policy.

Would you kindly provide us with information regarding the Diversity Policy’s implementation, its impact, and how it is being monitored, as well as the outcomes of any investigations from the implementation of the policy from August 2011 to the present?

In addition to the Diversity Policy, we have learned that there has been significant progress in ensuring that police officers work within a human rights framework. We were pleased to hear of the JCF’s partnership with Jamaicans for Justice in training new recruits in order to ensure that they understand and respect the rights of the Jamaican citizens the force serves. As such, we would like to learn more about how the JCF has been able to document and investigate crimes against members of minority populations.

During our five-week visit to Jamaica we interviewed dozens of crime victims. These individuals shared with us the reporting date and receipt numbers, and we want to understand how these cases have been handled by the JCF. We are attaching the relevant names, dates, and copies of the receipts. In each case, we would appreciate if you could provide us with a short description of the outcome of the
work of the JCF following the report and documentation of these incidences. Should your colleagues need further information in order to inquire into the outcomes of these cases, or if you wish to provide us with contacts for specific station commanders to follow up with them directly, please let me know.

We would appreciate if you could respond by November 12, 2013, in order to allow us to integrate your responses into our forthcoming report. If you have additional questions or if you would like to schedule a conference call, I can be reached by phone at +31-681-78-77-11 or by email at rhonreyolds@yahoo.com.

I look forward to hearing from you and working together to ensure the rights of persons from diverse populations in Jamaica.

Thank you for your kind cooperation.

Sincerely,

Rhon Reynolds, MPA
Research Consultant, Human Rights Watch
Annex II: Correspondence with the JCF Regarding Site Visits to Police Stations around the Country

F. Add the following correspondence to the email:

Re: Request to Visit Station and Conduct Research (2)

Mr Rhon Reynolds
Consultant
Human Rights Watch

Further to our telephone conversation last evening, I write to formally apologize for the withdrawal of the offer to allow you to visit police stations and interview police officers as part of your research project.

The protocol to be followed for international agencies to visit government agencies in Jamaica is that such agency should make its request through the Ministry of Foreign Affairs. Unfortunately the very short notice did not afford the Force enough time for consultation to receive the necessary Ministerial approval and to work out the appropriate parameters to guide your research.

The JCF will be more than happy to facilitate your visit in June of this year. However, please be guided by the advice given regarding the submission of your formal request through the Ministry of Foreign Affairs.

Yours truly,

Delworth Heath
Deputy Commissioner of Police.

Reply, Reply All or Forward | More
Annex III: Information Request – JCF’s Violence Attribution Assessment Form

Dear Kevin,

I am writing on behalf of Human Rights Watch following our previous communication dated May 10, 2013. We continue to be keen to learn more about the work and progress being made by the Jamaican Constabulary Force in protecting the rights of Jamaica’s most marginalized populations.

The JCF’s Diversity Policy has been hailed as a significant achievement in ensuring that members of Jamaica’s varied population receive equal treatment and service from the police. As such, I would like to learn more about the diversity policy. Would you kindly be able to provide some information regarding the Diversity Policy’s implementation, its impact, and how it is being monitored, as well as the outcomes of any investigations from the implementation of the policy from August 2011 to the present?

In addition to the Diversity Policy, we have learned that there has been significant progress in ensuring that police officers work within a human rights framework. I am pleased to hear of the JCF’s partnership with Jamaicans for Justice in training new recruits in order to ensure that they understand and respect the rights of the Jamaican citizens the force serves.

During my five-week visit to Jamaica I learned that the JCF records hate-related crime in the violence attribution forum. I am keen to learn more about the data that has been collected thus far and if it could be shared. If you have additional questions or if you would like to schedule a conference call, I can be reached by phone at +31-68178-7711 or by email at hrearnold@hrw.org.

I look forward to hearing from you and working together to ensure the rights of persons from diverse populations in Jamaica.

NOT SAFE AT HOME 80
Annnex IV: JCF’s Incident Assessment Form

<table>
<thead>
<tr>
<th>Incident</th>
<th>#</th>
<th>Context</th>
<th>Source evaluation</th>
<th>Probable Cause</th>
<th>Source evaluation</th>
<th>Risk of retaliation &amp; tension</th>
<th>Operational response</th>
<th>Source – Context/Co.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Murder victims</td>
<td></td>
<td>A: Gang-related</td>
<td>1: Revenge or Retaliation</td>
<td>2: Jealousy or Crime of Passion</td>
<td>3: Control Territory/Space</td>
<td>4: Political</td>
<td>High</td>
<td>1: Reassign local patrols</td>
</tr>
<tr>
<td></td>
<td></td>
<td>B: Domestic</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>C: Criminal, not gang-related</td>
<td>5: Monetary gain</td>
<td>6: Contract Killing</td>
<td>7: Self-defence</td>
<td>8: Impatience with Crim. Just. system</td>
<td>Medium</td>
<td>2: Inform patrols and task for attention</td>
</tr>
<tr>
<td></td>
<td>YES</td>
<td>D: Mob Killing</td>
<td>9: Hate crime - e.g ethnic/ Sexual orientation</td>
<td>10: Trafficking drugs</td>
<td>11: Trafficking weapons</td>
<td></td>
<td>Low</td>
<td>3: Additional resources required</td>
</tr>
<tr>
<td></td>
<td>NO</td>
<td>E: Not yet established</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Send to Statistics Dept.

CIMS Incident Number: Date of incident:

Time of incident: Location of incident:

Crime reference: Division: Station:

GPS reference for the main incident (supplied by SOC or DIU):

Overall grading of incident:

<table>
<thead>
<tr>
<th>Context</th>
<th>Cause</th>
<th>Risks</th>
<th>Operational Response</th>
<th>Source – Context</th>
<th>Source - Cause</th>
</tr>
</thead>
</table>

Reporting Officer

Name and rank: Date: Time: Signature:

Explanation

AIM – to more effectively identify risks and minimize harm, replacing the old ‘motive’ classification for murders, which was often unknown and open to misunderstanding. This new process will identify FROM ALL AVAILABLE KNOWLEDGE/INFORMATION the risks posed from such an incident and ensure an appropriate policing response is put in place.

- This form is used to categorise murder/shooting incidents and make a rapid determination of the appropriate policing response. It must be completed and submitted within 1 hour of the incident. It can then be updated as required by the Divisional Commander.
- Please note - two factors CONTEXT and PROBABLE CAUSE - are required to give an indication of how reliable the SOURCE of the information is. Use the codes listed in the SOURCE box above. All other factors just require a Circle in the appropriate box. The overall grading of the incident will be a 4 digit reference and this will have an additional two letter SOURCE evaluation for reference purposes ONLY and not for passing onto Statistics and this will assist local reviews, by the Divisional Commander.
- The Divisional Commander is responsible for managing and reviewing this assessment.
- Any ‘Not Yet Established’ MUST be reviewed by the next Tasking & Coordination meeting and the assessment updated – Statistics MUST be informed of the new assessment grading.
- The CR2 and information supplied to the JCF Statistics unit and Operations must include the 4 character reference for each incident (i.e AH23) and each crime record must have the same assessment recorded against the individual crime reference.
- A copy will be retained within the DIU for dissemination to NIU and inclusion in divisional threat assessments and strategic assessments.

**Homophobic Discrimination & Violent Incidents as reported to J-FLAG (January - December 2009)**

<table>
<thead>
<tr>
<th>Case #</th>
<th>Location</th>
<th>Month</th>
<th>Gender</th>
<th>Age</th>
<th>Perpetrator/s</th>
<th>Assaults/Attacks (28)</th>
<th>Displacement</th>
<th>Police Related</th>
<th>Discrimination (Services)</th>
<th>Further Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Kingston</td>
<td>January</td>
<td>Male</td>
<td>32</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>2</td>
<td>Kingston</td>
<td>February</td>
<td>Male</td>
<td>32</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>3</td>
<td>Kingston</td>
<td>March</td>
<td>Male</td>
<td>32</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>4</td>
<td>Kingston</td>
<td>April</td>
<td>Male</td>
<td>32</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>5</td>
<td>Kingston</td>
<td>May</td>
<td>Male</td>
<td>32</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>6</td>
<td>Kingston</td>
<td>June</td>
<td>Male</td>
<td>32</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>7</td>
<td>Kingston</td>
<td>July</td>
<td>Male</td>
<td>32</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>8</td>
<td>Kingston</td>
<td>August</td>
<td>Male</td>
<td>32</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>9</td>
<td>Kingston</td>
<td>September</td>
<td>Male</td>
<td>32</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>10</td>
<td>Kingston</td>
<td>October</td>
<td>Male</td>
<td>32</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>11</td>
<td>Kingston</td>
<td>November</td>
<td>Male</td>
<td>32</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>12</td>
<td>Kingston</td>
<td>December</td>
<td>Male</td>
<td>32</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
</tbody>
</table>

**Homophobic Discrimination & Violent Incidents as reported to J-FLAG (January - December 2010)**

<table>
<thead>
<tr>
<th>Case #</th>
<th>Location</th>
<th>Month</th>
<th>Gender</th>
<th>Age</th>
<th>Perpetrator/s</th>
<th>Assaults/Attacks (49)</th>
<th>Displacement</th>
<th>Police Related</th>
<th>Discrimination (Services)</th>
<th>Further Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>London</td>
<td>September</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>2</td>
<td>London</td>
<td>October</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>3</td>
<td>London</td>
<td>November</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>4</td>
<td>London</td>
<td>December</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>5</td>
<td>London</td>
<td>January</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>6</td>
<td>London</td>
<td>February</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>7</td>
<td>London</td>
<td>March</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>8</td>
<td>London</td>
<td>April</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>9</td>
<td>London</td>
<td>May</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>10</td>
<td>London</td>
<td>June</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>11</td>
<td>London</td>
<td>July</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>12</td>
<td>London</td>
<td>August</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>13</td>
<td>London</td>
<td>September</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>14</td>
<td>London</td>
<td>October</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>15</td>
<td>London</td>
<td>November</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
<tr>
<td>16</td>
<td>London</td>
<td>December</td>
<td>Male</td>
<td>30</td>
<td>Community</td>
<td>Vertical</td>
<td>Home</td>
<td>Home</td>
<td>Dislocation</td>
<td>Safety</td>
</tr>
</tbody>
</table>
## Homophobic Discrimination & Violent Incidents
as reported to J-FLAG (January – December 2011)

### Total Number of Cases

<table>
<thead>
<tr>
<th>Case #</th>
<th>Location</th>
<th>Month</th>
<th>Gender</th>
<th>Age</th>
<th>Perpetrator</th>
<th>Discrimination (Services)</th>
<th>Assaults/Attacks</th>
<th>Displacement</th>
<th>Police Related</th>
<th>Other</th>
<th>Further Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Daresen</td>
<td>March</td>
<td>M</td>
<td>23</td>
<td>Mab</td>
<td>* HIV</td>
<td>Verbal</td>
<td>Home</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>KGA</td>
<td>March</td>
<td>M</td>
<td>45</td>
<td>Group of Men</td>
<td>* Physical</td>
<td>Verbal</td>
<td>Home</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>KGA</td>
<td>May</td>
<td>M</td>
<td>25</td>
<td>Group of Men</td>
<td>* Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>KGA</td>
<td>January</td>
<td>M</td>
<td>30</td>
<td>Group of Men</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>KGA</td>
<td>January</td>
<td>M</td>
<td>37</td>
<td>Mab</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>KGA</td>
<td>April</td>
<td>M</td>
<td>40</td>
<td>Family</td>
<td>* Physical</td>
<td>Verbal</td>
<td>Home</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>KGA</td>
<td>April</td>
<td>M</td>
<td>24</td>
<td>Police</td>
<td>* Physical</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Home</td>
</tr>
<tr>
<td>8</td>
<td>KGA</td>
<td>April</td>
<td>M</td>
<td>22</td>
<td>Individual</td>
<td>* Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Home</td>
</tr>
<tr>
<td>9</td>
<td>KGA</td>
<td>February</td>
<td>M</td>
<td>19</td>
<td>Friends</td>
<td>* Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>KGA</td>
<td>May</td>
<td>M</td>
<td>35</td>
<td>Community</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>KGA</td>
<td>May</td>
<td>F</td>
<td>37</td>
<td>Mab</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>KGA</td>
<td>May</td>
<td>M</td>
<td>25</td>
<td>Family</td>
<td>* Verbal</td>
<td></td>
<td>Home</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>KGA</td>
<td>May</td>
<td>M</td>
<td>16</td>
<td>Mab</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>KGA</td>
<td>June</td>
<td>M</td>
<td>30</td>
<td>Group of Men</td>
<td>* Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>KGA</td>
<td>June</td>
<td>M</td>
<td>19</td>
<td>Community/Mob</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>KGA</td>
<td>June</td>
<td>M</td>
<td>22</td>
<td>Mab</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>KGA</td>
<td>June</td>
<td>M</td>
<td>18</td>
<td>Family</td>
<td>* Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Home</td>
</tr>
<tr>
<td>18</td>
<td>KGA</td>
<td>June</td>
<td>M</td>
<td>22</td>
<td>Family</td>
<td>* Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Home</td>
</tr>
<tr>
<td>19</td>
<td>KGA</td>
<td>June</td>
<td>M</td>
<td>15</td>
<td>Individual</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>KGA</td>
<td>August</td>
<td>M</td>
<td>44</td>
<td>Individual</td>
<td>* Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>KGA</td>
<td>August</td>
<td>M</td>
<td>24</td>
<td>Family</td>
<td>* Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Home</td>
</tr>
<tr>
<td>22</td>
<td>KGA</td>
<td>August</td>
<td>M</td>
<td>28</td>
<td>Individual</td>
<td>* Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>KGA</td>
<td>August</td>
<td>M</td>
<td>32</td>
<td>Individual</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>KGA</td>
<td>October</td>
<td>M</td>
<td>31</td>
<td>Individual</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>KGA</td>
<td>October</td>
<td>M</td>
<td>25</td>
<td>Individual</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>KGA</td>
<td>September</td>
<td>F</td>
<td>25</td>
<td>Individual</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>KGA</td>
<td>September</td>
<td>F</td>
<td>25</td>
<td>Individual</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td>KGA</td>
<td>November</td>
<td>M</td>
<td>30</td>
<td>Individual</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td>KGA</td>
<td>November</td>
<td>M</td>
<td>33</td>
<td>Mab</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td>KGA</td>
<td>November</td>
<td>M</td>
<td>33</td>
<td>Mab</td>
<td></td>
<td>Verbal</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>31</td>
<td>KGA</td>
<td>November</td>
<td>M</td>
<td>45</td>
<td>Family</td>
<td></td>
<td>Verbal Assault</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Summary of Incidents of Reported
January - December 2012

In 2012, there were sixty-six reports of incidents of violence, displacement, discrimination, harassment and other forms of abuse perpetrated on the basis of an individual’s (real or perceived) sexual orientation or gender identity.

Approximately 50% occurred in Kingston and St. Andrew; 20% in St James and St. Catharine respectively and 10% between Clarendon, Manchester, St. Ann and Trelawny.

The following is a breakdown of the incidents reported:

<table>
<thead>
<tr>
<th>Type of Incident</th>
<th>Number</th>
<th>Victim</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mob Violence</td>
<td>36</td>
<td>Adult Males</td>
</tr>
<tr>
<td>Ostracized by Family and Community</td>
<td>15</td>
<td>Males Under 18 Years</td>
</tr>
<tr>
<td>Beating</td>
<td>2</td>
<td>Transgender Persons</td>
</tr>
<tr>
<td>Beating and Stabbing</td>
<td>5</td>
<td>Bisexual Males</td>
</tr>
<tr>
<td>Beating and Displacement</td>
<td>8</td>
<td>Lesbians</td>
</tr>
</tbody>
</table>

Dane Lewis
Executive Director

© J-FLAG January 2013
Modified July 2013
Annex VI: Association between HIV and Vulnerability among 201 MSM in 4 Parishes, Jamaica, 2007

Acknowledgements

This report was researched by Rhon Reynolds, consultant for Human Rights Watch, and Rebecca Schleifer, former advocacy director of the Health and Human Rights Division, and written by Rhon Reynolds, with significant contributions from Neela Ghoshal, senior researcher in the Lesbian, Gay, Bisexual, and Transgender (LGBT) Rights Program at Human Rights Watch. The report was edited by Neela Ghoshal; Danielle Haas, senior editor at Human Rights Watch; and Graeme Reid, director of the LGBT Rights Program.

It was reviewed by Graeme Reid; Daniel Wilkinson, managing director of the Americas division at Human Rights Watch; Joseph Amon, director of the Health and Human Rights Division; Bede Sheppard, deputy director Children’s Rights Division; Amanda Klasing, researcher in the Women’s Rights Division; Aisling Reidy, senior legal advisor; and Danielle Haas.

Adam Frankel, associate in the LGBT Rights Program at Human Rights Watch, provided editorial and production coordination and formatted the report. Kate Segal, Americas associate at Human Rights Watch, proofread the report. Additional production assistance was provided by Kathy Mills, publications specialist; Grace Choi, publications director; and Fitzroy Hepkins, mail manager.

A number of experts and nongovernmental organizations in Jamaica and elsewhere assisted with this research. Human Rights Watch gratefully acknowledges the invaluable role of J-FLAG, Quality of Citizenship Jamaica, Caribbean Vulnerable Communities, Dwayne’s House and Women for Women.

We extend sincere thanks to everyone who shared their experiences with us and made this report possible, and regret that we cannot mention all of them by name.
NOT SAFE AT HOME
Violence and Discrimination against LGBT people in Jamaica

Lesbian, gay, bisexual and transgender (LGBT) Jamaicans face an intolerable level of violence, both physical and sexual, perpetrated on the basis of actual or perceived sexual orientation or gender identity. The July 2013 murder of 16-year-old Dwayne Jones, who was brutally killed for wearing women’s clothing, lies at the extreme end of this spectrum. Police investigations into such violence are often inadequate or lacking altogether, in some cases due to homophobia or transphobia within the police force. This report documents 56 cases of such violence, in addition to cases of discrimination from government institutions, including healthcare facilities, as well as in the private sector. The report recognizes recent efforts by police to establish protocols for addressing hate crimes, but calls for improved protection and non-discrimination mechanisms as well as an end to legislation that facilitates abuses, such as the “buggery laws.”
TAB 24
Homophobic attack by guards at upscale Jamaica hotel

Security guards at a popular upscale hotel in Kingston, Jamaica, launched an attack last week on gay men sitting across the street next to a public park.

By Maurice Tomlinson

Rogerrie D. Harris is a 29-year-old gay man living in Kingston, Jamaica.

Growing up, Rogerrie has suffered multiple assaults for most of his life because of his sexual orientation. These have ranged from homophobic slurs to physical attacks, and have come from police, community members, school mates, and complete strangers. Rogerrie has been diagnosed with post-traumatic stress disorder (PTSD) because of these unrelenting attacks.

The most recent jarring incident occurred on the morning of Feb. 23. At around 1:15 a.m. Rogerrie and two friends were sitting and chatting near the popular Emancipation Park in the heart of the business district of New Kingston. They were facing the landmark Pegasus Hotel when suddenly a large stone landed at their feet! Startled, they looked up and realized that the missile came from the hotel's entrance. It was quickly followed by a shower of stones from the same direction.

Rogerrie and his friends jumped up but instead of backing down they rushed to the source of the attack as they were tired of being subjected to this kind of unprovoked violence simply for existing.

When they entered the hotel's gates, they saw two hotel security guards scurrying from the area where the stones were thrown. The guards tried to elude Rogerrie and his friends by quickly making their way to the hotel's main lobby. When Rogerrie and his friends attempted to report the matter to another guard at the lobby entrance, they were met with aggression and expletives.

But still livid that someone would try to hurt them for just sitting in public, Rogerrie and his friends refused to leave and eventually a
it was: “Only one of her management team. After waiting for hours in the lobby... discriminative actions but instead of sympathising with Rogerrie and his attacked companions, the supervisor sided with the guards and said that “being a gay man violates Jamaican norms.”

Confronted by these Pegasus Hotel staff members, Rogerrie and his friends made videos in which they tried to explain what happened. In the darkness, you can hear them telling about the stones that were thrown and being called “battymen”. (Photo excerpted from video, courtesy of Facebook)

Rogerrie was understandably displeased with this dismissive response so he demanded to speak with the hotel’s manager. However, the security supervisor and other security guards adamantly stated that this was impossible. The guards then proceeded to call Rogerrie and his friends “battymen” and hurl other homophobic expletives at them before ordering them to leave the hotel compound.

Initially, Rogerrie and his friends resisted. The supervisor then instructed two security guards to physically throw the young men out unto the street. The supervisor also called for five or six more nearby guards to assist their colleagues to forcibly eject Rogerrie and his friends.

Facing overwhelming odds, Rogerrie and his friends started to retreat but in vexation at this unjust turn of events one of Rogerrie’s friends threw a bottle at a guard who then physically assaulted the young man. The security guards then pulled out two firearms at Rogerrie and his friends as they moved further from the compound. The supervisor still commanded the group of security guards to chase them.

The guards chased Rogerrie and his friends down Knutsford Boulevard to the Oxford Road intersection all the while throwing stones and even their batons at the fleeing youth.

Rogerrie was severely traumatized by the incident and stayed barricaded in his home for four days. He then went to the New Kingston police station to report the attack, but the police were rude and discriminatory and offered him no help.

So, Rogerrie attempted to make a complaint to the Pegasus Hotel management team. After waiting for hours in the lobby he was finally told that the manager on duty was too busy to deal with him because it was: “Only one of her.”
Feeling frustrated and defeated, Rogerrie left the hotel and went home. He now just wants to leave Jamaica as he sees no future or justice here for queer youth like himself.

**Videos:**

*As guards were ejecting them from the hotel compound, Rogerrie and his friends made these (very dark) videos in which they tried to explain what happened:*
TAB 25
No arrests after brutal anti-gay attack in Jamaica

Gay Jamaicans experience this kind of brutality almost daily, says Jamaican/Canadian activist Maurice Tomlinson.

21-year-old Jamaica Jason walks with a swish. He always has. His prominent hips, slight gur and delicate gestures made him the subject of violent bullying and vulgar name-calling in school and his community. After trying unsuccessfully for years to change his walk and mannerisms so that he could “be normal” Jason finally gave up. To compensate he developed a thick skin and a sharp tongue to defend himself. Most times these worked. However, this week they failed miserably, and Jason was nearly slaughtered at the hands of a homophobic mob.

On the evening of Jan. 7, Jason caught a bus to downtown Kingston. However, when he boarded the conductor started grumbling about not wanting any battyman [homosexual] on his bus and ordered Jason off. Jason tried to ignore him and refused to budge. But the bus driver abruptly stopped the bus and with the help of the conductor and some other passengers they hauled Jason off the vehicle and savagely beat him leaving him with a busted lip, swollen eye, bruised back, and several other injuries.

This happened in the full view of passersby, but no one stopped to assist. When the bloodlust of Jason’s attackers was satisfied, they casually re-boarded the bus while still hurling threats at Jason as he lay bleeding on the pavement. As the bus drove off Jason noted the licence plate number before limping to the nearby police station where he reported the attack. He then went to the Kingston Public Hospital where he was admitted.

Jason shared his story on social media and, although there was sympathy, there have been no arrests.
As our Prime Minister and Minister of Tourism tout how safe Jamaica is for gay tourists (as long as they remain behind high resort walls), gay Jamaicans experience this kind of brutality almost daily.

Related articles:
Gay Jamaican asylum seekers find new life in US with LGBT task force

Loop News  Created : 8 October 2019

Maurice Newman, a 26-year-old from Jamaica, is seeking asylum in the United States. (Photo: Masslive)

Maurice Newman was thriving in Jamaica, fulfilling his dreams. He was teaching the fifth grade and also traveling for the government, training fellow teachers. He was building his life, living in the upper-middle class with an apartment and nice car.

Then his life flipped around in an instant when police discovered his sexuality.

"All that changed when people find out you're gay. Because in Jamaica, it's a very homophobic country. By law, being gay is illegal. You can go to prison for 10 years maximum with hard labor," Newman recalled in an interview. "That's not even scary. The scariest part is the community in which you live, in which you invested, in which you helped to develop, if those people find out that you're gay, they themselves will try to kill you and that's exactly what happened to me."

Newman, 26, said Jamaican police saw him in his car with another man. It led to a chase, where Newman said he was able to evade police.

With his sexual orientation now known, Newman avoided work the day after police discovered the truth. When he returned to work the following day, he saw a large crowd gathering and he knew authorities were after him, Newman recalled.

"I started driving out of the schoolyard when they just started throwing stones, bricks whatever they could at my car," Newman revealed.

He was certain he would be sent to jail and was worried he might even be killed. But luckily, he was able to get away.

News travels fast in Jamaica, according to Newman.

"My family started calling me, (saying), 'What did we hear? We don't want you around. Don't come back to us," Newman said. "My own
mom told me that 'you can't come back to my house' ... it just broke me down. I knew I just had to leave."

He stayed with a friend overnight and then fled Jamaica. Newman already had a visiting visa to come to the United States, he said.

On the flight over, he asked friends if anyone knew where he could stay and they pointed him to the Worcester-based LGBT Asylum Task Force.

Discovering the task force changed everything. Newman was able to find legal resources and get a roof over his head. But, most importantly, the task force showed him acceptance and made him a part of a new community.

A ministry of the Hadwen Park Congregational Church, the task force raises money to help LGBTQ people who are seeking asylum in the United States and are there legally, likely on work, student or visiting visas.

The task force provides housing, food, a small monthly stipend, a connection to pro bono attorneys, health care providers and mental health support to asylum seekers. The task force also provides workshops that help asylum seekers acquire bank accounts and teaches what their rights are as asylum seekers, immigrants and tenants.

"It's pretty much a one-stop-shop, trying to help folks to start a new life here and be successful at it," said Alford Green, the director of the task force.

Asylum seekers are people who seek protection because they have suffered persecution or fear that they will suffer persecution because of race, religion, nationality, membership of a particular social group, or political opinion.

About 1 million people seek asylum worldwide every year, according to the United Nations High Commissioner for Refugees.

Across the ocean, Michael was living in secret, much like Newman.

In Uganda, being gay is punishable by up to life in prison. So, Michael, who only wanted to be referred to by his first name to protect his identity and safety, knew he could never come out to his family, he recalled in an interview.

Michael says he was outed in the community and then was beaten.

"I was attacked in the night and these people's motive was to actually kill me," Michael said.

During the attack, Michael's father came to help.

"When people attacked me, he came and he tried to push them away. He didn't support what I am, he didn't support that, but just like a father, he came and saved me when these people attacked me," Michael said.

"So when I left home a few days later, he got stabbed and he was left to bleed to death. He actually died in the hospital. I didn't know all about this until months later."
Michael went to the western part of Uganda to stay with a friend there. He was outed again and fired from his job. Then, Michael hid in the eastern part of the country, living in a small room with financial support from his sister.

He spent about a year in hiding before finally getting enough money to fly to the US on a student visa.

Michael remembered an old friend. He didn't have a phone number or street address but knew the friend lived in Burlington, Massachusetts.

After arriving at the airport, Michael took a taxi to Burlington, hoping he could knock on doors until he could find his friend. He grew tired and sat down to rest in a random driveway, he said. When a Burlington resident returned home and saw Michael in her driveway, he shared his story out of desperation, Michael recalled.

That woman took Michael in for a few days and then remembered a Ugandan woman who braided hair in town. That woman knew Pastor Judith Hanlon from the Hadwen Park Church. Hanlon picked Michael up so he could receive help from the task force.

The LGBT Asylum Task Force was created in 2008 when a gay Jamaican asylum seeker was having trouble preparing for his case. He was homeless and hungry and "had doubts as to whether or not God loved him as a gay man," Green said.

Seeking asylum is a lengthy process, but one LGBT individuals are willing to wait out.

According to the International Lesbian, Gay, Bisexual, Trans and Intersex Association, known as the ILGA, same-sex acts between consenting adults are criminalized in 70 countries.

Such activity could result in the death penalty in 11 countries; 10 years to life in prison in 26 countries; and up to 8 years in prison in 31 countries. There is de facto criminalization in 2 countries.

On average, asylum seekers getting approval to legally work in the US wait eight months to 18 months. To get their case adjudicated, some are waiting 6 years, according to Green.

"It is really devastating, the wait, because you don't know if you're going to stay here and be safe or if you're going to be sent home," Michael said. "You might feel safe here, but you don't know your fate yet until your case is decided. It takes a while for you to get a hearing date but until then your heart can never rest."

Since 2008, the LGBT Asylum Task Force has helped more than 200 people from more than 20 countries, Green said.

"One of the things that I think is pretty telling about the importance of the work that we do is that every person that we've helped so far who's got to the stage of having their asylum hearing has been successful. A 100 percent success rate," said Green, who noted that because the task force provides housing and a stipend, it gives asylum seekers ample time to prepare a solid case.

The task force took on Newman's case in May and has housed him in a Worcester three-decker with other asylum seekers.
"When I got here I cried for maybe like two weeks. They don't know me, I'm a complete stranger to them, they're a complete stranger to me. They gave me a house," he said. "I think it's just beautiful. It warms your heart. Your own family pushed you out but then strangers take you in, treating you so nice, making you feel so special, making you feel at home. It saddens you on one end but then it uplifts you on the other end."

Michael, who also lives in a three-decker with fellow asylum seekers, has been helped by the task force since August 2018. He applied for asylum earlier this year and is also waiting for his work permit and social security.

"I lost family. I lost friends. Being with the task force has got me friends. It has got me family. I have hope," Michael said. "They have done so much for me honestly. I don't know where I would be right now."

At any time, the LGBT Asylum Task Force represents 24 to 28 asylum seekers, Green said, which costs $32,000 per month. The task force owns leases to several apartments in the city.

Funding for the task force comes in three parts: a grant, fundraising from an annual gala, and donations from individuals. The grant pays for Green's position as the only compensated person on staff. All other help by the task force is volunteer-based.

"We're in it for the long haul," Green said. "Until you can legally work to support yourself, we'll be there supporting you."

The task force works with organizations across the city, including the Family Health Center of Worcester, Inc.

The health center connects asylum seekers with primary care doctors and resources to help them through the process, focusing on a trauma-informed approach, according to Jeanne Mailloux, the manager of integrated behavioral health at the Family Health Center.

"It really is life and death. A lot of these individuals were facing death in the countries they were coming from," Mailloux said. "If they had nowhere to turn or nowhere to go, that could have been the likely outcome."

Over the summer, Newman said he prepared his asylum case, filling out an application and writing a declaration. He is just now meeting with an attorney to prepare everything to file for asylum.

"I'm hoping for the best here. I want to get back into education. I really love kids," Newman said. "Nation-building is my passion. That's why I really became a teacher. I wanted to help build my nation and what better way to do it than through the classroom."

For Newman, like many asylum seekers, going from working every day to not being able to work in the United States has been challenging. Newman has been trying to fill his time, working on his case, taking classes at Quinsigamond Community College and teaching Sunday school at Hadwen Park Church.

"It's hard to remember your story, your country, your own family telling you, 'we don't want you around,'” Newman said. "The other thing that
In Worcester, one thing that comforts Newman is the presence of Sharon McQueen, the Worcester Police Department's LGBTQ Liaison Officer, at monthly meetings. It has proven to him that he doesn't need to fear police here, he said.

Green, a 29-year-old graduate of Worcester Polytechnic Institute, first got involved with the task force as an asylum seeker himself before taking over the role of director. He's still waiting to be granted asylum.

After graduating from WPI in 2012, Green went back to Jamaica.

"Imagine being here for four years and being accustomed to freedom, this is after spending 17, 18 years in your home country and being suppressed and oppressed," he said. "Coming here and seeing ok, I can actually for the first time have a relationship that is public. I can go to the movies and not have to worry about who's watching. I can go out for drinks even with just a male colleague and not have to invite a couple of female colleagues as well so that folks don't think we're on a date."

It became clear that he had to come back to the United States.

"For people like me, its literal hell on earth having to live in a completely closed off, underground segment of society. Basically, if found out, being treated as a second-class citizen in your own country," Green said.

Every day includes prayer and hope for asylum seekers.

"If it was about choice, if I had the choice to be straight, I would choose to be straight. It's not that I don't love who I am, but to protect my people, to protect my friends, my family, and just to be with them again, I would choose that path," Michael said.

Michael tells himself that things will be OK eventually.

"They say time heals wounds," he said. "Maybe it will heal mine."


Get the latest local and international news straight to your mobile phone for free:
TAB 27
Jamaica: Gay panic defense in killing of Pride icon

The man who killed fashion designer Dexter Pottinger had his murder charge reduced to manslaughter after he told Jamaican authorities that he stabbed Pottinger 25 times after Pottinger appeared to him naked and aroused.

Tattoo artist and thief Romario Brown pleaded guilty to the manslaughter charge on April 10.

Pottinger was a fashion designer, video director and LGBT rights activist who was named Jamaica’s “Face of Pride” in 2016.

Coverage in the Jamaica Star interpreted the reduced charge as a response to Brown’s “gay panic” defense — the statement that “his actions were caused by provocation” by Pottinger:

Tattoo artist pleads guilty to manslaughter in Dexter Pottinger case

Kingston-based tattoo artist Romario Brown, who was initially charged with the murder of popular fashion designer Dexter Pottinger, yesterday pleaded guilty to the lesser offence of manslaughter after his caution statement revealed that his actions were caused by provocation by the deceased.

Brown also pleaded guilty to larceny from the premises and simple larceny when he appeared in the Home Circuit Court in downtown Kingston.
In a caution statement made to police shortly after his arrest, Brown said that while at the fashion designer’s Yarico Place residence in St Andrew, Pottinger appeared before him naked with his penis erect.

He further told police that he did not know that Pottinger was gay and was surprised by the act, subsequently using a knife to stab Pottinger 25 times.

TWO KNIVES

Before the incident occurred, the killer said Pottinger posted bail for him on Tuesday, August 29, 2017, after he was arrested by police for being in possession of two knives. That was two days before Pottinger was found dead.

Following that, he said they returned to Pottinger’s home where they had talks about how to get his tattoo studio off the ground.

In his statement, he said that he had only known the fashion designer for a week, having met him in Half-Way Tree, St Andrew, where he was handing out flyers to promote his tattoo studio.

Brown said that on the fateful day, he was on the balcony of the house using a knife to cut up ganja, while having drinks with Pottinger.

He said that Pottinger left the balcony indicating that he would soon return.

According to Brown, when Pottinger returned, he was naked.

Pottinger’s decomposing body was found on August 31, 2017 by his brother, who went to his house to check on him because the fashion designer could not be reached.

A flat-screen television, a watch, and Pottinger’s Honda CR-V motor vehicle were missing.

Brown admitted to stealing these items and led police to their recovery after he was arrested.

Sentencing is set for May 24, before Justice Shelly Williams.
Related article:
Homosexuality Is Still Illegal In These 9 Caribbean Countries

Trinidad repealed its ban on gay sex this month, and there is increased pressure on other Commonwealth countries to follow suit.

Jeff Taylor 4/23/2018

This month Trinidad and Tobago decriminalized consensual gay sex, which was previously punishable with up to 25 years in prison.

While the news has invigorated LGBT rights advocates, the picture for gay rights in the region is still far from ideal: Same-sex relations are still illegal in nine Caribbean countries, all of which are part of the British Commonwealth. And while laws are not always enforced, they have a chilling effect on the local LGBT community, which can often face harassment, discrimination and even violence. Sodomy laws also inhibit many LGBT Caribbeans from reaching out to police or HIV/AIDS agencies for help.

British Prime Minister Theresa May met with Commonwealth leaders last week and expressed regret for the U.K.’s role in criminalizing same-sex activity in former colonies. “I am all too aware that these laws were often put in place by my own country. They were wrong then and they are wrong now.”

Below we look at the state of affairs in the Caribbean nations where homosexuality is still against the law.

1. Antigua and Barbuda
2. **Barbados**
3. **Dominica**
Colin McConnell/Toronto Star

On this island republic in the Lesser Antilles, anal sex between men is punishable by up to 10 years in prison. “Gross indecency,” or any act besides intercourse, is punishable by up to five years behind bars. And the court can order those convicted be sent to a psychiatric hospital.

In 2012, two American men arrested for having sex on the balcony of a cruise ship docked in Dominica. They were initially charged with buggery but plea-bargained down to indecent exposure.

4. Grenada
Grenada’s sodomy ban punishes anal sex between men with up to ten years in prison. (Female same-sex relations are not illegal on the island of some 107,300.) While the law is rarely enforced, a 41-year-old man was charged with having sex with a 17-year-old in 2011, even though both were considered consenting adults according to Grenadan law.

In 2013, Senator Lawrence Joseph encouraged the legislature to reexamine its ban, saying “the day is fast approaching” when it would be struck down.”

5. Guyana
Guyana’s penal code lists buggery as a felony, punishable by up to life imprisonment. A man who commit an “act of gross indecency,” which is not defined but likely includes sexual activity other than anal sex, can be imprisoned for up to two years.

President David A. Granger has signaled he’d be open to repealing the statute, which is not commonly enforced.

“I am prepared to respect the rights of any adult to indulge in any practice which is not harmful to others,” Granger said back in 2016. However, to date there has still been no change to the law.

6. Jamaica
While Jamaica advertises itself as “welcoming to all,” homosexual intercourse is punishable by up to ten years in prison, which can include hard labor. (Any other sexual contact between men is punishable by up to seven years in prison.)

Other Caribbean countries have stricter penalties, but anti-LGBT violence is endemic in Jamaica: Gay men have been beaten, shot and stoned to death. In 2017, LGBT activist Dexter Pottinger, dubbed the “face of Pride,” was murdered in his home. Some young queer Jamaicans are even forced to live in the sewers after being rejected by their families.

There are efforts toward change: In 2005, the European Parliament called on Jamaica, to repeal its sodomy ban and actively combat homophobia.

In a 2011 debate, former Jamaican Prime Minister Portia Simpson-Miller said “no one should be discriminated against because of their sexual
orientation.” A year later, LGBT rights campaigner Maurice Tomlinson filed suit at the Inter-American Commission on Human Rights to get the ban lifted. But he was forced to flee the country after news of his marriage to another man hit local media.

An inaugural Jamaica Pride event was held in Kingston in 2015, though security concerns meant there was no parade.

7. **Saint Kitts and Nevis**

![Image of Saint Kitts and Nevis](https://via.placeholder.com/150)

Saint Kitts and Nevis’s Offences Against the Person Act **punishes “the abominable crime of buggery” between men** with up to 10 years in prison with the possibility of hard labor. (Female same-sex relations, however, are not illegal.)

According to Human Dignity Trust the law hasn’t been enforced in recent
history. But in 2005 a gay cruise was barred from docking and the captain was taken to shore for a meeting with port, police, customs and immigration officials. The port’s general manager told reporters that Nevis does not want homosexuality “to be a part of our culture.”

8. **Saint Lucia**

Saint Lucia punishes consensual sex between men with up to ten years in prison. (If the defendant doesn’t contest the charges, the sentence is only five years.)

In 2008, the country was the only U.N. member state in the Americas to formally oppose a declaration that the U.N.’s principles of non-discrimination included sexual orientation and gender identity. Three years later, a group of gay Americans were robbed and beaten in their hotel room.
“They asked if we were gay,” one of the victims, Michael Baker, told The Georgia Voice after the attack. “Why had we showered together? Todd and I both said it was because the water heater was so small. They said if we were faggots they would kill us.”

He added that while they contacted authorities, “the police were almost annoyed with us, almost as if we were the criminals.”

9. **Saint Vincent and the Grenadines**

Anyone who commits “an act of gross indecency with another person of the same sex” can face up to five years behind bars in Saint Vincent.

Receptive partners, male or female, actually face up to ten years in prison.

In 2011, ARC International encouraged the country to repeal its sodomy laws, but its efforts were rejected.
TAB 29
Jamaica Insists Gay Tourists Welcome, Despite Horrific Anti-LGBT Violence

Gay men have been stoned in the street, but Jamaica's tourism minister claims "It’s 'tourism for all' in our country."

Dan Avery 12/7/2017

Tourism boards the world over want LGBT vacation dollars: We travel more often, spend more money, and hit more exotic locales. Now Jamaica wants to cash in, too, despite a history of homophobic violence and discrimination.
“LGBT travelers should feel relaxed traveling to Jamaica,” beamed tourism minister Edmund Bartlett to eTurboNews in November. “It’s ‘tourism for all’ in our country, regardless of gender, religion, handicap, or sexual orientation.”

But Bartlett’s sunny statement contradicts a history of rampant homophobia in the former British colony, where consensual homosexual sex is still a crime and anti-LGBT violence is endemic: Gay men have been beaten, shot and stoned to death because of their orientation. Just this year, LGBT activist Dexter Pottinger, dubbed the “face of Pride,” was murdered in his home.
Some young queer Jamaicans rejected by their families are forced to live in the sewers.

Grace Phelps/Planting Peace

Little wonder a 2006 *Time* story asked if Jamaica was "The Most Homophobic Place on Earth?"

But Bartlett would have us turn a blind eye to all that, since it doesn’t directly
impact European or American visitors to the island.

There are efforts at changing the dynamic: an inaugural Jamaica Pride event was held in Kingston in 2015 (though security concerns meant there was no parade). In a 2012 report, the Jamaican government insisted “there is no legal discrimination against persons on the grounds of their sexual orientation,” despite the law against homosexuality. “[We are] opposed to discrimination or violence against persons whatever their sexual orientation.”

Those are the right words, certainly. But they don’t line up with the reality.

Click here to contribute to Planting Peace’s fundraising campaign for homeless Jamaican LGBT youth.

Dan Avery


@ItsDanAvery
TAB 30
Gay activist and face of Jamaica Pride found murdered in his home

Neighbours reported hearing screams in the early hours of Wednesday morning

Jon Sharman  Saturday 2 September 2017 13:15

A Jamaican gay activist dubbed “the face of Pride” has been found stabbed to death in his home, according to reports.

Dexter Pottinger, a fashion designer, was found dead on Thursday at his home in the Washington Gardens neighbourhood of Kingston.

There was blood “everywhere”, according to police officers quoted by the Jamaica Gleaner.

Neighbours reported hearing screams in the early hours of Wednesday morning, the paper said, but did not tell police about the disturbance, it was said.

Mr Pottinger became the face of Pride Week in 2016 in celebrations organised by the Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG).

At the time he said: “I hope that my participation will show members of J-FLAG that it is okay to come out in an atmosphere where there is no violence, realise that it’s your time to be part of the change—not just for the week but permanently as a part of the community.

“It was hard for me as a youngster, but now my mother understands me more and my dad is cool, My siblings are also cool with me and my brother works with me.”
TAB 31
After fleeing violence in Jamaica, gay man seeks refuge in America

By Avir Mitra

March 8, 2017

Anti-gay prejudice is written into Jamaican law. A colonial-era rule criminalizes male intercourse and LGBT activists say talk of jail time and prison is used to intimidate people.

I’m a new doctor—and when I met Malcolm, his story changed the way I do my job.

He’s worried this story could make his family in Jamaica unsafe, so “Malcolm” asked that we don’t use his real name.
In 2012, he was in Jamaica, heading home from work in a shared taxi with a bunch of strangers.

“Apparently, there was somebody in the taxi who wanted to rob the car or something,” he said.

The man pulled out a gun. He ordered everyone out of the car.

“Now when I got out of the car, all of his attention now started to focus on me. And he left everybody else, he had the gun on me because when I walked out he realized that I was gay. He immediately pointed the gun at me and was like ‘I didn’t know a fish was in here,’” Malcolm said.

Fish is a derogatory term used to harass and insult gay men.

Malcolm is in his mid 20s now. But let’s rewind even further to his childhood in a small town in Saint Ann Parish. Malcolm says everyone knew everyone in his town, and everyone knew he was gay.

“I talked very squeaky for example,” Malcolm said. “Some would say ‘you talk like a girl’... the way how I walk. I would look at other boys my age. I don’t look like that. It’s sort of wishing to be normal.”

Malcolm’s kind of “different” is tough in Jamaica, says Sarah Hamilton. She’s Jamaican, and a human rights lawyer for Amnesty International.

“Jamaica is a deeply religious and Christian country. I think 70 percent of Jamaicans identify as evangelical Christian,” she said. “There’s widespread belief that homosexuality is actually against the laws of god, and is seen as a threat to their religion. And as a threat to religion, it’s a threat to their identity.”

Malcolm says that as a boy, strangers in the street would hiss threatening words at him. In school, he was bullied. He told his teachers at first but eventually stopped complaining because no one helped. He felt afraid. He had nightmares. Even the dance hall music that was popular when Malcolm was a
Malcolm says he endured “name-calling, people saying ‘people like you must die, you don’t deserve to live,’” he said.

It wasn’t empty talk. One evening, Malcolm was walking home from classes and he was attacked by a group of men. “They did a number on me,” he said. “They beat me really bad, they dragged me to the alley calling me names, going on and on, they punched me, they kicked me on the ground. They beat me really bad.”

So he did what most of us would do.

“I went to the police station and I told them what happened, and the cop, he looked at me and was like, ‘That is what you deserve.’ That’s exactly what he said to me. And I went into a public restroom and I cleaned myself up and then I went home.”

At that moment, Malcolm realized the police wouldn’t protect him—no one was going to protect him.

“Even if somebody tries to stand up for you, then they go against that person, it’s like ‘Oh you’re trying to protect this gay man from us–are you gay too?’” Malcolm said.

**An evolving history**

Anti-gay prejudice is written into Jamaican law. A colonial-era rule criminalizes male intercourse and LGBT activists say talk of jail time and prison is used to intimidate people. And then in 2006, a Time magazine headline asked if Jamaica was the most homophobic place on earth—and that kicked off a slew
of reporting on the island.

“The Pulse” requested an interview with Minister of Justice Delroy Chuck and Jamaica’s Permanent Representative to the United Nations Ambassador Courtenay Rattray—to get comment on accusations of homophobic violence and allegations that there’s a culture of intimidation on the island.

After multiple follow-up emails and phone calls, Kurt Davis, Rattray’s counselor for social, humanitarian and cultural affairs, referred the interview request to the embassy in Washington, D.C. Davis’ response was sent after the radio production deadline for “The Pulse.”

Rohan Powell, Delroy Chuck’s adviser, said the minister was not available for an interview.

Writer Suzanne Persard—whose parents are from Kingston—says as a ‘queer Jamaican-American woman,’ living in the United States, she keeps tabs on Jamaica.

Persard says homophobic violence on the island should be viewed in the context of island-wide “criminality and instability” linked to persistent poverty.

“How safe you are is very tied to socioeconomic status,” she said.

Poverty makes the human rights situation difficult for many people living there, she said.

Persard has visited the island several times to do LGBT activism work.

“The narrative that is perpetuated in the West sometimes feels radically different than the activism that’s happening on the ground,” she said.

The country’s track record is clear, but it’s also time to update Jamaica’s image, Persard said. “More people are coming out,” she said and when activists held the country’s first public Pride celebration in 2015, the then
Minister of Justice Mark Golding urged Jamaicans to respect the event.

“A lot of LGBT activism on the ground has been happening and that’s definitely something that I think a lot of people are surprised to learn about,” Persard said.

So Jamaica’s story has evolved, but Malcolm—who was bullied as a boy—and taunted as a teen—says as he grew older, Jamaica got worse for him.

Fast forward a couple years, and Malcolm is where we met him at the top of this story—with a gun to his head and singled out for being gay.

“He put the gun in my face and I was trying to get away,” he said. “I’m not really entirely sure what happened after that. He gun butted me and then he shot me.”

Knocked unconscious and bleeding from his leg, Malcolm eventually came to lying on the side of the street. He spent several weeks recovering from the gunshot wound and a brain injury. Depressed, he felt he might take his own life, or eventually someone else would. So Malcolm left Jamaica.

With little money and no job, he arrived in New York City on a tourist visa, with no intention of returning home.

**How I met ‘Malcolm’**

I’m doing part of my ER residency in Elmhurst, Queens—a neighborhood of immigrants—and that’s where I met Malcolm.

Walking out of the subway, it seems like everyone is speaking a different language. A Spanish bodega butts up against a Korean grocery store, which is filled with Bengalis.

At first, Malcolm was reserved and nervous. It took awhile, but eventually, he opened up and told me just how scary it was for him growing up in Jamaica.
“It’s constant it’s every day, it’s been a nightmare for the entire 20 odd years, I don’t know what it is to live,” he said.

Emergency medicine physician Dinali Fernando, one of my supervising doctors, introduced me to Malcolm. Elmhurst Hospital, where Dr. Fernando and I work, cares for lots of people who are new to America.

“They’re undocumented, uninsured or underinsured, and so they end up utilizing the [emergency department] as their primary source of entry into the healthcare system—it’s their portal of entry,” she said.

Years ago, hospital leaders wanted to know more about the immigrants who come through the emergency room–so they surveyed 500 patients and asked two questions:

“Were you ever threatened or harmed by groups such as the government, police, military or rebel soldiers?” and “Some people in your situation have experienced torture–has this ever happened to you or your family?”

Nearly seven percent of the patients surveyed said ‘yes.’ They had experienced some form of torture. That may sound small, but the ER at Elmhurst Hospital has 90,000 patient visits every year. That means during one busy shift, I might see one or two people who’ve experienced torture.

The survey led to the creation of the Libertas Center for Human Rights. It’s an ER-based program, and Dinali Fernando is the medical director.

Eventually, Malcolm made his way to the Libertas offices, tucked away in a quiet, old part of the hospital. There, he learned he was more than a victim of a hate crime.

Remember when Malcolm spoke to his teachers? When he went to the police? Malcolm says they looked the other way—and in at least one instance, authorities condoned violence against him. Dr. Fernando says Malcolm’s experience makes him a torture survivor, according to The United Nations and
“If there are no systems in place to protect you, or the systems that are in place don’t offer protection, then you will qualify,” Fernando said.

The center links asylum seekers with medical care, counseling and a caseworker. The plan is to help Malcolm get well as he works to gain legal status in the U.S. It’s a long, winding process, that means talking with attorneys and sharing ugly details from the past. Dr. Fernando did a forensic evaluation of Malcolm—a medical and psychological exam—and later wrote an affidavit to support his asylum case.

“The case for asylum is that you cannot return to your home country, because if you go, your life will be in danger,” she said.

The Libertas Center is studying the people it serves and their interactions with the U.S. healthcare system. The researchers found that seven percent of surveyed patients never had a physician ask them about torture.

In medicine, they say you only find something if you’re looking for it, and doctors, like me, simply weren’t looking. We don’t ask the right questions.

Now, I’m on the lookout. But that’s easier said than done.

“Part of it is just to weave it into your conversations,” Fernando said.

“If they say they’re from a country where you know there’s a lot of political turmoil and harm, then that can be something to kind of initiate the conversation. Then when you’re doing the physical exam on the patient, if you see scars, you can ask them, what is this from.”

“Threats and psychological is the predominant type of torture, followed pretty closely by beatings,” she said. “And then wounding and maiming, and then rape and sexual violence.”
There are centers like Libertas at Bellevue Hospital in New York City, another in Minneapolis and about 30 other places across the country.

Malcolm’s asylum papers have been filed, but it can take three or four years before you get a hearing with a judge. Until then, he’s living in legal limbo, waiting his turn.

“This is my home,” Malcolm said. “I can’t picture myself living anywhere else right now.”

Alex Stern contributed to this story.
TAB 32
Jamaican LGBTQ youths escape persecution in city storm drains

Rebekah Kebede

KINGSTON (Thomson Reuters Foundation) - Kaci was always what she calls a “girlie boy.”

Growing up in her grandmother’s house in Kingston, Jamaica, that was not a problem. But when her grandmother died and her uncle became her guardian, being a “girlie boy” meant trouble.

“People started to talk,” said Kaci, a 22-year-old transgender woman, who did not want to provide her last name. “They found out I was gay and then, the community ran me down to kill me.

“My uncle turned me out, and then he turned his back on me, so I had to end up on the street,” she recently told the Thomson Reuters Foundation.

Kaci now lives in one of Kingston’s storm drains or gullies, along with several other dozen gay and transgender people who call themselves “Gully Queens.” Most share the same story of family rejection.
Now, a grassroots effort is underway to create a shelter for the group, whose members regularly suffer violent homophobic attacks and often resort to sex work to survive.

“Every day, it’s life or death,” said Savannah Baker, a British-Jamaican creative director and photographer who is spearheading an effort via the fundraising site GoFundMe.com to raise money for the shelter.

Baker hired some of the “Gully Queens” to work on a music video for British musician Ray BLK. She said while there have been several documentaries and photography features on Jamaica’s LGBTQ people, none of the coverage has highlighted specific ways to help them.

In Jamaica, where hostility toward lesbian, gay, bisexual, transgender or queer (LGBTQ) people is common, being homeless and poor leaves “Gully Queens” especially vulnerable.

Homosexuality is illegal in Jamaica. The country’s sodomy law, which dates back more than 150 years to British colonial times, makes consensual sex between men illegal and carries a prison term of up to 10 years with hard labor.

“For some Jamaicans, rejection of homosexuality is not only a defense of Christian values, it is also a marker of national identity,” the Jamaica Forum of Lesbians, All-Sexuals and
Gays (J-FLAG) says on its website.

Last year, when the U.S. Embassy in Kingston flew a rainbow flag in solidarity with victims of a shooting at a gay nightclub in Orlando, Florida, Jamaica’s attorney general criticized the display, saying it disrespected the nation’s laws.

Government officials were not immediately available for comment on Kingston’s “Gully Queens”.

“YOU HAVE TO SLEEP AND WATCH”

Tayshawn Beltre, a 24-year-old transgender woman, has been homeless off and on since her mother kicked her out 10 years ago.

She often makes her home in Kingston’s gullies, which are open-air, paved channels that snake through the city.

Walled in stone, they are typically six to nine feet wide (two to three meters) and lie below street level. Like small creeks, they drain rainwater, and much of the city’s refuse, out to sea.

“We find means and ways to try and make it a home,” said Beltre.

But living out in the open means that “Gully Queens” can be victims of random violence. Beltre says she was once was stabbed in the back with a knife by a stranger.
“You cannot really sleep. You have to sleep and watch,” she said.

Many LGBTQ people do not feel protected by authorities and say they are targeted by police because of their sexual orientation.

Minutes after Beltre spoke to the Thomson Reuters Foundation, the gully where she lives was raided by the police.

She and other transgender women said they were beaten, had their phones confiscated and their clothing burned.

A spokeswoman for the Jamaican Constabulary Force confirmed that police did conduct the raid in the gully but denied the reports of abuse. She said the women were suspects in a robbery case. No arrests were made.

Some in the transgender community say they have no choice but to resort to crime because they are exiled from the job market and cannot find legal work.

“I’m not going to put a pretty face on it. You do have people who do rob at night ... Everybody does a little thieving to survive,” Beltre said.

TRAUMA

The constant trauma of living on the streets means most of
Kingston’s homeless LGBTQ population need much more than just a roof over their heads, said Dane Lewis, executive director of J-FLAG.

“Their concerns are more than just shelter,” he said. “This is a community that has been marginalized and is still straining to get access to work and a safe environment for them to be full human beings.”

Lewis estimated the number of gay and transgender homeless people in Kingston could be as high as 60 but is usually between 30 and 50.

The number who are displaced or at risk is likely far higher, Lewis said. J-FLAG gets calls almost weekly from people who need to leave their homes but are staying on friends’ couches or have found other temporary places to live.

For Mindy, a 24-year-old transgender woman who has been homeless for eight years, a roof over her head would not be enough.

“My aim is to leave from Jamaica and be somewhere where I can be free and be myself, have a job, live like ordinary people,” Mindy said.

“I don’t want to end up dead here. They don’t have us as human beings. They have us as dogs,” she said.
Reporting by Rebekah Kebede, Editing by Ellen Wulfhorst. Please credit the Thomson Reuters Foundation, the charitable arm of Thomson Reuters, that covers humanitarian news, women's rights, trafficking, property rights, climate change and resilience. Visit http://news.trust.org
TAB 33
This week, two gay men were murdered in the Flanker community of St. James in Jamaica. Media reports indicate that the men, reputed to be lovers, had earned the ire of thugs in the community, who stormed the victims’ house on Tuesday before unleashing a barrage of gunshots.

Apathy reigned in the wake of the vicious attack. According to a resident quoted in the Jamaica Gleaner, “we don’t know nothing about it... a just two fish (homosexuals) get fry over there.”

Residents of the community have walled up and said little to police about the crime, its motives or the people involved. “This is going to be one of those unsolved murders because the police will not get any information from anybody,” a man told the Gleaner. “You must write that is a fish kill, but we don’t know what cause it.”

And while the individuals responsible for the murders must be condemned, the
incident must be viewed in the broader context of the criminalization of the LGBT community in Jamaica and the complicity of the state in such acts of violence.

“We really not into the fish thing around here ... you don’t see seh nobody not crying about it.” – St. James resident

**The state and the law:** Jamaica has notorious “buggery laws” which criminalize sex and all physically-intimate acts between men. In 2011, the Portia Simpson-Miller government promised a parliamentary conscience vote to repeal the law, but due to intense pushback, the vote never occurred.

The newly-installed government of Prime Minister Andrew Holness has similarly rejected recent recommendations from the United Nations to repeal the law. Instead, the government has indicated that it will take the issue of a repeal to a national referendum which, given the extreme opposition of 2011, is anything but certain. The mere idea of dispensing with the law last saw thousands of Jamaicans rallying in the streets in protest.

![Two sides of the buggery law debate: At left, Maurice Tomlinson, exiled Jamaican rights activist. At right, one of many anti-gay protesters at a recent rally in Jamaica. Credit: Reuters (L) / James Poremba (R)](image)

To its defenders, the buggery law is not a violation of human rights because it does not criminalize being gay — it just criminalizes homosexual acts. When
the law is taken literally, it is not illegal to be gay in Jamaica; it is only illegal to behave in a certain way.

Put simply, it is legal for gay men to exist, but it is not acceptable for them to act in accordance with their identity.

Within this context, gay men must keep an integral component of who they are hidden for fear of adverse ramifications. Criminalization arguably contributes to a political and social climate that fosters antipathy and hatred toward gay men.

**Acts of violence** like the St. James murders do not occur in a vacuum, and are not the result of rogue lone actor. They are expected outcomes of a political and social climate that vilifies sexual identity. Put simply by Foucault, state regulations over behavior create categories for normality and deviance through which individuals then define themselves, and others. The law sets the boundaries of abnormality and normality in societies, and in turn shapes people’s actions and beliefs.
One of three men branded as homosexuals had to be rescued by police in 2005 in Jamaica, after an angry mob surrounded them, some calling for their deaths

By outlawing homosexual behavior, successive Jamaican (and other Caribbean) governments establish homosexuality as a form of deviance, and suggest that the LGBT community should understand itself as abnormal. They are also viewed as abnormal by other members of the public, putting them at a higher risk for violence. The law itself, while hardly enforced by the state to punish consensual homosexual acts, remains dangerous when acts of violence against homosexuals are legitimized in its name.

On access to justice, Human Rights Watch published a damning report about violence inflicted on the LGBT community in Jamaica. Between 2009 and 2012, J-FLAG, a Jamaican LGBT rights organization, recorded 231 incidents of attacks against LGBT people, including home invasions, physical assaults, and mob attacks. Not only do these horrific acts of violence occur,
perpetrators are rarely arrested and held responsible.

Of the 71 members of the LGBT communities who were interviewed by Human Rights Watch in 2013, 44 reported being victims of violence based on their sexual orientation or gender identity. 19 of these reported the crimes to the police, and in only 8 cases did police take formal statements.

A shelterless gay man makes a home in a gully in Jamaica. Credit: Human Rights Watch

Victims interviewed were aware of arrests by police in only 4 of 56 cases documented by Human Rights Watch. 26 of those who had experienced violence did not report the crimes due to fear of retaliation from the perpetrators, or because reporting the homophobic hate crime would “out” them to society.

While it would be naive to suggest that a repeal of the buggery law would suddenly end the violence against the LGBT community in Jamaica, it is a vital first step to ending state complicity in the cycle of violence. Not only is it uncertain whether the forthcoming national referendum will pass, but gay men’s basic human right to act upon their sexuality without fear of
repercussion is not an issue that should be put up for a majority vote. History repeatedly shows instances of the majority denying marginalized communities basic human rights in order to reinforce the status quo.

It is the responsibility of elected public officials to pass legislation that protects the basic rights of all citizens. While putting the issue to a national referendum would be an easy way for Jamaican politicians to shirk responsibility if it fails to pass, such an excuse is unacceptable to the LGBT community in Jamaica who must continue to live in the shadow of the law and the acts of violence that the law helps to inspire.
TAB 34
Another Double Murder In MoBay - Resident Says Male Victims Were Gays

Western Bureau:

There was yet another double murder in St James on Tuesday, but this one is somewhat mysterious as according to sources in the Providence Heights area of Flanker, where the killing took place, the victims were labelled gay lovers, who had earned the wrath of thugs in the community.

While the police did not confirm any gay links to the incident, they did say that the men, one identified as 40-year-old carpenter Orville Lorne and the other, who remains unidentified, were shot and killed by persons who attacked the house in which they were staying.

"Yes, we can confirm that there was a double murder in Providence Heights, but we have only ascertained the identity of one of the victims," said Assistant Commissioner of Police Winchroy Budhoo, the commanding officer for Area One. "Outside of the fact that the house was shot up, we have no other details."

Early-morning attack

According to residents of the community, shortly after 5:50 a.m., men armed with guns attacked the house in which the men were staying, firing a barrage of shots. When the shooting subsided and the shooters had left, the bodies of Lorne and the other man were found.

"We don't know nothing about it ... a just two fish get fry over there," a young woman told The Gleaner mockingly. "We really not into the fish thing around here ... you don't see seh nobody not crying about it."
It would appear that there was a general lack of sympathy for the men as most residents seemed to support the view that they were gay and were not welcome in the community.

"This is going to be one of those unsolved murders because the police will not get any information from anybody," another man said. "Gleaner, you must write that is a fish kill, but we don't know what cause it."

Since the start of the year, St James has recorded close to 80 murders, making it the bloodiest police division islandwide. Last year, the parish also had a record 212 murders.

adrian.frater@gleanerjm.com
TAB 35
Most Jamaicans Would Kick Out Their Gay Children

Almost half of Jamaicans say they would throw their children out of their homes for being gay, resurrecting the issue of homelessness reportedly affecting members of the lesbian, gay, bisexual and transgender (LGBT) community in Jamaica.

The finding is contained in the 2015 Awareness, Attitude & Perception Survey about Issues Related to Same Sex Relationships.

The survey of employers, politicians, and members of the general public was done between June and July last year by Market Research Services for Jamaica's leading gay lobby, the Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG).

Forty-seven per cent of the 942 people who made up the general public cohort indicated that they would not allow their child to live in their houses if he or she was gay or lesbian.

Seventeen per cent was indifferent, and the remaining 36 per cent said they would allow their gay child to remain in the household.

That view is cemented by the 75 per cent of the general public who say they would feel uncomfortable living with gays.

CONTRASTING POSITION

Employers and politicians, however, shared a contrasting position when questioned whether they would allow their gay child to stay at home. Fifty-two per cent of the 33 politicians said they would keep their gay child.

A higher percentage (57) said they would allow their gay children to remain in
their household; the rest were either indifferent or completely disagreed.

Meanwhile, even if some Jamaicans would allow their gay children to remain in the household, most of them, according to the survey, were indifferent to, or totally disagreed with, allowing any mixing with their siblings.

In 2013, following the police-removal of alleged homeless gays from sections of upper St Andrew, J-FLAG argued that LGBT identity in Jamaica was "shaped and coloured by displacement".

The lobby said then that the Government was not doing enough to respond to homelessness and called for a specific strategy to deal with the situation.

The general attitude by Jamaican households towards gays should not be surprising given that the 2015 survey has also pointed to increasing levels of 'hatred' for homosexuals, as well as a stagnant low level of tolerance.

The survey involved a sample group of 1,003 comprising 33 politicians, 28 employers, and 942 people from the general populace. It covered all parishes and has a margin of error of plus/minus three per cent.
TAB 36
In the latest instance of Jamaica’s dangerously pervasive homophobic climate, a 41-year-old allegedly gay man was reportedly stabbed to death, his car stolen, and his house set on fire while his body was still inside on Aug. 28.

The Jamaica-Gleaner News Paper, reportedly citing the Western Bureau, stated that “renowned Montego Bay hospitality worker Dean Moriah was early this morning killed at his Bogue Village home in Montego Bay, burnt by unknown assailants. The police say Moriah was stabbed several times before the house was set on fire with him inside.”

Additionally, a mob attempted to attack two men they perceived to be gay following a minor car accident on Aug. 23 in Jamaica.

The victims were forced to take refuge inside of a local police station in Old Harbour, St. Catherine, after a resident accused the men of being gay and a violent mob formed in response, according to a video released by Jamaica LGBT News.
It is worth reiterating that there are no confirmed reports that these latter two men actually identified as gay. Rather, the angry mob mentality sparked from a perception and assumption framed by Jamaican attitudes toward LGBT individuals.

Jamaica — historically understood to be one of the most anti-gay countries on the planet — has seen a disturbingly high number of instances of violence targeting the LGBT community this month alone.

At the end of July, a mob reportedly chopped and stabbed Dwayne Jones, a gender non-conforming teen, to death at a party after attendees realized that Jones was biologically male. Last week, five men were trapped and barricaded inside of a house by the residents of their village after an “alleged homosexual man... made statements that made them gravely concerned.”

Since Time magazine branded Jamaica as “The Most Homophobic Place In The World” in 2006, attitudes and awareness surrounding the country’s “abominable crime” legislation and violence against LGBT individuals has increased. In fact, last Wednesday LGBT advocates protested outside of the Jamaican embassy in D.C. in repose to Jones’ brutal murder last month.

For more updates of anti-LGBT violence in Jamaica, follow
Subscribe to The Morning Email.

Wake up to the day's most important news.

*Check out five videos from the “We Are Jamaicans” campaign against anti-LGBT discrimination below:*
THE DEVELOPMENTAL COST OF HOMOPHOBIA

The Case of Jamaica

JANUARY 2016

EDITORS
Rochelle McFee, MSc., BSc.
and
Elroy Galbraith, MSc., BSc.
Acknowledgements

We would like to thank M.V. Lee Badgett of the University of Massachusetts Amherst, Javier Corrales of Amherst College, and Jaevion Nelson of J-FLAG for their invaluable contribution to the research process.
Over time, we are learning how important human rights are for the health and growth of a country’s economy. To create a vibrant economy, all people must be given the opportunity to contribute fully and to share in its success. However, the results of this study suggest that lesbian, gay, bisexual, and transgender (LGBT) people in Jamaica face violence, stigma, and discrimination, which hold those individuals back—and hold back Jamaica’s economy.

Fear of violence and discrimination are preventing LGBT people in Jamaica from full participation in society and the economy, and this fear encourages behaviours which are detrimental to the affected persons’ wellbeing. The respondents in this study were largely people who are considered as socioeconomic elites, yet they report that they are not open about who they are to people they work with and live near. They avoid public places that feel threatening. One in five have been attacked in the last five years. Their experiences lead them to need additional health services.

The workplace is hardly a haven of safety. More than half of lesbians and gay men and almost a third of bisexual and transgender respondents have experienced harassment or discrimination at work in the last year. LGBT people worry about discrimination in the workplace and perceive it as a major problem. And they’re right: it’s a problem for LGBT workers and for the businesses that employ them or want to sell them goods and services. By treating LGBT people unfairly, businesses lose out on productivity and loyalty of their LGBT workers and customers.
In a global economy, countries that provide their citizens with an excellent education, quality health services, and a tolerant social climate are likely to have an advantage in attracting business investment, local entrepreneurs, and international tourists. Economic partners increasingly look at how countries treat their LGBT citizens when they make important business decisions and have noted that organizations that encourage diversity and openness display greater productivity and creativity. This important study provides crucial knowledge about LGBT people’s lives and suggests reasonable next steps for policymakers, the business community, and every Jamaican who want to ensure that LGBT people’s human rights are respected and the country’s economy can achieve its potential.

M. V. Lee Badgett is a professor of economics and director of the Center for Public Policy and Administration at the University of Massachusetts Amherst. She is also a Williams Distinguished Scholar at UCLA’s Williams Institute.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acknowledgements</td>
<td>1</td>
</tr>
<tr>
<td>Foreword</td>
<td>2</td>
</tr>
<tr>
<td>List of Tables</td>
<td>7</td>
</tr>
<tr>
<td>List of Figures</td>
<td>8</td>
</tr>
<tr>
<td>List of Illustrations</td>
<td>11</td>
</tr>
<tr>
<td>Abstract</td>
<td>12</td>
</tr>
<tr>
<td>Executive Summary</td>
<td>13</td>
</tr>
<tr>
<td>Chapter 1: Homophobia-Historically and Internationally</td>
<td>15</td>
</tr>
<tr>
<td>Chapter 2: Jamaica and Homophobia</td>
<td>21</td>
</tr>
<tr>
<td>Objectives</td>
<td>28</td>
</tr>
<tr>
<td>Chapter 3: Methodology</td>
<td>29</td>
</tr>
<tr>
<td>Conceptualization</td>
<td>29</td>
</tr>
<tr>
<td>Sampling strategy</td>
<td>30</td>
</tr>
<tr>
<td>Data collection and analysis</td>
<td>31</td>
</tr>
<tr>
<td>Limitations</td>
<td>33</td>
</tr>
<tr>
<td>Chapter 4: Profile of Respondents</td>
<td>35</td>
</tr>
<tr>
<td>Demographics</td>
<td>35</td>
</tr>
<tr>
<td>Relationship Status</td>
<td>37</td>
</tr>
</tbody>
</table>
Gender Identity and Sexual Orientation ................................................................. 38

Openness ..................................................................................................................... 39

Summary: The Jamaican LGBT Person .................................................................... 44

Chapter 5: The Jamaican LGBT Experience .............................................................. 45

Discrimination .............................................................................................................. 47

Assault and Threats .................................................................................................... 51

Heath Services ............................................................................................................ 56

Experiences with the State .......................................................................................... 58

Legislature and Law Enforcement ............................................................................. 58

Economic Experiences ............................................................................................... 62

Business and Workplace Impact ................................................................................ 62

Chapter 6: Responses to Experiences........................................................................ 70

Lifestyle Changes ........................................................................................................ 70

Relocation ..................................................................................................................... 71

Help Seeking ................................................................................................................ 72

Summary ....................................................................................................................... 76

Chapter 7: Recommendations from Respondents ..................................................... 77

Recommendations from Lesbians, Gays and Bisexuals ............................................. 78

Recommendations from Transgender persons ......................................................... 78
LIST OF TABLES

Table 1 Demographic Distribution of sample..................................................36

Table 2 Distribution of threats and assaults..................................................52
LIST OF FIGURES

Figure 1 Relationship status of the sample .........................................................37

Figure 2 Household relationships .................................................................38

Figure 3 Openness and sexual orientation .....................................................40

Figure 4 Others with knowledge of LGBT status ..........................................41

Figure 5 How other identify your LGBT status .............................................42

Figure 6 Displaying LGBT status at work/school ..........................................43

Figure 7 Places avoided when being open about LGBT status .......................43

Figure 8 Distribution of discrimination against LGBT persons .....................48

Figure 9 Personal experiences of discrimination because of perception as LGBT person ..........................................................................................................49

Figure 10 Treatment received for being LGBT person ...................................50

Figure 11 Last perpetrator of assault ...............................................................53

Figure 12 Gender of last perpetrator ...............................................................54

Figure 13 Location of last assault ....................................................................54

Figure 14 Severity of discrimination faced by LGBT persons in Jamaica ......Error!

Bookmark not defined.
Figure 15 Experiences with health care service providers.................................58

Figure 16 Knowledge of laws that forbids discrimination.................................59

Figure 17 Reason assault was not reported ......................................................61

Figure 18 Reason harassment was not reported ...............................................62

Figure 19 Participation of LGBT persons in workforce .....................................65

Figure 20 Employment experience because of LGBT ........................................66

Figure 21 Experience because of LGBT status ...............................................67

Figure 22 Impact of Openness of LGBT Status and Access to Aspects of the Economy .................................................................68

Figure 23 Experience with economy because of LGBT status ..........................69

Figure 24 Respondents who have made a change because of their LGBT status 71

Figure 25 Respondents who have relocated because of their LGBT status ........72

Figure 26 Type of help needed because of LGBT status ..................................73

Figure 27 Quality and source of medical help ...............................................74

Figure 28 Quality and source of psychological help .......................................75

Figure 29 Quality and source of spiritual help .................................................75

Figure 30 Community should ensure equal opportunities for LGBT ...............77
Figure 31 Suggestions so LGB persons may live comfortably ....................................78

Figure 32 Suggestions to live comfortably as Transgender.................................79

Figure 33 Suggestions to government regarding legislation ..............................80

Figure 34 Effect of legislation outlawing discrimination on the grounds of sexual orientation..........................................................81
ABSTRACT

This study describes the lived experiences of Lesbian, Gay, Bisexual and Transgender (LGBT) Jamaicans, and examines how discrimination affects the country's development, with particular emphasis on the economy. The results describe persons who still live in fear of discrimination and threat of violence and assault; the LGBT community is largely an unprotected community constantly in jeopardy of exclusion from the politics and economy of the place called home. This reality is costly for a country in need of diverse and qualified individuals to contribute to achieving the vision of “a healthy and stable society”; “a more inclusive society which fosters a great sense of hope” (Vision 2030).
EXECUTIVE SUMMARY

Recognition and protection of the human rights of Lesbian, Gay, Bisexual and Transgender (LGBT) persons in Jamaica is insufficient. This is particularly worrisome as exclusion of LGBT people has implications for the sustainable development of the country. While international work exists detailing the impact of stigma and discrimination on national development, though limited, there is a dearth of scholarship on the Jamaican situation. This study is aimed at exploring the experience of LGBT persons and describing how these experiences jeopardize Jamaica’s human, social and economic development.

The study employed a cross-sectional, mixed methods approach that targeted LGBT Jamaicans and used a convenience sampling technique that reached over 300 LGBT persons living in Jamaica. The questionnaire probed their sexual orientation and gender identity; their experiences with discrimination at school, work, and when accessing services of the State and private sector and how these affect their lived experiences in Jamaica.

The data provide evidence of discriminatory experiences unique to the Jamaican LGBT person. Respondents indicate the constant need to keep their non-heterosexual orientation a secret, and having to be very cautious when choosing with whom they are open. Despite various deliberate attempts to conceal their LGBT status, these persons feel that they are denied participation in the economy, representation in the legislature, and access to spaces free from stigma and discrimination. Respondents recounted
several recent incidences of threats of physical and sexual violence and actual experiences of same. Personal, direct experience of physical and sexual violence was relatively infrequent in this sample, but they existed, and the sample demonstrated fears of violence that would affect people’s health and ability to operate freely in society.

Unfortunately, this reality presents real hurdles that affect the development of Jamaica. As marginalised and vulnerabilised members of society, some LGBT Jamaicans were unable to be productive members of society as they were constantly afraid of having the assets and opportunities attacked. Many LGBT persons surveyed, XX% of whom were either in or already completed college or university, were desirous of leaving the country, denying it their contribution to national development. This sample was able to cope through various strategies, but the fear of homophobic attacks continues to loom.

This study concludes that sustainable development in Jamaica is jeopardized by the lack of regard, and limited protection or coverage for the LGBT community. Among its recommendations are the creation of legislation and policies aimed at reducing discrimination on the grounds of sexual orientation or gender identity and other factors unique to LGBT person. It also calls for the engagement of duty bearers, public figures and authorities in the promotion of the human rights of LGBT persons and an end to stigma and discrimination. Perhaps add a call to action for the general public, caregivers, employers, and religious folk...?
CHAPTER 1: HOMOPHOBIA-HISTORICALLY AND INTERNATIONALLY

The Caribbean archipelago, with its history of slavery and dependence, has struggled over the past 100 years in its bid to achieve higher levels of development. More recently, development praxis and discourse have put great emphasis on human capital and ensuring that the human rights of all are protected. The discussion around human rights, especially within the Caribbean, has been contentious because of the drive to recognize and promote the rights of some of the poorest and most vulnerable Jamaicans, including for the Lesbian, Gay, Bisexual and Transgender community - a community that has historically been marginalized and discriminated against.

Much like slavery, homophobia is seemingly a legacy of the plantation system. The British who colonized parts of the Caribbean, including Jamaica had a tradition of condemning sex between men (Smith and Kosobucki, 2011). Faced with the debacle of same-sex activity ‘contaminating’ the workers in Britain said activity was criminalized in 1533. Smith and Kosobucki (2011) write that as the British began to colonize more countries; their proximity to the equator became a concern. It was felt at the time that heat promoted promiscuity which heightened vulnerability to engage in same sex-activity. Consequently, Caribbean countries became subject to Common Law, which would ban this practice.

Even though the British lost their direct influence on Jamaica after independence, the long standing influence supported by the Christian faith ensured that the legacy remained. The colonies needed to define citizenship as part of sustaining their liberation
(Brady, 2010). Jamaica was among the islands that established a hierarchy by which same would be determined. Heterosexual males were given the highest status, as heterosexuality shaped the definitions of respectability, masculinity and reproductive sexual activity; any sexual act incapable of reproducing was considered unpleasant and abominable. Black men, in order to lead had to demonstrate moral rectitude, particularly on questions of paternity. It followed that personal respectability would require Jamaicans to shun anything “nasty” Including oral sex, anal sex or any same-sex.

Han and O’Mahoney (2014) have investigated the variation in laws regulating punishment for homosexual conduct around the world. Using a sample of 185 countries, they found that “former British colonies were more likely to have laws that criminalize homosexual conduct than former colonies of other European powers or than other states in general” (pp.5). They note that almost 70 percent of states with British origin continue to criminalize homosexual conduct compared to the French Colonies that represent just about 8 percent. This they attributed to the fact that after the French Revolution ended in 1799 the French Empire decriminalized sodomy; spreading the enlightenment legacy among its colonies while Britain and Wales continued to criminalize Sodomy until 1967.

While the literature examined was silent on the genesis of discrimination against Lesbians, Bisexual and Transgender women, it stands to reason that it was steeped in the same belief that LGBT unions could not reproduce. Furthermore, when the British colonized parts of the Caribbean and even years after liberalization, women were seen
as inferior and arguably their sexual practices less significant than that of men whose power and masculinity aided and sustained the economy.

Even with a heavy subscription to biblical precepts, slaves who were Christians were not against pre or extra marital sex, but rather, they focused on any form of sex that did not have the potential to reproduce (Smith & Kosobucki, 2011). Clearly, pre or extra marital sex was important to preserve the labour force. The act of same-sex intercourse was indistinguishable from the individual who indulged and the state, Church and citizenry, responded with fear, hatred, contempt and disgust toward such persons.

The narrative describing the LGBT community has, for the most part been written by the white colonizers (who have now abandoned said narrative) and political and religious interests convinced that recognizing the humanity of the LGBT community causes moral panic. In the past, hetero-normativity\(^1\) has been inextricably linked to economic growth as reproduction ensured survival of the Plantocracy. Today, the link between economic growth and homophobia is perceived by development experts Sen (1999) and Houdart (2012) as negative in the way that it limits members of the LGBT community’s participation in and contribution to economic activity. Fabrice Houdart, ______________________

\(^1\)The institutions, structures of understanding and practical orientations that make heterosexuality seem not only coherent – that is, organized as sexuality – but also privileged. Its coherence is always provisional, and its privilege can take several (sometimes contradictory) forms: unmarked, as the basic idiom of the personal and the social; or marked as a natural state; or projected as an ideal or moral accomplishment
president of World Bank GLOBE - the Bank’s LGBT employee resource group - posits”[Discrimination against LGBT persons] is a significant, self-inflicted economic wound.”It is easy to assent to Houdart’s position when we consider Banks’2003 findings that LGBT persons\(^2\) have a shorter life span and faced greater health risks and social problems than heterosexuals. This was the result of the chronic stress placed on LGBT people owing to the need to cope with discrimination and negative social responses to anything that went beyond the parameters of hetero-normativity - anything considered "other" or "different". Health issues were exacerbated by the substandard care provided to LGBT persons due to stigma and discrimination and their disproportionate exposure to violence. LGBT people were significantly at risk of being victims of violence or being unemployed (Banks, 2003).

By 2014, Badgett demonstrated that the economic cost of homophobia, particularly for countries in the Global South was becoming increasingly obvious and quantifiable. While discrimination takes its toll on the individual, in ways such as personal attacks or loss of wages, the combined effects of homophobia will manifest into the broader macroeconomic environment - “individual effects [of homophobia] will translate into important economic outputs” (Badgett 2014 in Wescott 2014, NPag). This translates into lower rates of education, poor health, and poverty which lead to a smaller labour ________________

\(^2\) At the time of the study, Banks referred to this population as GLB (gay, lesbian and bisexual). However, LGBT has become the nomenclature.
force and higher healthcare costs (Westcott, 2014). Badgett’s (2014) case study of India also highlighted the enormous cost of healthcare due to homophobia in that country, as Banks argued about Canada from as early as 2003.

The aforementioned studies demonstrate that when LGBT people are denied full participation in society on the basis of their identity, micro level economic harm results. Such denial of human rights is also likely to have a direct negative effect on the level of economic development of a country (macro-level). According to Badgett et al. (2014), LGBT people

- are taken out of productive employment when they are harassed, arrested, detained, jailed, beaten and humiliated,
- face disproportionate rates of physical, psychological and structural violence, which may restrict their ability to work due to injuries and psychological trauma,
- face workplace discrimination and may therefore be unemployed or underemployed leading to their full productive capacity not being utilised,
- face multiple barriers to mental and physical health leading to reduced productivity.

Persons from the LGBT community will therefore be forced to, or find themselves engaging in casual labour or self-employment in order to avoid discrimination and harassment. LGBT students’ learning is hampered when they face discrimination in learning environments; they may become truants or drop out, thereby reducing their skills and knowledge to allow them to function effectively in the workplace or matriculate to higher levels of education. Such exclusionary practices cost the economies of these emerging nations in lost labour time, lost productivity,
underinvestment in human capital, and inefficient allocation of resources due to
discrimination in education and hiring practices (Badgett et al. 2014).

Badgett et al’s analysis showed that there was a positive correlation between per capita
GDP and legal rights for LGBT persons. It demonstrated that one additional right in the
Global Index on Legal Recognition of Homosexual Orientation (GILRHO) 3 was
associated with US$1,400 more in per capita GDP and with a higher Human
Development Index (HDI) value. The positive correlation between LGBT rights and the
HDI is an indication that the ability to enjoy freedoms go beyond economic outcomes to
the level of individual well-being.

3 Countries are ranked on a scale of zero to eight – zero indicating a country that grants no legal rights to
its LGB citizens, and eight representing a country that grants full legal equality for LGB people. This would include
the legal recognition of same-sex relationships between consenting adults, protections against discrimination in
employment and the legal ability of same-sex couples to adopt children, etc
CHAPTER 2: JAMAICA AND HOMOPHOBIA

In May 2015, Jamaica’s human rights record was appraised by the Universal Periodic Review (UPR) among the areas of concern were discrimination based on sexual orientation or gender identity (SOGI) and violence against Lesbian, Gay, Bisexual and Transgender (LGBT) persons. In a summary prepared by the Office of the High Commissioner for Human Rights and in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1, referencing the Youth Coalition for Sexual and Reproductive Rights, the submission stated that legislation did not guarantee all persons equal and effective protection against discrimination, but recommended that Jamaica enact legislation which recognizes sexual orientation and gender identity as criteria for non-discrimination. The limitations of the Jamaican legislation and other cultural prescriptions have seemingly anchored and amplified stigma and discrimination in Jamaica, which has resulted in an international perspective that Jamaica is one of the “most homophobic countries in the world”. And while by comparison, Jamaica is less homophobic than some African and Middle Eastern countries, it is very homophobic relative to the rest of the Americas except for Central America and the Non-English-Speaking Caribbean. Development theorists and indices continue to show that societies

---

4 A unique process which involves a periodic review of the human rights records of all 193 UN Member States. The UPR is a significant innovation of the Human Rights Council which is based on equal treatment for all countries.
with stable, liberal and prosperous democracies seldom score as low as Jamaica. Despite this perceived positive relation between regard for and protection of human rights and development, neither the academic community in Jamaica nor the Jamaican government has commissioned any research to study the impact of this phenomenon on the developmental process.

A significant aspect of the development process as argued by Sen (1999) is the removal of major sources of unfreedom. This is also a salient feature of Jamaica’s National Development Plan, Vision 2030 which is promoting “a more inclusive society which fosters a great sense of hope” (P.VII) and that “we treat each other with respect and dignity” (P.VI). The fulfilment of this Vision requires that the rights of all persons within the society, including minority populations, be protected. Noteworthy is the demographic characterization of “minority” which included children, youth-at-risk, the elderly, persons living with disabilities (PWDs), persons impacted by HIV/AIDS, women and poor families. While the document does not explicitly identify the LGBT community it was keen on highlighting the fact that it’s list was not exhaustive and that further identification and targeting of vulnerable groups is envisaged as part of the reform process (p.78).

5Underdevelopment is “unfreedom” and development is the process of removing the various forms of unfreedom and expanding the capabilities of people to lead the kinds of lives they value
Vision 2030 identifies “a healthy and stable” population as an outcome, another aspect of the development process. Regardless of the many ways in which health has been conceptualized, a common characteristic in contemporary permutations is a state of physical, emotional, mental and social well-being that also relates to sexuality. This World Health Organization’s (WHO) 2006 framing has moved the discussion beyond the notion of absence of disease, dysfunction or infirmity to include issues of emotional health, which are essential for the functioning and sustainability of society.

The consequences of homophobia have been documented by Banks (2003)\textsuperscript{6}; Houdart (2012)\textsuperscript{7}; Badgett (2014)\textsuperscript{8} and Bocci (2014)\textsuperscript{9} and include lack of access to education and healthcare, violence, unemployment, illiteracy, displacement, lack of legal rights, loss of community-based safety nets, brain drain, lack of economic opportunities, lack of equitable access to land and housing, social exclusion, poor mental health, substance use, suicide, lack of cultural representation, and high rates of HIV among some members of the LGBT community who engage in unprotected forms of sex.

\textsuperscript{6}The Cost of Homophobia: Literature Review on the Human Impact of Homophobia On Canada- This study reviewed research related to homophobia’s negative results on gays, lesbians, and bisexuals (GLB) in terms of its human impact, which was defined as the number of “pre-mature” deaths caused by homophobia

\textsuperscript{7}Estimating the Global Cost of Homophobia and Transphobia

\textsuperscript{8}The Economic Cost of Homophobia and the Exclusion of LGBT people: A Case study of India

\textsuperscript{9}Quantifying the Effect of Homophobia
With the exception of a few local studies such as, West (2014) West and Cowell (2014), Harriott, Lewis and Zechmeister (2014) and Boxill (2012), which examined the political culture of democracy and views of homosexuality held by Jamaicans and the factors that determined those attitudes, respectively, conversations around the impact of homophobia on Jamaica have not been based on empirical evidence. However, given what has been gathered from Banks (2003) and Badgett et al. (2014) regarding the impact of homophobia on economies and national development, the cost of stigma and discrimination is too great.

After reviewing economic variables from a number of countries including the United States of America, Netherlands, Argentina, Australia, Brazil, Canada, Chile, Ecuador, France, Germany, Peru, Mexico, Poland, South Africa, among others, the World Tourism Organization (WTO) (2012) has said that the positive influence of the LGBT community on the tourism sector is undeniable. Citing a 2011 projection from Out Now Consulting, the WTO (2012) report placed the global LGBT market potential at nearly US$ 165 billion for leisure travel spending in 2012. While the projection was based on an ongoing study expected to end in 2020, it was gleaned from responses to a question that asked a sample exceeding 40,000 about the last 12 months of spending in global markets. Of note is the fact that the report went further to state that the sample was largely a representation of homosexual males and that if one were to consider the lesbian, bisexual and transgender populations the figure would likely increase significantly.
These are merely snapshots of the global market segment, not intended to summarize the diversity of LGBT people worldwide. However, there is no denying that LGBT travelers are a dynamic and influential segment within the tourism sector— one whose willingness to come out and be counted will continue to grow as society becomes more and more accepting and more human rights laws that promote equality are passed. Reaching out to LGBT travelers in an informed, authentic manner is essential. (WTO, 2012. P.9)

Commensurate with the forgoing views, Nelson (2015) has written about the impact of homophobia on the image of Jamaica citing statements from former Prime Minister Bruce Golding and local artists and showing how such statements have resulted in campaigns to boycott Jamaican tourism and products. Given the heavy reliance of the local economy tourism on for foreign exchange (17.25% GDP in 2013) (Edward Seaga Research Institute, 2015) any action or inaction that alienates tourists and investors will have damning ramifications for economic growth. And while the present government declared prior to the elections the intention to review the anti-sodomy laws the persistence of local artistes to create and produce hate music has deepened the perception that Jamaica is in fact very homophobic.

The research and academic inferences (particularly that of Banks (2003)) presented are limited by the lack of comprehensiveness due to several factors, including: gaps in the literature since LGBT-related issues are far from mainstream research; and the fact that the economic analysis needed for such research is extremely complex. While the Badgett et al.' (2014) later study better attempted to quantify the cost of homophobia, its full impact is not easily modelled since current analyses are incomplete due to the lack of relevant data. Closing the data gap with studies is necessary to uncover the complete costs of homophobia, especially the cost to business and economic life.
Buddan (2015) argues that while the Caribbean ranks well in human rights and human development as economic conditions deteriorate so too will conditions for supporting human rights and democracy. He presents very succinct arguments that link human capital to national development and demonstrates how political discrimination impacts development. Such is the case in Jamaica, where as it pertains to LGBT rights, discrimination in institutionalized; laws not limited to section 76 and 77 of the Offences Against the Persons’ Act institutionally discriminates against a group, albeit small. Buddan (2015) advises that good governance must favour a kind of development where the choice is not between human rights and human development but a balance between both. The views espoused by Buddan (2015) are commensurate with the Human Development Report (HDR) in 2000, which provided evidence of the symbiotic relationship between human rights and human development highlighting the importance of enabling people to enjoy their human rights. Furthermore, Hall and Lamont (2013) have postulated that there is a close link with very few exceptions between human development and human freedoms (rights). They write that freedom is the integral part of the concept of human development; If a society represses its people, it also represses their creativity and motivation and thus its growth rate and its human progress. Human development is then equal to the right of all people to the realization of their human rights (Bacer, Hey, Smith and Swinehart, 1994).

As part of closing the gap, this study attempts to explore the implications of the micro level impact (i.e. individual mental, physical or economic) of homophobia for human development in Jamaica. A study of this nature is essential in helping to fashion a
pragmatic argument that goes beyond social justice and human rights rhetoric. It also serves to expand the body of knowledge on the subject matter to broaden our understanding about the ways in which individuals and society are affected by the high levels of stigma and discrimination as well as violence that remain prevalent in Jamaica. White (2014) has proffered that as Jamaicans we need to “get past the lie that we are not affected”. In an article in the Sunday Gleaner online, November 9th, he noted that

When hundreds of otherwise productive youths are side-lined, left uneducated, and treated as outcasts for merely being gay, the society (you and me) must foot the bill for the lost productivity, plus provide their support. Similarly, when investments and tourism are reduced because of our stance on gays, we must pay for the resulting joblessness and the currency devaluation.

In accordance with this view, this study was executed within a human capital frame which promotes the inclusion of all groups in the society, including those from the LGBT community. Full inclusion requires the eradication of laws and cultural norms that create barriers to the full development, quality of life, and meaningful engagement of this vulnerable and marginalized population. It acknowledges that a country’s greatest resource is its people - all its people - and that discrimination, stigma and exclusion limit the attainment of real, sustainable economic and social development.

This literature review (Banks (2003); Houdart (2012) and Bocci (2014) demonstrated how discrimination against one or several vulnerable populations affects the state. Using an exploratory research design, this study acts as a framework for making informed inferences that will guide legislators and policymakers’ re-evaluation of laws and policies which support discrimination. Narratives about Jamaica’s homophobia in the local, regional and international media affect Jamaica as a global brand. Arguably,
this leads to personal loss of earnings, as will be demonstrated in the study. This investigation is supported by the results of a survey of Jamaican LGBT persons about their experiences of discrimination, harassment, violence and other forms of abuse and the impact on their economic and social participation in the Jamaican society. While the study focuses on LGBT people and the impact of stigma and discrimination as well as violence perpetrated against them on the country’s attempts at human development it must be noted that other populations or communities of vulnerable and marginalized people are similarly affected and the macro impact can be considered the same. However, for the purposes of this study focus will be on LGBT people.

Objectives

The objectives of this research are to:

- Examine the experiences of LGBT Jamaicans with respect to discrimination in the wider society, accessing State and support services and the local economy
- Examine the extent of workplace discrimination that may result in under-productivity
- Describe the economic costs experienced by Jamaican LGBT persons
- Describe the responses of persons in the LGBT community to their experiences with discrimination
- Present suggestions and recommendations made by the LGBT community for improving their lives and reducing stigma and discrimination within the population
CHAPTER 3: METHODOLOGY

Conceptualization

The following terms are being defined so that readers will have a common understanding of the context in which they are being used when they appear in this study. The illustration also defines key concepts in this research.

- **Discrimination** - discrimination occurs when a distinction is made about a person that results in him or her being treated unfairly or differently on the basis of belonging to, or being perceived to belong to, a particular group
- **Transgender** – A person whose gender identity does not match his/her biological sex
- **Economic impact** - the gains and losses in money, time and resources of one course of action compared to another. Economic cost poses the problem of choice, that is, the benefit forgone by choosing one option rather than another
- **Homophobia** - embodies a range of negative attitudes and feelings towards LGBT persons which often affects their ability to achieve their fullest potential and contribute to social, political and economic development
- **Sexual orientation** – the enduring romantic, emotional, and sexual attraction to persons
- **Open/out/public affirmation**- Identifying oneself as Lesbian, gay, bisexual or transgender and disclosing this to other people
- **Lesbian**- A female who has enduring romantic, emotional and sexual attraction to other females
- **Gay**- A male who has enduring romantic, emotional and sexual attraction to other males
- **Bisexual**- A person who has enduring romantic, emotional and sexual attraction to both males and females
- **Biological Sex**- the chromosomal, hormonal, and anatomical characteristics of a person particularly those characteristics that determine sexual and reproductive system of persons
• **Gender Identity** - one’s personal, individual, internal experience of attitudes, feelings and behaviors associated with their own, or a different biological sex from that assigned at birth. This is different from gender expression which is external and speaks to behavior.

• **Gender Expression** - the external display, practice and behavior of a person in relation to social norms associated with masculinity and femininity.

---

**Sampling strategy**

The unit of analysis for the project was persons who identify as LGBT. It goes without saying that, as the target of discrimination and stigma, they are best placed to explain the impact of stigma and discrimination on this group. However, given the nature of that target population, two challenges presented themselves regarding designing the sample. First, no exhaustive sample frame exists, indicating the population size of this
group and listing out its members. Second, finding and engaging these persons in an environment of discrimination and stigma proved difficult.

As such, this study used the convenience sampling technique to guide the selection of respondents. Convenience sampling is a specific type of non-probability sampling that relies on data collection from population members who are available to participate in the study and meet the requirements to participate in the study. In other words, this sampling method involves getting participants wherever they can be found and typically wherever is convenient. Given the difficulties in accessing members of this community, the researchers accepted available participants to provide primary data without additional requirements, as is typical with this sampling technique. The researcher utilized a group of persons from the LGBT and ally community who were known to have access to a network of persons who also identified as LGBT. It must be noted however that persons who made up this group that would act as the entry point also had experience in data collection. This was important for the proper administration of the instrument to the research participants.

For this sample, no additional inclusion criteria outside of being a part of the LGBT community were identified prior to selection of subjects.

**Data collection and analysis**

Given the dearth of information that exists on the economic cost of homophobia, and the absence of same in a Jamaican context, it became important to employ a methodology that triangulates to unearth “truth”. As such, this study was explorative
and descriptive in its design, utilizing a mixed methods approach. This mixed methods research utilized cross-sectional data obtained from face-face surveys as well as secondary data analysis. The data and discussion of findings are presented simultaneously, given the exploratory nature of study. This approach, which juxtaposes methods of different types, should allow for a more elaborate understanding of the phenomenon of interest (including its context) and greater confidence in the conclusions generated.

The face-face survey involved the use of a structured questionnaire comprising open and closed-ended questions. This proffers a number of benefits as part of the selected design. Chief among these was the opportunity to further explore particular questions, particularly those that are more prone to misinterpretation. Face-face surveys have a strong advantage with respect to higher response rates especially where the interviews are long. Furthermore, open-ended items were designed to allow for depth through probing which contributes to the empirical completeness, conceptual richness and theoretical consistency. The instrument, as such, can use more diverse indicators for representing a theoretical concept, such as homophobia, and for securing the internal validity of causal inferences and/or theoretical interpretations for same.

It was the researchers’ hope to conduct in-depth interviews with owners of businesses or employers who would be best placed to say whether decisions not to employ have been connected to sexuality whether real or perceived. The researchers failed at the many attempts to find respondents who were willing to engage in such dialogue. The researchers are being deliberate in noting this challenge as it goes to the core of this
very research—the cost of homophobia. It strongly appears that stigma and
discrimination also have implications for the advancement of scientific research in
Jamaica on the topics of homosexuality and transgenderism as there is reluctance to be
associated with anything, including scholarship related to these areas.

Secondary data analysis was also employed given its feasibility for assessing
longitudinal and internationally comparative studies. Although difference between
countriescontexts exists, present research creates and unifies criteria all over the world
or at least within certain geo-political and social landscapes. These criteria will form the
basis for any conclusions drawn regarding what constitutes homophobia in the first
instance and impact in the second. The mutually constitutive character of theoretical
concepts and empirical reality was useful for narrowing the gap between concrete ways
in which homophobia plays out and how it has been conceptualized.

**Limitations**

Male homosexuals are over represented in the sample; lesbians, bisexuals and
transgender persons are underrepresented. This compounds the problem of
representativeness of this sample. Any decision based on this sample presumes that the
Jamaican LGBT community is comprised of mainly male homosexuals. It is not practical
or possible at this time to quantify members of the LGBT population. Such an exercise
would be costly and time-consuming as well as difficult to complete in light of fears of
persecution. A convenience methodology, as used in this study, is possibly the best
choice in light of resource constraints and socio-political environment surrounding sexual and gender minorities.

However, future research may wish to consider utilizing a statistically representative sample of the population of Jamaica over a longer period. In this approach, the instrument first would need to screen for the sexual and gender identity of the respondent before completing data collection. Another approach may be to make comparisons between LGBT and non-LGBT people.

There were some challenges with question construction which made analysis difficult. Specifically, the items related to sexual orientation and gender identity tended to be confused within the instrument. As such, a transgender respondent was not allowed to respond as a homosexual or bisexual, although such combinations are certainly possible. Future research will need to construct questions that reflect the complexity of the LGBT reality: being able to reflect in a well-articulated way that a transgender person can also be Straight, Lesbian, Gay or Bisexual.

Given the sampling method employed it is likely that there is some level of exaggeration in how experiences were reported by participants. Most of the respondents were willing to self-identify as LGBT in a context where there are high costs for doing so. The sample was evidently one with strong opinions and some with unusual life experiences. Because the sample is so educated, there is a risk that this group overstated the level of discrimination faced by the LGBT person in Jamaican.
CHAPTER 4: PROFILE OF RESPONDENTS

This section presents and discusses the profile the LGBT community based on the survey conducted among 316 lesbians, gays, bisexuels and transgender (LGBT) persons in Jamaica. It begins with a demographic description of the sample, and then provides an overview of the gender and sexual identities surveyed. It concludes with a discussion of the respondents’ public affirmation of their gender and sexual identities.

Demographics

Most of the respondents (63%) were assigned the male biological sex at birth, compared to 34% who were assigned the female biological sex at birth; 3.2% did not provide a response. The age distribution showed most of the sample under 25 years old (58%), followed by those between 25 and 39 years old (32%), and 3% who were between 40 and 60 years old; 7% did not provide an age. Almost equal proportions of the sample came from the urban (28%), suburban (25%), rural (24%) and inner-city (20%) areas; 2% were from unspecified locations and 2% did not respond. The sample was very (formally) educated, as the majority had obtained a college, university or higher education (53%), followed by those who achieved secondary education (26%) and post-secondary education (other than college/university; 14%); only 2% had not passed the primary level and 6% did not respond. (See Table 1)
Table 1 Demographic Distribution of sample

<table>
<thead>
<tr>
<th>CATEGORIES</th>
<th>FREQUENCY (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>SEX AT BIRTH</strong></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>200 (63%)</td>
</tr>
<tr>
<td>Female</td>
<td>106 (34%)</td>
</tr>
<tr>
<td><strong>AGE GROUP</strong></td>
<td></td>
</tr>
<tr>
<td>Youth (11-24 years old)</td>
<td>182 (58%)</td>
</tr>
<tr>
<td>Young adults (25-39 years old)</td>
<td>100 (32%)</td>
</tr>
<tr>
<td>Middle Age (40-60 years old)</td>
<td>8 (3%)</td>
</tr>
<tr>
<td><strong>LOCATION</strong></td>
<td></td>
</tr>
<tr>
<td>Rural</td>
<td>75 (24%)</td>
</tr>
<tr>
<td>Suburban</td>
<td>79 (25%)</td>
</tr>
<tr>
<td>Inner-city</td>
<td>64 (20%)</td>
</tr>
<tr>
<td>Urban</td>
<td>87 (28%)</td>
</tr>
<tr>
<td>Other</td>
<td>5 (2%)</td>
</tr>
<tr>
<td><strong>EDUCATION</strong></td>
<td></td>
</tr>
<tr>
<td>No formal Education</td>
<td>3 (1%)</td>
</tr>
<tr>
<td>Primary</td>
<td>4 (1%)</td>
</tr>
<tr>
<td>Secondary</td>
<td>83 (26%)</td>
</tr>
<tr>
<td>Post-Secondary</td>
<td>45 (14%)</td>
</tr>
<tr>
<td>Tertiary</td>
<td>166 (53%)</td>
</tr>
</tbody>
</table>

Most of the sample (50.6%) identified as Christians, with the sample representing various denominations. The largest group of respondents were in paid employment (47%) followed by those who were students (35%) and then by those who are
unemployed (14%). Only 40% of the sample indicated their income. Of that figure, the largest portion earned between J$10,000.00 and J$55,000.00 per month and 20% earning between J$100,000.00 and J$293,550.00 per month; 10% reportedly earned less than the minimum wage (J$22,400 per month).

Relationship Status

As shown in Figure 1, one third of the sample (33%) were involved in a relationship without cohabiting, as opposed to 15.2% who lived with their partner; 44.6% had no relationship and 5.4% had multiple relationships.

![Figure 1 Relationship status of the sample](image)

**Figure 1 Relationship status of the sample**

The sample was questioned regarding familial and household relationships. Only 11% of the sample responded in the affirmative when asked if they were legal guardians or
parents of minors. They were also asked if any household members were under 18 years old: just over one third (39%) said yes. A third set of responses showed that most of the sample (57%) live in a household in which someone else was a guardian or parent of a child. (Figure 2)

![Household Relationships](image)

**Figure 2 Household relationships**

**Gender Identity and Sexual Orientation**

As illustrated earlier (see *Error! Reference source not found.*), the human being represents a complicated blend of identities. Two identities are the gender and the sexual identity. The gender identity refers to whether the individual thinks he/she is a man or woman based on their body chemistry and interpretations of social symbols of gender expressions such as mannerism and dress. One’s sexual identity refers to whether one is hetero-, homo-, or bi- sexual. As such, a person’s gender identity does
not dictate their sexual identity. For example, a transgender male may not be gay, as after transitioning to the male gender, he may find himself sexually attracted to females, making him heterosexual. For this study, respondents indicated their gender identity- whether they were transgender- and their sexual identity- whether they were lesbian, gay, bisexual or heterosexual.

Concerning their gender identity, only 27 respondents (8.5%) were transgender, while the remaining 92% were not. Of these, 1 identified as bisexual and 5 as gay; the other 21 did not identify with these sexualities. Overall, most respondents identified as gay (154 respondents or 49%), compared to 6% (19 respondents) who identified as lesbian, and 9% (27 respondents) who identified as bisexual. Unfortunately, close to one third of the respondents (95 respondents or 30%) did not provide a valid response about their LGBT status. The data suggests that most of those who identified as transgender were assigned the male biological sex at birth (61%) while the other 39% were assigned the female biological sex at birth. Only 5 respondents who identified as transgender also identified as homosexual.

Openness

Figure 3 illustrates with whom LGBT people are most likely to share information about their sexual orientation or gender identity. They were asked to indicate whether they were open with none, few, most or all of their friends, colleagues, family, medical staff faith-based, organizations or neighbors. Overall, it would appear that the closer the relationships, the more willing the respondents are to share the information. For
example, only 8% were not open with any of their friends, compared to 38% who were not open with their work or school colleagues, and 42% who would not share with any family member (other than parents). This figure increases as the relationship becomes increasingly impersonal. The majority were not open with medical staff (55%), their work superiors (60%), customers (63%), faith-based organizations (63%) and neighbors (68%).

![Openness and Sexual Orientation](image)

**Figure 3 Openness and sexual orientation**

However, the data also show that there was some variability within all categories of relationships, such that respondents were willing to share with at least a few persons, regardless of their relationship. Note, for example, that some respondents were unwilling to be open even among those they considered friends. Although a relatively low percentage, this should be of concern as these intimate relationship should provide an emotionally safe-space for these individuals, and not another arena for anxiety. Of
note, as well, is the large number who would not share their orientation with the faith-based organisations (68%). This is not surprising given the strong religious condemnation of homosexuality existing in Jamaica (LaFont 2009).

Respondents were also asked to indicate the extent to which certain classes of persons were knowledgeable of their LGBT status without them necessarily being told (see Figure 4). In congruity with the distribution of their openness, it appears that the closer the relationship the more likely the person will know about the respondent’s LGBT status. Only 12% of respondents felt none of their friends knew of their status, compared to family (28%), work colleagues (30%) and, least of all, neighbours (53%). However, it should be noted that respondents did not indicate whether these persons knew because they were told by themselves personally.

![Figure 4 Others with knowledge of LGBT status](image)

**Figure 4 Others with knowledge of LGBT status**
This notwithstanding, in general, the sample believed that, apart from sharing information with others about their LGBT status, their mannerism and speech were most likely to have made this known (see Figure 5). This was not verified as the respondents were not given an opportunity to state exactly how any of their associates who were aware of their LGBT status gleaned that information. This data more accurately speak to whether the respondents feel their conduct, manner of speech, or dress conforms to culturally held stereotypes about the LGBT community. In other words, though it cannot be said that others have identified them as LGBT persons, the respondents felt that their mannerisms, speech and dress could reasonably identify them as such within the Jamaican context.

![How others identify your LGBT status](chart)

**Figure 5 How other identify your LGBT status**

The data suggest that respondents typically try to keep their LGBT identity private. As illustrated in Figure 6, respondents are more likely to hide their status than be open.
Most said they have never or rarely been open about their status at school (81%) or at work (64%). Similarly, the largest group said they hid their status at school (55%) and at work (44%).

Figure 6 Displaying LGBT status at work/school

Figure 7 Places avoided when being open about LGBT status
The places typically avoided were public places like squares and roadways. Other top places they avoided included public transportation, public establishments, and faith-based organizations.

Summary: The Jamaican LGBT Person

Assuming that the LGBT persons represent around 3% of the population, this study presents the views and experiences of a relatively small sample of Jamaican LGBT persons. These persons were mostly male, homosexuals, with fewer bisexuals and even fewer transgender persons. Most are under 25 years old, fairly well educated, with some being gainfully employed, and from diverse communities in Jamaica; lightly fewer than half are in stable relationships, with some being parents or guardians.

They are willing to share about their status with persons who are close to them and have actually done so to a sizable degree. To a lesser extent, they have even shared their sexual and/or gender identity with colleagues at work and school. However, they will try to avoid public spaces for fear of persecution, especially because they feel others can tell their LGBT status by their dress and mannerisms.

The next section of this report will examine the experiences of these Jamaicans given their sexual and gender identity. It will consider their experiences with discrimination, their interaction with the State and the economy.
CHAPTER 5: THE JAMAICAN LGBT EXPERIENCE

As was presented in the introductory section, the study takes a human capital approach primarily at the micro level of analysis. This section focuses on the micro level considerations which include: loss of labour time; loss of productivity; under-investment in human capital; discrimination in education and the hiring process; and general human insecurity – including bias motivated assaults and structural violence (Badgett et al 2014; Banks 2001). The survey instrument measured personal experiences with discrimination at school and in the workplace; perception of personal safety; and accessing basic support services.

The study by Badgett (2013) demonstrated that discrimination against LGBT people led to various and varying kinds of harm. The harm is meted out at the level of the individual; the larger economic front at the level of the workplace; and, ultimately, the national economy. The researchers found specifically that LGBT persons

- are taken out of productive employment when they are assaulted, harassed and threatened
- face disproportionate rates of physical, psychological and structural violence, which may restrict their ability to work due to injuries and psychological trauma
- face workplace discrimination and may therefore be unemployed or underemployed leading to their full productive capacity not being utilised
- face multiple barriers to mental and physical health leading to reduced productivity.

Following on Banks’2011 analysis there is considerable stress involved in coping with the stigmatization and hatred directed at those who are LGBT. Banks found that LGBT persons had a shorter life span and faced health risks and social problems at a greater
rate than heterosexuals. Banks (2003) provided estimates of the annual cost of homophobia due to health and social issues based on LGBT persons representing 5-10% of the population. Suicide costs Canada an estimated $695-823 million per annum; alcohol abuse costs $0.29-4.1 billion; smoking –$281-623 million; drug use –$119-221 million; depression –$0.54-2.3 billion.

However, in 2001, there was not enough data to calculate figures related to unemployment, physical violence and HIV and AIDS. Nonetheless, these figures are considered to be substantial, especially as data show that gay, bisexual and other men who have sex with men (MSM) and transgender persons are 19 and 40 times more at risk of HIV transmission respectively Baral et al (2013), demonstrated from a systematic review and meta-analysis of existing data that transgender women were approximately 49 times more likely than the wider adult population to become infected with HIV. All these health issues were exacerbated by the substandard care provided LGBT persons due to stigma and discrimination as well as violence.

The lack of comprehensiveness in the research at that time was due to several factors, including the gaps in the literature, since LGBT-related issues are far from mainstream research, and the fact that the economic analysis needed for such research is extremely complex. This study demonstrates that these observations on the international scene are clearly evident or, at least, quite possible within the Jamaican context. The following will illuminate the discrimination and fear that Jamaican LGBT persons experience, and how this affects their personal lives, political and economic lives.
Discrimination

It is generally understood that when persons from any minority population- including the LGBT community experience discrimination or any other form of social exclusion, their ability to positively contribute to the economic development of the society is greatly compromised (Badgett et al 2013). Discrimination was defined by the Joint United Nations Programme on HIV/AIDS (UNAIDS) as treating someone less favourably than others because of a specific personal feature such as their age, gender, gender identity, sexual orientation, minority background or for any other reason. For example, discrimination can occur when an LGB person is not given an equal opportunity to be promoted in their job, based on their sexual orientation, in comparison with a heterosexual, although an LGB person is equally suitable and experienced. It was important that this was readily distinguished from prejudicial attitudes which is based on an opinion but is not behaviour.

Respondents felt that members of the LGBT community all face discrimination of some kind. They expressed the view that the experience of discrimination is most widespread among persons who are gay and transgender, as shown in Figure 10. It should be noted that an overwhelming majority (93%) thought that there was widespread (very widespread or fairly widespread) discrimination against gays. In contrast, lesbians (46%) and bisexuals (46%) are believed to face less discrimination.

This distribution must be considered in light of the overrepresentation of homosexual males in the sample, and the patriarchal nature of Jamaican society. As stated earlier
(see Page 3), the legacy of British dependency was a society in which heterosexual masculinity was given primacy. As such, any permutation of sexual identity that appears to threaten this masculinity would most likely receive strong opposition. Notwithstanding, the largest group of respondents in all cases suggest that discrimination is widespread for members of the LGBT community.

**Figure 8 Distribution of discrimination against LGBT persons**

In terms of personal experience, 71% of male persons who identify as gay have experienced some form of harassment or discrimination in the last 12 months, compared to 59% of lesbians, 35% of bisexuals and 29% of those who identified as transgender. The latter is interesting because the general LGBT community perceives discrimination against transgender persons to be high but few surveyed have personally experienced such actions. However, respondents indicated elsewhere that it was still a substantial problem within the community. This would mean that respondents are
aware of others within the community being harassed though they may not experience it themselves. (See Figure 9)

Figure 9 Personal experiences of discrimination because of perception as LGBT person

This study found evidence of differences in treatment of LGBT persons. The largest group (12.3%) felt they were treated with less courtesy, compared to 12% who felt they were treated with less respect and 10% who were treated with fear and apprehension. (See Figure 10)
**Figure 10** Treatment received for being LGBT person

<table>
<thead>
<tr>
<th>Condition</th>
<th>Never</th>
<th>Once</th>
<th>2-5 times</th>
<th>6 or more times</th>
</tr>
</thead>
<tbody>
<tr>
<td>Treated as less clever</td>
<td>61.1</td>
<td>7.0</td>
<td>6.0</td>
<td>1.9</td>
</tr>
<tr>
<td>Received poorer service</td>
<td>57.9</td>
<td>8.2</td>
<td>5.4</td>
<td>4.1</td>
</tr>
<tr>
<td>Treated with fear</td>
<td>56.0</td>
<td>10.1</td>
<td>6.0</td>
<td>3.8</td>
</tr>
<tr>
<td>Treated with less courtesy</td>
<td>51.3</td>
<td>12.3</td>
<td>9.2</td>
<td>4.7</td>
</tr>
<tr>
<td>Treated with less respect</td>
<td>50.3</td>
<td>12.0</td>
<td>9.5</td>
<td>7.0</td>
</tr>
</tbody>
</table>

**Figure 11** Severity of discrimination faced by LGBT persons in Jamaica

Overall, the majority respondents felt that the amount discrimination faced by the LGBT community in Jamaica posed a very serious problem (75.9%).
Assault and Threats

The nature of the “discrimination” being reported on by respondents is critical to this investigation. Internationally, discrimination encapsulates differential treatment meted out in employment, education, business experiences among other situations. However, in the Jamaican context, discrimination and homophobia are generally understood and discussed as the rate physical violence against LGBT persons. The assertion that “Jamaica is not homophobic” is usually substantiated by the lack of overt and frequent violent aggression meted out to those- especially the males- who make their status public. The fact of “corrective” sexual violence and gender based violence- a uniquely lesbian experiences- are also important to the discussion. It is important, then, to discuss the extent of assaults and threats of assaults experienced by the LGBT community. The data suggest that LGBT persons have been experiencing physical and sexual assaults as well as threats of such assaults and harassment. These come from both known and unknown perpetrators, and happen in both private and public spaces.

The data suggest that there have been more threats of violence than occurrences of same. In the last 5 years, 32% reported being threatened with physical violence, compared to 12% who reported being attacked. Similarly, more reported being threatened with sexual violence (23.7%) than being sexually assaulted (19%). Overall, respondents shared that they were threatened with physical violence as three times on average, and that they were actually assaulted three times as well. On average they
were threatened with sexual violence three times on average, but they experienced sexual violence slightly less, two times on average. (see Table 2)

Closer inspection suggests that there is a moderately strong likelihood of being physically and sexually assaulted if one was threatened with physical or sexual violence. That is, if an LGBT person was threatened with a physical or sexual assault, there is a fairly high probability that the threat will be carried out. Portions of the sample were willing to recount how many times they had experienced such threats exclusively versus assaults exclusively. On average, these persons reported being threatened with physical violence and experience such violence three times each. They received threats of sexual violence an average of three times, and were sexually attacked an average of two times.

**Table 2 Distribution of threats and assaults**

<table>
<thead>
<tr>
<th>Percentage victimized (n=316)</th>
<th>Physically attacked</th>
<th>Sexually attacked</th>
<th>Threat of violence</th>
<th>Threat of sexual violence</th>
</tr>
</thead>
<tbody>
<tr>
<td>12%</td>
<td>19%</td>
<td>32%</td>
<td>24%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Number of Victimizations</th>
<th>Mean</th>
<th>Median</th>
<th>Minimum</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

|                          | 2    | 2      | 1       |
|                          | 3    | 3      | 1       |

<table>
<thead>
<tr>
<th></th>
<th>3</th>
<th>3</th>
<th>1</th>
</tr>
</thead>
</table>
Respondents were allowed to indicate all the classification of perpetrators of violence against them. Most of the sample said the last perpetrator of physical or sexual violence was a stranger (53%), compared to 20% who experienced such an assault from a schoolmate, and 18% who said it was from a family or household member. Close to 1 in 8 (12%) identified a faith-based organisation with close to 1 in 10 (9%) identifying a police officer.\textsuperscript{10}

\textbf{Figure 12 Last perpetrator of assault}

\textsuperscript{10}Respondents were given the opportunity to make multiple responses to this question.
The perpetrators were predominantly male (76%) according to the respondents; 10% of the sample was assaulted by females, and 14% by both males and females.

**Figure 13 Gender of last perpetrator**

**Figure 14 Location of last assault**
Almost 1 in 5 of the assaults occurred in public spaces such as town squares or roadways. Close to 1 in 10 (9.5%) reportedly occurred at the home of the respondent, while 7.6% reported being assaulted while at school. Approximately 7% said that the assault occurred in an unlisted place, citing virtual spaces, such as Facebook and other social media websites, as the location of their last assault.

These figures (see Figure 14), couple with those indicating the identity of the last perpetrator (see Figure 12), can assist policy makers and practitioners in their attempts to target their interventions. That schools and public servants, along with “public spaces”, are implicated in the experiences of threats and violence necessitates the intervention of public officials and community leaders. They must be called upon to encourage their coworkers and constituents to create a much safer environment for LGBT persons, who are also citizens. Religious leaders much also be encouraged to ensure that their sanctuaries remain safe spaces and that their congregants are more tolerant. Especially of note is the work that needs to be done in households. The participants identified family members and households as the perpetrator and location of violence. The issue of domestic violence needs to include discussions and interventions centered on dealing with LGBT issues, as much as marital and parental issues.

The findings of this survey were compared to those from the 2012-13 Jamaican National Crime Victimization Survey (NCVS) in order to illustrate how the experiences of the LGBT community compare to the wider population. It would appear that this sample of the LGBT community experience higher rates of threats of violence and actual
assaults than the national population. During the 2012-2013 periods, only 2% of the population had experienced a serious threat with a weapon, compared to 2.6% who received a serious threat without a weapon. In contrast, 43% of the LGBT community surveyed here reported receiving threats, within the last 5 years. Where 1.1% of the population had been assaulted with a weapon, and 0.8% had been assaulted without a weapon between 2012 and 2013, 19 of this study’s sample reported being assaulted in the last 5 years. The NCVS showed that 0.1% of the population had experienced sexual assault. Data presented here suggests that 10% of the LGBT community were threatened with sexual violence and 11% of them had experienced sexual assaults. Notwithstanding the differences in time periods under review, the magnitude of the differences in experiences of the LGBT community and the wider society is cause for concern. This accentuates the fact that violence in Jamaica is not always random, but sometimes targeted at certain demographics.

Heath Services

Respondents were asked whether they had been denied healthcare services because they were identified as LGBT. The instrument did not distinguish between private or public sector providers. However, the majority (95.6%) indicated that they had not
been denied service\textsuperscript{11}, but, overall, the respondents felt that the problem of healthcare service providers refusing to treat someone because they were identified as LGBT as a very serious problem in Jamaica.

Denial of treatment is not the only form of discrimination that can be demonstrated by healthcare providers, however. The experience with healthcare service providers was varied. Most of the sample (52.5\%) reported being forced to undergo seemingly unnecessary medical or psychological testing. A third of the sample (32.2\%) also experienced inappropriate curiosity regarding their status. Approximately 17\% felt they had not received equal treatment, and 15\% declined treatment because they felt fear or discrimination or intolerance, and 15\% also felt the need to change their general-practitioner or specialist because of negative reaction.

\textsuperscript{11}This is but one of the ways healthcare providers may discriminate against LGBT persons. Others are discussed later.
Figure 15 Experiences with health care service providers

Experiences with the State

As citizens of the country, members of the LGBT community will need to interact with representatives of the State. This study investigated the experiences of LGBT persons with representatives of the State who offer security services.

LEGISLATURE AND LAW ENFORCEMENT

There are currently no laws in Jamaica which explicitly protect individuals from discrimination on the basis of sexual orientation and gender identity. This sample of the LGBT community was asked if they knew of laws that forbade discrimination against persons because of their sexual orientation. The largest group (45%) was confident that there was no such law. When asked about laws against discrimination on the
Grounds of gender identity, again the largest group (43%) said there was not. In both cases, approximately 1 out of every 3 (35%) respondents was unsure whether or not such laws existed, compared to less than 20% in both cases who were sure there were such laws.

![Knowledge of laws that forbids discrimination](image)

**Figure 16 Knowledge of laws that forbids discrimination**

The Latin American Public Opinion Project [LAPOP] (2012) found that Jamaica was particularly unsupportive of the basic rights of homosexuals. They found that persons with a higher level of schooling, those of a higher economic standing and persons who were more aware of current affairs issues were more likely to be supportive of the notion of equal rights for LGBT people (p. xxxv). The Department of Sociology, Psychology and Social Work at the University of the West Indies (UWI) in 2012 in the National Survey on attitudes and Perceptions towards Same-sex Relationships found
that males; persons “who listen mostly to reggae and dancehall music”; and persons who attended church frequently were more likely to have negative attitudes towards homosexuals.

During the 2011 election campaign, Prime Minister Portia Simpson Miller pledged if re-elected that one of her agenda items would be a review of Sections 76, 77 and 79 of the Offences Against Person Act which is referred to as “the Buggery Law.” This piece of legislation is considered as a precursor to, and encourages prejudice and discrimination towards the LGBT community in general. Gay men and transgender women who are heterosexual are deemed to be particularly affected. The issue was raised again in 2014 at the review of the Sexual Offences Act which upon its promulgation in 2009, called for periodic five year reviews. Further afield, there were debates concerning the treatment of anti-sodomy laws. Trinidad and Tobago in 2006 ruled that sexual orientation should be protected under the country’s Equal Opportunity Act, the ruling was overturned by the UK based Privy Council, this however shows that there is liberal thinking on this issue throughout the Caribbean. Political parties in Guyana, Trinidad and Tobago and even Jamaica, made mention of the inclusion of sexual orientation in their manifestos. Nonetheless, Boxhill (2012) showed that 37% of the Jamaican population felt that the government was not doing enough to promote the rights of LGBT people and to protect them from discrimination and violence. Almost 77% of the same sample supports the retention of the ‘buggery law’.

Considering the state of the legislature and the awareness of the sample, the respondents were questioned about their interaction with members of law enforcement.
The majority of the respondents did not report their last incidence of physical or sexual assault to the police; 51.3% of all respondents, regardless of offence. There were various reasons the assault was not reported. The largest proportion of the sample (41%) did not report it because they did not think the police would do anything, compared to 30% who did not report it because they thought the matter was too minor. Approximately 1 in 4 feared homophobic reaction from the police (25.5%), and 1 in 5 felt too embarrassed and did not want anyone to know. Close to 14% also feared reprisals from the offender if they reported the matter, with close to 1 in 10 sharing that they were discouraged from reporting the matter (8.5%).

Figure 17 Reason assault was not reported

They were also asked about whether they had ever reported incidents of harassment to the police and their experience of that interaction. The majority did not report incidents
of harassment to the police (61.4%). The largest group of respondents (41%) felt the incident was too minor to be reported, compared to 36.6% who did not because they felt the police would do nothing. Close to 1 in 4 (24.6%) feared a homophobic response from the police, while close to 1 in 5 (19.1%) felt too ashamed or embarrassed to report the harassment. Another 18.6% dealt with the matter themselves, with yet another 15% fear reprisal from the offender.

![Figure 18 Reason harassment was not reported](image)

**Figure 18 Reason harassment was not reported**

**Economic Experiences**

**BUSINESS AND WORKPLACE IMPACT**

In 2013, Badgett et al. conducted a review of previous studies in order to identify and evaluate all published research assessing the impact of LGBT-supportive employment
policies and workplace environment on business outcomes with two primary questions in mind: 1) does research show that LGBT-supportive policies bring about the specific benefits mentioned by private companies that enact them, or are they associated with other similar economic benefits that may have an impact on the bottom line; and 2) if LGBT-supportive policies bring about certain benefits, does research show that these benefits actually have an impact on the bottom line, and if so, is it possible to estimate that effect in quantitative terms?

In total, they reviewed 36 research studies and concluded that research supports the existence of many positive links between LGBT-supportive policies or workplace environments and outcomes that actually benefit businesses. The studies reviewed demonstrate that LGBT-supportive policies and workplace environments are linked to greater job commitment, improved cohesion in the workplace, increased job satisfaction, and improved health outcomes among LGBT employees. LGBT-supportive policies and workplace environment are also linked to less discrimination against LGBT employees and more openness on the part of employees about being LGBT. Unfortunately, none of the studies provide direct quantitative estimates of the impact on the bottom line and this remains an area in need of research.
Badgett et al. (2013) were consistent with Banerji, Burns and Vernon (2012), who conducted research in India on behalf of Community Business. The researchers produced a Resource Guide for Employers: Creating Inclusive Workplaces for LGBT Employees in India in which they presented a cogent business case for creating a diverse and inclusive business environment since this is directly linked to enhanced business performance. Apart from the changing legal environment in India and globally, “the most compelling business case relates to direct impact that creating more inclusive workplaces for LGBT employees has on productivity and performance, attraction and retention and market share” (6).

Boxill’s 2012 study on Attitudes towards Same-sex Relationships in Jamaica found that business owners surveyed were not likely to hire someone from the LGBT community whose identity was known because of fear of making others uncomfortable. This was also outlined in Badgett et al’s 2013 study as a concern. In the Boxill study, however, business owners indicated that they would not dismiss an employee because of their sexual orientation.

In this study, data collected showed close to 1 in 6 (16%) respondents did not have a job during the 12 months leading up to this investigation. When asked if they had ever

12 Community Business is a non-profit organisation based in Hong Kong that has a mission to lead, inspire and support businesses to make positive impact on people and communities.
been denied a job because they were identified as LGBT, 7% said they had. However, it was not clear whether those who did not have a job at the time of the survey were jobless because they were denied one.

**Figure 19 Participation of LGBT persons in workforce**

As members of the LGBT community, the majority of the respondents (89.2%) considered denial of a job on the grounds of LGBT status a serious problem in Jamaica (very serious or serious). The majority (83%) also considered losing one’s job on the same grounds to be an equally serious problem in Jamaica.
This survey also investigated the experience of LGBT persons with other aspects of the economy. Respondents were asked whether they had ever been denied service or access to a private establishment because they were perceived as an LGBT person. Close to 1 in 8 (12%) reported being denied access to restaurants or cafés; 1 in 10 (10.4%) reported being unable to rent a house or apartment for the same reason; and 2% were unable to buy a house or apartment.
Figure 21 Experience because of LGBT status

These findings must be considered in light of the secrecy maintained by members of these communities. Recall that respondents typically tried to keep their LGBT status private. The more public the place, and the more formal and distant the relationship, the less likely it was for them to share their LGBT status. Therefore, it would not be entirely correct to assume that members of the LGBT community are not experiencing challenges participating in the formal economy. Rather, the data implies the difficulty that would be faced if respondents were open. Consider that, despite the secrecy, a significant and notable portion were denied access to restaurants or rental of residences.

Further analysis of the data provides some substantiation for this. The tendency to be open about ones LGBT status was crosstabulated against experiences of denial of
access. Statistically significant results were not obtained, however a general trend emerged. As illustrated, (see Figure 22), the data suggested that those who tend to be more open about their LGBT status were more likely to have been denied a job, denied access to public places such as restaurants, and denied the opportunities to rent a house or apartment.

**Figure 22** Impact of Openness of LGBT Status and Access to Aspects of the Economy

When asked how serious a problem these situations were, the respondents generally identified them as serious problems in Jamaica. A landlord refusing to let their property (83.1%) or being denied access to public spaces such as restaurants (86.1%) were both seen as serious problem in Jamaica.
It is not possible to determine the validity of the claims. While these respondents may not be lying, the true reason they may have had particular experiences might not have been their LGBT status. It might have been coincidental. This notwithstanding, the fact that this community personally perceives discrimination is a cause of concern. It indicates that there is an environment in which discrimination, on the whole is occurring. Secondly, the fact that such theorizing is even possible suggests that the environment in which they live is not accepting of their LGBT status.

**Figure 23 Experience with economy because of LGBT status**
CHAPTER 6: RESPONSES TO EXPERIENCES

This study also investigated how members of the LGBT community responded to their various experiences.

Lifestyle Changes

There was roughly the same proportion of respondents who felt the need to change their life in some way in comparison to those who felt no such need, 40.5% and 41.5% respectively. The primary changes involved adjustments in mannerisms so as not to arouse suspicions. The respondents also indicated that they became much more wary of strangers and strange places, avoiding public places such as certain roadways, eateries and other establishments. Their familial and close relationships sometimes became strained as they move out of family homes, and ended friendships. There were changes to wardrobes, occupation and modes of transportation. These respondents would have started taking private transportation instead of public transportation. Some entered into hetero-normative relationships much to the chagrin of their LGBT partner.
The responses illustrate that relocation is a response for some LGBT persons, though a small portion. According to responses, 12% indicated that they have relocated within Jamaica because of their LGBT status. The largest group of these persons (23.7%) relocated within Jamaica only once, compared to 16% who relocated three times, 11% who relocated twice and 3% who relocated as many as six times. The relocations were mostly because of fear of persecution from neighbours and even family. They felt threatened and had actually received threats. At the time of this survey, these persons had managed to find jobs, and were most likely from the inner-city. It is not clear whether they had jobs before or where they were from originally.
Despite the low levels of relocation within Jamaica, many have considered leaving the country altogether. The majority (74.4%) confessed thinking about migrating because of their LGBT status. Although the differences were not significant, the data also suggested that these persons were most likely male, from urban centres, employed.

### Help Seeking

Having gone through these experiences, another reaction might be to seek out professional help. Respondents were also asked to indicate whether they ever sought medical, psychological or spiritual help, and the reason they felt they required such help. Few of the respondents sought any kind of help: 3.5% sought medical help; 10.4% sought psychological help; and 11.1% sought spiritual help.
Some respondents shared that they were sent to counselling while in school, though not specifying by whom, and others identified family members - usually parents - who encouraged them to seek psychological help. One indicated that this was against their will. Others felt different or abnormal and wanted help dealing with their feelings. Some sought help following traumatic incidents as well. None of the LGBT statuses desired medical or spiritual help more than any other.

**Figure 26 Type of help needed because of LGBT status**

Medical help was sought for unspecified tests and to obtain medication. Spiritual help was sought because they felt their status was sinful, wrong or the result of evil spirits. They sought guidance and prayer from their spiritual leaders and communities. In some cases, the desire for help came because of directives from others usually family members, while in other cases it was as a result of personally held Christian beliefs.
The respondents indicated the source of their help. Medical and psychological help were sought mostly from local professionals; spiritual help was sought from more foreign sources. With respect to medical and psychological help, most respondents felt the local sources were informative and helpful: 73.3% and 73.1% respectively. Only 40% and 30.8% felt the assistance offered by local medical and psychological professionals, respectively, was sufficient. More of those who sought psychological help from foreign sources felt that they were not able to receive everything they needed in comparison to those who sought such help from locals. This notwithstanding, more of the foreign sources were unwilling to help, and more actually refused to provide assistance. (See Figures 27-29)

![Figure 27 Quality and source of medical help](image_url)
Figure 28 Quality and source of psychological help

Figure 29 Quality and source of spiritual help
More of those who sought spiritual help from foreign sources felt they received informative and helpful assistance than those who received local assistance. More foreign spiritual helpers were not able to provide everything the respondent needed. Although more of the foreign sources did not want to help and none actually refused to help, unlike the local spiritual sources.

**Summary**

Three main responses were surveyed during this exercise: lifestyle changes, relocation and personal help seeking. Overall, most respondents felt the need to make some kind of change to their way of living because of threats to personal safety. These included decisions surrounding how to behave, what to wear, how to travel and where to be. There were places where they felt unsafe, and though relocation did not occur very often, there was the real desire to migrate to perceived safer countries. The respondents were able to find quality local medical and psychological help, but spiritual help was not sufficiently found though desired.
CHAPTER 7: RECOMMENDATIONS FROM RESPONDENTS

Respondents were given an opportunity to indicate to what extent they agreed with a set of suggestions. These suggestions were aimed at making living as a lesbian, gay, bisexual or transgender person more acceptable. They were also given an opportunity to indicate to what extent they agreed with commonly held beliefs about the effect these suggestions may have on society.

![Community should ensure equal opportunities for LGBT](image)

**Figure 30 Community should ensure equal opportunities for LGBT**

The sample was asked to what extent they felt that their communities should ensure equal opportunities for LGBT persons. The vast majority (81%) agreed or strongly agreed with this statement. The following presents the preferred recommendations from homosexual, bisexual and transgender persons on how this might be accomplished.
Recommendations from Lesbians, Gays and Bisexuals

Respondents who were identified as LGB indicated to what extent they agreed with a selection of recommendations aimed at improving their lives. Not all those who identified as homosexual or bisexual provided a response. The majority agreed with all the suggestions offered. The top three recommendations from this group were the training of public servants on LGB rights (52.9%), public authorities publicly promoting LGB rights (51.3%) and the acceptance of differences in sexual orientation by religious leaders (51%).

<table>
<thead>
<tr>
<th>Recommendations</th>
<th>Strongly Agree</th>
<th>Agree</th>
<th>Current situation is fine</th>
<th>Disagree</th>
<th>Strongly Disagree</th>
<th>No response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Training public servants on LGB rights</td>
<td>36.8</td>
<td>16.1</td>
<td>41.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Authorities promoting LGB rights</td>
<td>34.1</td>
<td>17.2</td>
<td>39.8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Religious leaders’ acceptance of differences</td>
<td>34.1</td>
<td>16.9</td>
<td>41.4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Recognition of same sex partnerships</td>
<td>32.6</td>
<td>18.0</td>
<td>40.6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Respect LGB people at school</td>
<td>33.3</td>
<td>17.2</td>
<td>41.4</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anti-discrimination policies</td>
<td>33.3</td>
<td>16.9</td>
<td>41.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workplace acceptance of differences</td>
<td>32.6</td>
<td>17.6</td>
<td>41.8</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public figures in support of LGB people</td>
<td>32.6</td>
<td>16.9</td>
<td>41.0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Possibility to foster/adopt children</td>
<td>29.1</td>
<td>19.2</td>
<td>43.7</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Figure 31 Suggestions so LGB persons may live comfortably

Recommendations from Transgender persons

Respondents who identified as Transgender also indicated to what extent they agreed with a selection of recommendations aimed at improving their lives. Not all those who identified as transgender provided a response. However, the majority seemed to agree
with all the recommendations offered. The top three recommendations from this group were workplace acceptance of gender identity differences (66.7%), measures implemented at school to respect transgender people (66.7%) and training for public servants on the rights of transgender persons (66.7%).

**Figure 32 Suggestions to live comfortably as Transgender**

**Recommendations for Legislative Changes**

The respondents were also asked to indicate their agreement with the implementation of particular legislations. The vast majority of respondents either agreed or strongly agreed that the Jamaican Government should introduce legislation which outlaws discrimination on the grounds of sexual orientation in employment (92.3%), education (89.3%) and service delivery (89.7%).
Perceived Effects of Recommendations

Persons will have various perspectives on how the adoption of these recommendations will affect the status quo and social fabric. The sample was asked to indicate to what extent they agreed with typical responses of persons to undertaking these recommendations. Close to 80% of the sample disagreed that implementing these laws would result in an increase in child molestation by LGBT persons. With respect to an increase in LGBT behaviour and accommodation of the same, the respondents were not as confident. The largest group neither agreed nor disagreed that introducing such laws would increase LGBT behaviour (26%) or the inclination of communities to tolerate LGBT persons (31%).
Figure 34 Effect of legislation outlawing discrimination on the grounds of sexual orientation
CHAPTER 8: DISCUSSION

Despite the progress in creating safe spaces for some LGBT Jamaicans, the findings form this research demonstrates that LGBT Jamaicans experience high levels of stigma and discrimination. While the analysis of the data was quantitative, the researcher is conscious that the qualitative nature of the convenience sampling method employed precludes making statements that would adequately represent the entire LGBT population in Jamaica. In the context of earning power, a substantial portion of the sample would be able to escape some of the obvious non-institutionalized manifestations of discrimination (displacement, homelessness, street harassment, mob attacks etc), (on the grounds of sexual orientation. Consequently, most of the respondents did not report experiencing non-institutionalized forms of discrimination but reported knowing persons who had experienced same. This substantiates the fact that the respondents felt the problem was widespread and of significant concern. Note too that noteworthy portions of the sample personally experienced the violent and costly side of discrimination, despite their perceived ability to avoid it.

The data confirm that the Jamaican LGBT community has reason to live in fear and in circumscribed spaces. The respondents recalled recent incidents of violence and threats of violence that were motivated by their LGBT status. The data suggested that for the LGBT community, threats were precursory to actual incidence of physical violence. Based on the statistics, LGBT Jamaicans seem to experience violence to a greater extent than the wider population. For example, recall that while 1.9% of the general population had been assaulted between 2012 and 2013, 19 of this study’s sample
reported being assaulted in the last 5 years. These assaults and threats were physical and sexual in nature.

Admittedly, international discourse around human rights has opened the floor for increasing dialogue locally. This has resulted in greater visibility of the Jamaican LGBT person who might have previously been considered alien. The fact that Jamaicans are now able to identify persons who belong to the community - persons who are their friends, family members, colleagues, as reported in the study - have seemingly softened their once hostile response. This gives evidentiary supports to West’s position that knowing persons from the community and having contact with them is important for reducing stigma and discrimination. Pockets of Jamaicans are therefore more 'tolerant'. This notwithstanding, there remains spaces where they have not been welcomed or treated with equity because of their LGBT status. Similar to what was found in the referenced Canada and India studies, some LGBT Jamaicans have been denied access to public places of business, and they have been denied service or poorly treated by members of the State sworn to serve them. Their jobs have been affected and their property has been damaged.

The foregoing is compounded by the failure of legislators to recognize in the first instance, the existence of this diverse group and, in the second, their need for protection and recourse under the law. For example, when a Jamaican is able to make a case that they were discriminated against or denied service on the grounds of being male or female, black or white, Christian or Rastafari, there is no such provision for one who is discriminated against on the grounds of their sexual orientation or gender
identity. The possibility of discrimination causes an apprehension about seeking medical assistance that has been shown to increase the risk of serious medical complications like contracting HIV. The reality of discrimination even in this life or death sector was brought out in this study when some respondents reported difficulty in gaining access, receiving unequal treatment including undergoing unnecessary tests (53%) and inappropriate curiosity (32%) of medical personnel.

While the instrument of data collection captured impact at a micro level, given what has been gleaned from development experts such as Buddan (2015), Sen (1999) and Bocci (2001), development of the country is hampered by the strain experienced by this marginalized group. True development as it is understood today involves ensuring that all members of the society can experience the best of their country. It also means that all members of that society can contribute to the continued growth of said country. The experiences of these LGBT persons suggest that the politics of Jamaica is a long way from removing barriers; this will double the benefits as both human rights and human development will be balanced.

Contemporary policies on human development are modelled after the Human Development Index, established in 2009. The spirit of this index is that a country is developing where it allows its people to live long and healthy lives, obtain high levels of education, and earn a sufficient income to support comfortable standards of living. A high gross domestic product was no longer seen as the best and most useful indicator of human development. For a nation to be truly developed, its people must also be able to access quality health care and education.
The Index has evolved over the years and now emphasises the limiting power of inequality to development. The HDI is an average of a country’s achievements in the key dimensions of human development. However, the reality on the ground tends to be dissimilar to that suggested by the statistics. Within every society, there exists substantial differences between what the country as a whole experience, and what the average individual actually experiences. While the country has a better health care system, there are those who are unable to access it. There may be many more schools, but still some students are unable to stay in the system long enough. The country may be earning increasing sums of foreign exchange, but that wealth may be concentrated in the hands of a few. This notion of inequality presents itself in very manifest was for marginalized communities and especially the LGBT community.

The health aspect of the HDI is measured primarily by the life expectancy at birth, with an ideal minimum being 20 years and maximum being 85 years old. This life expectancy is greatly improved where countries have quality pre and post-natal care, sufficient medical personnel and hospital space, relatively peaceful societies among other factors. The findings from this study describe a community that felt that the problem of healthcare service providers refusing to treat someone because they were identified as LGBT as a very serious problem in Jamaica. The respondents recounted receiving unnecessary tests and unequal treatment. For fear of discrimination, there were instances where some respondents did not seek medical attention, demonstrating that availability does not amount to access. The distribution of responses also suggests a community that is more likely to experience threats and physical violence than the
wider Jamaican population. The threat of violence and limitations to accessing health care impacts this dimension of human development for the LGBT community in Jamaica.

Human development as it pertains to education is measured by the average years of schooling for adults, and expected years of schooling for children. This sample of respondents was well educated, with most having obtained a tertiary education. The researcher notes that the sample for this study is uncharacteristic of the LGBT community in Jamaica as it relates to high levels of education. Anecdotal evidence points to a large proportion of the LGBT community in Jamaica not being able to continue schooling due to bullying, withdrawal of financial support from parents and caregivers and displacement. The sampled population also recounted instances of bullying in school that could negatively impact the expected years of schooling for children, and their academic performance in the system. Studies (Glew, Fan, Katon, Rivara, & Kernic, 2005; Juvonen, Wang, & Espinoza, 2011) have shown that bullied children have lower levels of achievement than other students. Additionally, others (Mehta, Cornell, Fan, & Gregory, 2013) have shown that bullying could significantly reduce a child’s commitment to school. It can also be inferred from the data in this study that if schools are inhospitable then LGBT attrition is to be expected.

Finally, the HDI measure the gross national income per capita as a measure of the standard of living of a country’s citizens. This economic dimension is impacted by the country’s macro-economic performance, but is lived out in the economic experiences of the people: job availability and inclusion in the market. Although income is not critical to
the HDI, the economy is of greater concern for many and is affected by the experiences of any group, including the disenfranchised. The data suggest that being open about your LGBT status in Jamaica could result in your exclusion from the formal economy. There were respondents who, despite their best efforts to keep their status private, were still not allowed to enter certain establishments, purchase or rent homes, or purchase other goods and services. On the other side of the counter, as Badgett had observed, discrimination against LGBT persons can result in unproductivity, as they spend precious time and resources keeping their status secret. The losses from both sides were not calculable in this study, but it stands to reason that where business is denied and productive workers are hampered, potential profits are lost.

This loss is scaled upwards as the institutionalization of discrimination reduces the consumer population. The sustainable growth of a capitalist, free market economy, such as Jamaica's, necessitates the participation of a large and growing market. Marginalization of any group jeopardizes this. This population also needs to be healthy, educated and employed; and so must not be denied access to quality healthcare, education and job opportunities. This consumer population must have avenues for recourse so that businesses are obligated to offer the widest and best service possible. The general lack of job opportunities, compounded by stigma and discrimination, leads to a brain drain as they seek these opportunities elsewhere. A modern, successful economy does not have room for discrimination of the kind experienced by LGBT Jamaicans.
In the matter of politics, the experiences of these participants highlight the exclusionary nature of laws and cultural practices. The success of the HDI index depends heavily on a legal and policy framework that facilitate its realization for all members of the society. There are no laws which explicitly protect LGBT persons from discrimination, but there were some respondents who thought this was the case. Not only are they not protected under the law, but they are not aware that they are not protected. This creates a community of people who are unable to access the rights, benefits, and most importantly, the protections that are theirs. It creates a community of persons who cannot effectively participate in good governance; persons who do not know that they are disenfranchised and that their needs will not be met in the national discourse.

Notwithstanding the perceived existence of laws that will protect the community, the sample had requests for the Jamaican legislature. The results of this survey show that Jamaican LGBT persons desire laws which will protect them from discrimination when seeking education, employment or accessing other goods and services. They request anti-discrimination policies in the workplace and training for public servants in anti-discrimination. Commensurate with Buddan’s arguments, respondents felt it important for duty bearers to publicly denounce discrimination against LGBT persons and support anti-discrimination laws and policies. Given the link that exists between laws and culture, support at the highest political level can inform the attitudes of the masses and eventually engender a society of tolerance.

What these findings illustrate is that the LGBT community in Jamaica is not free. Far from achieving the demolishing of unfreedoms that would result in the sustainable
development described by Sen, Jamaican culture sustains the marginalization of the LGBT community. LGBT Jamaicans still feel unwelcomed within their own homes, communities and country as even the laws which were arguably conceptualized to protect all citizens discriminates against them. As one respondent clearly stated,

“...as much as we want to believe Jamaica is moving away from being homophobic there is still a mass[ive] amount of ignorant people [and laws] that make it unsafe [and unprotected]. And you just never know when that person will attack you.”

Recommandations

The following recommendations were supported by the study participants and are in line with recommendations for good governance and justice:

• Sensitization sessions with the LGBT community that address institutionalized discrimination, including legislation;
• Lobby for the enactment of legislation that explicitly protect persons from discrimination on the grounds of sexual orientation and/or gender identity, especially in the areas of employment, education, healthcare and when accessing goods and services;
• Design and enact a national workplace diversity policy that prohibits discrimination on the basis of sexual orientation and other statuses;
• Capacity building for duty bearers so that they are made familiar with the issues affecting the LGBT community and are adequately equipped to address them;
• Engage leading public figures and government representatives to secure buy-in for the recognition of the protection of the human rights of the LGBT community;
• Establish a committee charged with responsibilities for recording instances and forms of discrimination experienced by LGBT persons;
• Design and implement national public education campaigns aimed at reducing stigma and discrimination against members of the LGBT community;
• Encourage scientific research aimed specifically at illuminating the Transgender experience in Jamaica, so that programmatic intervention can be evidence-based.


http://gtuwi.tripod.com/human4.html


https://books.google.com.jm/books?id=nqcqV7nUBdQC&pg=PA77&lpg=PA77&dq=there%20is%20a%20close%20link%20with%20very%20few%20exceptions%20between%20human%20development%20and%20human%20freedoms%20%28rights%29.&source=bl&ots=jGSympQuho&sig=ZaJZ1VMtiJEngtOT-BX8fERoCJAhl=en&sa=X&ved=0CBsQ6AEwAGoVChMIIs7f7xqb8xwIVDayACh1fLqbs#v=onepage&q=there%20is%20a%20close%20link%20with%20very%20few%20exceptions%20between%20human%20development%20and%20human%20freedoms%20%28rights%29.&f=false

Hans, E. and O’Mahoney j. (2014). The British colonial origins of anti-gay laws


http://jamaica-gleaner.com/gleaner/20141124/lead/lead5.html

http://www.academia.edu/15129800/Opportunity_in_Crisis_re_Presenting_Jamaica_the_Most_Homophobic Place_on_Earth


https://books.google.com.jm/books?id=NQs75PEa618C&printsec=frontcover&dq=amartya+sen+development+as+freedom&hl=en&sa=X&ved=0CBQ6AEwAGoVChMIoOihtf6

http://www.google.com.jm/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CBsQFjAAahUKEwipm5eD0PrHAhXKJh4KHa7YDSk&url=http%3A%2F%2Flsdjournale.net%2FArchives%2FVolume1%2FHomophobia%2520in%2520the%2520Caribbean.pdf&usg=AFQjCNHWOdyx7cH1cqS_RbhJoTDE7Ny-bq&bvm=bv.102829193,d.dmo


http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx


White, Patrick. Get off anti-gay bandwagon. Sunday Gleaner online. Sunday November 9, 2014

www.who.int/whr/2006/whr06_en.pdf

A young gay man was murdered in Jamaica this month, when a mob shouting anti-gay threats tied him up in wire and stoned and kicked him to death.

Disturbing video footage of the mob stoning the victim’s lifeless body has surfaced (Watch it at your own discretion). At one point, an attacker shouts “Batty man yuh fi dead!” or “Gay man, you should die.”

The identity of the victim is unknown, but its believed the incident took place in Montego Bay in the last few weeks. In 2013, a gender-nonconforming Jamaican was stabbed to death in the same area—with no charges ever filed.

Related: Fred Phelps’ Granddaughter Is Helping LGBT Youth In Jamaica

“It’s time for persecution of LGBTI persons to end,” Jamaican
LGBT rights activist Dwayne Brown told Gay Star News. “The silence of our government, the silence of our politicians, the silence of our community allows this type of behavior to continue... People need to rise up and call for a full investigation into this video.”

The video surfaced as a spate of international attacks on LGBT people have emerged, including reports of ISIS throwing alleged homosexuals off of buildings in Syria.

Related: [ISIS Executes Another Gay Man In Syria, Crowd Stones His Corpse](#)

While not as codified, attacks on gays and trans people in Jamaica are all too common, fortified by harsh legal punishments for homosexuality. In Kingston, some young LGBTs are forced to live in the sewers to survive.

Dan Avery


@ItsDanAvery