



11<sup>th</sup> July 2016 (COI included up to 30 June 2016)

## A Commentary on the May 2016 Country Information and Guidance report issued on Jamaica

This commentary identifies what the 'Still Human Still Here' coalition considers to be the main inconsistencies and omissions between the currently available country of origin information (COI) and case law on Jamaica and the conclusions reached in the following Country Information and Guidance (CIG) report issued by the UK Home Office:

- [Background Information, including actors of protection and internal relocation, May 2016](#)

Where we believe inconsistencies have been identified, the relevant section of the CIG report is highlighted in blue. An index of full sources of the COI referred to in this commentary is also provided at the end of the document (COI up to 30 June 2016). This commentary is a guide for legal practitioners and decision-makers in respect of the relevant COI, by reference to the sections of the CIG report on Jamaica issued in May 2016.

**The document should be used as a tool to help to identify relevant COI and the COI referred to can be considered by decision makers in assessing asylum applications and appeals. This document should not be submitted as evidence to the UK Home Office, the Tribunal or other decision makers in asylum applications or appeals. However, legal representatives are welcome to submit the COI referred to in this document to decision makers (including judges) to help in the accurate determination of an asylum claim or appeal.**

**The COI referred to in this document is not exhaustive and should always be complemented by case-specific COI research.**

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## Guidance

### 2. Consideration of Issues

#### 2.1 Protection

##### May 2016 CIG on Jamaica: Background information

[...] 2. Consideration of Issues

##### 2.1 Protection

2.1.1 The Jamaica Constabulary Force (JCF) has primary responsibility for internal security, assisted by the Island Special Constabulary Force. A series of measures have been taken to [sic] in recent years to enhance operational and administrative efficiency and reduce serious crime, including the successful merger of the Island Special Constabulary Force into the Jamaica Constabulary Force, and an increase in police recruitment, which had contributed to the ongoing improvement of crime statistics and decline in serious and violent crimes. Despite the progress made in recent years, there are reports that some police officers continue to be involved in corruption and criminal activity (see Police).

2.1.2 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; and for connected matters. It has been reported that the speed of investigations and prosecutions has quickened in recent years (see Avenues of redress).

2.1.3 The law provides for an independent Judiciary. The judicial system is headed by the Supreme Court and includes a court of appeals and several magistrates' courts. The courts are reported to be overburdened which can lead to delays in the justice system (see Judiciary).

2.1.4 In general, the authorities in Jamaica are willing and able to provide effective protection. In the country guidance case of AB (Protection-criminal gangs-internal relocation) Jamaica CG [2007] UKAIT 00018 the Tribunal, before going on to consider whether the Jamaican authorities can protect persons who face a real risk in the form of targeting by criminal gangs, 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 [para 150 of determination]. In doing so, the Tribunal reconfirmed the guidance given in JS (Victims of gang violence, Sufficiency of protection) Jamaica [2006] UKAIT 00057 (21 July 2006) which found that 'There is clear evidence that in general the Government of Jamaica is not only willing, but also able to provide through its legal system a reasonable level of protection from ill-treatment to its citizens who fear criminal acts in Jamaica and to those who fear retribution for testifying against criminals.'

2.1.5 See also country information on Police and Judiciary.

2.1.6 For further information on assessing the availability or not of state protection, see the Asylum Instruction on Assessing Credibility and Refugee Status [...]

##### 3. Policy summary

3.1.1 In general, a person is likely to be able to access effective state protection against persecution or serious harm by non-state actors or rogue state actors. [...]

In relation to whether the Jamaican state can effectively provide protection to its citizens, the Country Information and Guidance (CIG) report concludes at paragraph 3.1.1 that effective state protection against persecution and serious harm is "likely to be" available (see highlighted sentence above). This policy summary is based on the analysis of COI included in the previous sub-section '2.1 protection', which it is considered fails to adequately represent the Country of Origin Information (COI) contained in the main body of the CIG under 'Country Information' and additional COI available in the public domain. This is despite COI being included in the CIG on the following issues, which seriously compromise the ability of the authorities to be able to provide effective protection:

- [Police corruption and involvement of the police in criminal activities,](#)
- [The excessive use of police force with impunity,](#)

- [General ineffectiveness of the police](#), including limited ability to solve homicides and patrol and protect neighbourhoods adequately; lack of funding, resources, management, and training,
- [Issues besetting the justice system](#) including: lack of resources, corruption, inefficiency, underfunding, backlog of cases, trial postponements and delays,
- Protection gaps for: [people fearing organised criminal gangs](#), [women fearing domestic violence](#) and [LGBTI individuals](#).

### **Police corruption and involvement of the police in criminal activities**

#### May 2016 CIG on Jamaica: Background information

[...] 2. Consideration of Issues

##### 2.1 Protection

2.1.1 The Jamaica Constabulary Force (JCF) has primary responsibility for internal security, assisted by the Island Special Constabulary Force. A series of measures have been taken to [sic] in recent years to enhance operational and administrative efficiency and reduce serious crime, including the successful merger of the Island Special Constabulary Force into the Jamaica Constabulary Force, and an increase in police recruitment, which had contributed to the ongoing improvement of crime statistics and decline in serious and violent crimes. **Despite the progress made in recent years, there are reports that some police officers continue to be involved in corruption and criminal activity** (see Police).

Paragraph 2.1.1 finds that “some” police officers continue to be involved in corruption and criminal activity” and in this respect does not give due weight to the available COI on police corruption and involvement in criminal activities as included at paragraphs 8.1.5, 8.1.6 and 8.4.4, which does not necessarily paint the picture that ‘rouge individual’ police officers are involved in such activities [emphasis added]:

#### May 2016 CIG on Jamaica: Background information

[...] 8. Security Apparatus

##### 8.1 Police [...]

8.1.5 The US Overseas Security Advisory Council 2015 Crime and Safety Report, released 3 November 2015, noted:

‘Organized crime and other criminal elements are prevalent and extremely active. Most criminal activity is gang-related. The police are only able to resolve (make arrests) in 45 percent of homicides annually, and they only convict perpetrators in seven percent of the homicide cases. This leads both the public and police to doubt the effectiveness of the criminal justice system leading to vigilantism, which only exacerbates the cycle of violence. **Based on their past experiences, most civilians fear that at best, the authorities cannot protect them from organized criminal elements, and at worst, are colluding with criminals, leading citizens to avoid giving evidence or witness testimonies.**

‘...Police are unable to patrol and protect most neighborhoods adequately, and as a result, burglaries are quite common. Most wealthy residents hire private, armed guard forces to deter criminals.

‘...Police support for foreign victims of crimes runs between semi-responsive and responsive due to a shortage of manpower, training, vehicles, and other resources. Although the police receive some training from U.S and U.K law enforcement entities, they endure a lack of funding, resources, and management.

**‘Police corruption and police involvement in criminal activity is not uncommon. Consequently, citizens are often indifferent to police authority, adding to a perceived sense of lawlessness. The Jamaica Constabulary Force is considered to be underpaid, poorly trained, and corrupt.’**

8.1.6 The DCAF [Geneva Center for the Democratic Control of Armed Forces] ISSAT [International Security Sector Advisory Team] Jamaica Country Profile, last updated 2 February 2015, noted:

**‘The JCF has a history of corruption and inefficiency. Police officials make arrests in around 44 percent of homicide cases annually and have been found to be involved in the illicit arms trade through supplying weapons and ammunition to criminals from government stockpiles. They also have a history of protecting prominent gang members and allowing them to run their illicit networks**

**in exchange for bribes.**

'... The UNDP's 2010 Citizen Security Survey, the police fared badly with respondents showing an extremely low degree of confidence in the force. Only 15 percent believed that the police respected citizens' rights, while only 23.4 percent had confidence in the police to control gang violence.' [...]

8.4 Human rights violations and impunity [...]

8.4.4 The Inter-American Commission on Human Rights 2014 Annual Report noted:

**'Civil society organizations have noted that summary executions and corruption are still major issues plaguing the Jamaica police force...there remain obstacles to accountability and the persistence of impunity is noted in the low number of police shooting cases that make it to the criminal court. JFJ [Jamaicans for Justice] identified that setbacks and challenges still arise as illustrated in instances where police officers still delay informing INDECOM [The Independent Commission of Investigations] of fatal shootings which allows officers to remove or interfere with vital forensic and ballistic evidence. JFJ has stated that JCF officers collude on statements before presenting them and police officers still give the orders for post-mortems and examinations of ID parades which create serious conflicts of interest for INDECOM's investigations.'**

The Geneva Center for the Democratic Control of Armed Forces (DCAF), a source quoted above in paragraph 8.1.6, provided additional useful information regarding corruption, which was not included in the CIG:

- [Geneva Center for the Democratic Control of Armed Forces \(DCAF\), Jamaica Country profile, Information last updated 02/02/2015, 2 February 2015](#)  
[...] Security and Justice Opportunities [...]  
Jamaica's gangs, both domestic and transnational, are an enormous concern for the country given that they are the primary drivers of violence. Institutional weakness and corruption is only helping to exacerbate the problem and prevent Jamaica from dealing with its current security issues.  
Corruption within the government means engaging on reform measures should be approached with caution [...]

The following additional sources found in the public domain from January 2014 to June 2016 also report on police corruption and involvement in criminal activities:

- [U.S. Department of State, 2016 Trafficking in Persons Report: Jamaica, 30 June 2016](#)  
[...] JAMAICA: Tier 2 Watch List [...]  
Jamaican police officers may be complicit in prostitution rings, some of which are alleged to recruit children and coerce adults into the sex trade. [...]
- [U.S. Department of State, Country Reports on Human Rights Practices for 2015: Jamaica, 13 April 2016](#)  
[...] Section 4. Corruption and Lack of Transparency in Government  
The law provides criminal penalties for corruption by officials, but the government did not implement the law effectively, and officials sometimes engaged in corrupt practices with impunity. The government continued efforts to interdict and prosecute officials' corrupt practices and raise public awareness on corruption. Media and civil society organizations, however, continued to criticize the DPP for being slow and at times reluctant to prosecute corruption cases. [...]
- [U.S. Bureau of International Narcotics and Law Enforcement Affairs, 2016 International Narcotics Control Strategy Report \(INCSR\), Country Report Jamaica, 2 March 2016](#)  
A. Introduction [...]  
In 2015, drug production and trafficking were enabled and accompanied by organized crime, domestic and international gang activity, and police and government corruption. [...]  
The government and law enforcement authorities are committed to combating narcotics and illicit trafficking. However, their efforts were only moderately effective in 2015 because of a lack of sufficient resources, corruption, an inefficient criminal justice system, and the inability of lawmakers to adopt meaningful legislation to combat corruption. [...]

#### 4. Corruption

As a matter of policy, the Jamaican government does not encourage or facilitate illegal activity associated with drug trafficking or the laundering of proceeds from illicit drug transactions. Jamaican law penalizes official corruption; however, corruption remains entrenched, widespread, and compounded by a judicial system that has a poor record of successfully prosecuting corruption cases against high-level law enforcement and government officials. [...]

➤ [Freedom House, Freedom in the World 2015: Jamaica, 27 January 2016](#)

[...] Political rights and civil liberties [...]

C. Functioning of Government: 9 / 12 [...]

Corruption remains a serious problem in Jamaica. Long-standing relationships between elected representatives and organized crime, in which criminal gangs guaranteed votes in certain neighborhoods in exchange for protection, has been highlighted in recent years as the U.S. government pressed for the extradition of Coke, who was sentenced to 23 years in prison in 2012 following a lengthy investigative process. [...]

➤ [The Jamaica Gleaner, 'Fit-For-Duty' Policy Proposed For Cops, 22 January 2016](#)

[...] In its quarterly publication, the PCOA [Police Civilian Oversight Authority] head said his agency has been concerned for some time now over the seemingly high number of incidents involving members of the force. He said these incidents "relate to plain criminality", noting that murder-suicides involving JCF personnel and their family members had been of particular concern to the PCOA.

In the October to December 2015 quarterly newsletter, McIntosh [Chief Executive Officer of the Police Civilian Oversight Authority (PCOA) Dave McIntosh] bemoaned a number of incidents in 2015 and over the last three years, which involved the police; incidents such as robberies, kidnapping, attempts to export ganja, and shoot-outs with other JCF members in a bid to escape apprehension. Additionally, he said there were five reported cases of murder-suicides involving service personnel. [...]

### **Excessive use of police force with impunity**

Despite mentioning avenues of redress for police violence, the 'Guidance' remains silent about reports of the continued excessive use of police force and the subsequent unaccountability of the perpetrators:

May 2016 CIG on Jamaica: Background information

[...] 2. Consideration of Issues

2.1 Protection [...]

2.1.2 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; and for connected matters. It has been reported that the speed of investigations and prosecutions has quickened in recent years (see Avenues of redress). [...]

This is despite such reports having been included in the 'Country Information' section at paragraphs 8.4.1 – 8.4.4 [emphasis added]:

May 2016 CIG on Jamaica: Background information

[...] 8. Security Apparatus [...]

8.4 Human rights violations and impunity [...]

8.4.1 The US State Department 2014 Human Rights Practices Report noted: 'The most serious human rights issues were alleged **unlawful security force killings; cases involving the violation of rights that were not resolved in a timely way...**

'...While the government or its agents did not commit politically motivated killings, **there were numerous reports that the government's security forces committed arbitrary or unlawful killings.**

'...According to official INDECOM [Independent Commission of Investigations] statistics, there were

103 killings involving police through October [2014], which represented a 53 percent decline from the same period in 2013. **Human rights monitors indicated some killings by police went unreported, with police allegedly meting out justice they believed was unavailable through the judicial system.** On many occasions the Jamaica Constabulary Force (JCF) employed lethal force in apprehending criminal suspects. In most shooting incidents, police alleged the victims were carrying firearms and opened fire on them. In many cases, however, eyewitness testimony contradicted the police accounts. In other cases allegations of “police murder” were not credible, because the killings occurred in areas where well-armed gangs, trafficking in weapons and narcotics and running lottery and advance-fee scams, controlled communities and were often better armed than police.’

8.4.2 The Freedom House 2015 Freedom in the World Report noted:

**‘Extrajudicial killings by police remain a major problem in Jamaica, accounting for 12 percent of murders each year...While there were a large number of homicides by police in the first half of the year, the rate for all of 2014 was 100, considerably lower than the 258 registered in 2013; this was the first time that the annual number of homicides by police had fallen below 200 in more than a decade. Observers attributed the improvement to increasing accountability, as an independent commission began to more vigorously pursue cases of police violence in 2014.’**

8.4.3 A Guardian article of 2 December 2015, ‘Jamaica’s police at last being called to account for killing of civilians’, noted:

**‘...Stewart is one of 93 civilians killed by Jamaican police this year. In a country of 2.8 million people which is awash with guns, and where powerful gangs have taken over inner-city areas so neglected by the state they have no running water or sanitation, the police have a reputation for being one of the deadliest security forces in the world.**

**‘Over the past decade they have gunned down about 200 people a year, to the condemnation of human rights groups across the world.**

**‘...Accounts provided by police after fatal shootings over the years have been accepted with little robust challenge. Jamaica has a bad record of holding those officers responsible for such killings to account.’**

8.4.4 The Inter-American Commission on Human Rights 2014 Annual Report noted:

**‘Civil society organizations have noted that summary executions and corruption are still major issues plaguing the Jamaica police force...there remain obstacles to accountability and the persistence of impunity is noted in the low number of police shooting cases that make it to the criminal court.** JFJ [Jamaicans for Justice] identified that setbacks and challenges still arise as illustrated in instances where police officers still delay informing INDECOM [The Independent Commission of Investigations] of fatal shootings which allows officers to remove or interfere with vital forensic and ballistic evidence. JFJ has stated that JCF officers collude on statements before presenting them and police officers still give the orders for post-mortems and examinations of ID parades which create serious conflicts of interest for INDECOM’s investigations.’ [...]

Sources included at paragraphs 8.4.1 and 8.4.4 also provided the following additional information with regards to the excessive use of force by the police force, which has not been included in the CIG:

- [U.S. Department of State, Country Reports on Human Rights Practices 2014: Jamaica, Last updated: 2 July 2015](#)

[...] Role of the Police and Security Apparatus [...]

Jamaicans For Justice (JFJ), a prominent nongovernmental organization (NGO), reported at least 21 police officers responsible for fatal shootings in recent years had fled the country and were living abroad. The JFJ alleged the lengthy time it took the DPP to determine that police personnel should be charged with a crime suggested collusion between the accused police officers and their colleagues, allowing accused officers to escape [...]

- [Inter-American Commission on Human Rights \(IACHR\), Annual Report 2014, 7 May 2015](#)

[...] Chapter V Follow-up of recommendations issued by the IACHR in its country or thematic reports [...]

Report on the situation of human rights in Jamaica [...]

C. Killings at the hands of security forces

32. Extrajudicial killings, the use of excessive force, and the lethal use of firearms by State actors are

continuing occurrences in Jamaica. In 2013, Jamaicans for Justice (“JFJ”) reported that 258 persons lost their lives at the hands of agents of the Jamaican State, an almost 18% increase over the 219 persons who were killed by the security forces in 2012. Of the 258 persons who were killed, the manner in which those persons died included shooting and stabbing. In January 2014, there were 22 deaths at the hands of security forces.

33. According to JFJ, in 2014, there had been reports from ex-policemen alleging that there was a killing squad inside the JCF that planned killings, planted evidence, and altered records [...]

IV. Administration of justice [...]

A. Police Impunity [...]

52. Civil society organizations have noted that over the last four years, more than 1,000 Jamaicans have lost their lives as a result of actions by the Jamaican security forces, primarily the Jamaica Constabulary Force (“JCF”). Almost half of those cases are being investigated by the Independent Commission of Investigations (“INDECOM”) as ‘Category A’ fatalities, meaning that the fatalities were the result of circumstances where there may have been no justification for the action taken, or neglect.

53. [...] JFJ contends that, as of August 2014, 96 civilians had been killed by the police (averaging 3 civilians weekly). [...]

54. Civil society organizations expressed concern that impunity within the JCF remains a serious problem since it undermines the trust and credibility of the police force and the criminal justice system as an institution [...]

The following additional information found in the public domain between January 2014 to June 2016 also document Jamaica police’s excessive use of force and failure to bring perpetrators to account:

➤ [Amnesty International, Report 2015/16, The State of the World’s Human Rights, 23 February 2016](#)

[...] Jamaica [...]

Excessive use of force by the police and extrajudicial executions continued. [...]

Police and security forces

Human rights organizations continued to highlight concerns around arbitrary arrests and ill-treatment in police custody [...]

Justice system

Major backlogs in the judiciary led to continued delays and hampered access to justice. In particular, investigations into police killings remained slow. [...]

➤ [U.S. Department of State, Country Reports on Human Rights Practices for 2015: Jamaica, 13 April 2016](#)

Executive Summary [...]

The government’s efforts resulted in charging a much larger number of police officers with abuses than 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 or Unlawful Deprivation of Life

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 to eliminate suspected criminals and exact justice unavailable through the dysfunctional judicial system. Official Independent Commission of Investigations (INDECOM) statistics indicated that 93 persons were killed by police through December 2, on pace for a significant decline from the 150 killings that occurred in 2014. Local human rights organization Jamaicans for Justice, however, alleged that police out of uniform at times committed unlawful killings that were not reflected in the INDECOM statistics. [...]

d. Arbitrary Arrest or Detention [...]

Role of the Police and Security Apparatus [...]

Lengthy trials with numerous delays continued to be a systemic problem, not confined to cases involving police officers. From 2006 through 2014, the courts took many years to complete trials against police officers; in that period three police officers were convicted of extrajudicial killings. As of

the end of June, however, the DPP and INDECOM had 54 active cases of criminal charges against 64 police officers for their alleged involvement in unlawful killings. [...]

- [Bertelsmann Stiftung, BTI 2016 — Jamaica Country Report. Gütersloh: Bertelsmann Stiftung, 2016](#)

This report is part of the Bertelsmann Stiftung's Transformation Index (BTI) 2016. It covers the period from 1 February 2013 to 31 January 2015. The BTI assesses the transformation toward democracy and a market economy as well as the quality of political management in 129 countries. [...]

I. Political transformation [...]

3 Rule of law [...]

Office holders who break the law and engage in corruption are not adequately prosecuted. Adverse publicity about politically corrupt activities of politicians does take place, but in the absence of evidence that there is personal gain through the breaking of laws (e.g., for procurement of goods or services), there are no legal consequences if criminal acts cannot be proven. Politically corrupt acts then do undermine the rule of law. This means that public officeholders (both public servants and politicians) who abuse their positions are not prosecuted or penalized if evidence of criminal action cannot be produced. Penalties may take the form of removal from duty and being placed on partial pay while the case is taken through a long legal process. [...]

The right to life is frequently denied by the paramilitary behavior of some members of the police force, who are alleged to be responsible for the high rate of extra-judicial killings. [...]
- [UN Human Rights Council, Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 \(c\) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, 12 February 2015](#)

[...] C. Implementation of international human rights obligations, taking into account applicable international humanitarian law [...]

2. Right to life, liberty and security of the person [...]

21. AI stated that however, a number of people have been killed in circumstances suggesting that they may have been extra-judicially executed. AI also highlighted that INDECOM had faced a number of obstacles in carrying out its functions, including lack of cooperation and even hostility from members of the police force.

22. JS1 stated that the newly established agencies - INDECOM and a special coroner's office to conduct inquests into security force-related deaths - had neither the resources nor the political power necessary to effectively reduce unlawful police killings. CHRI expressed concern, about the ability of Jamaica's national institutions to effectively monitor situations where torture and ill-treatment might be practiced [...]

3. Administration of justice, including impunity [...]

42. IACHR expressed however concern that INDECOM was not given the power and authority it needed to be truly effective. JS1 stated that since its inception in 2010, and up to January 2012, INDECOM had referred only 39 cases to the Director of Public Prosecution. CHRI expressed concern about the ability of INDECOM to hold police officials accountable for abuses as a result of officers challenging its authority. [...]
- [Immigration and Refugee Board of Canada, Jamaica: Requirements and procedures to lodge a complaint against a police officer; requirements and procedures to obtain a police report; alternative mechanisms available for lodging a complaint against a police officer; effectiveness of complaint mechanisms \(2013-January 2015\), 11 February 2015](#)

[...] 5. Effectiveness of Police Complaints Mechanisms

In report on its activities in 2012, published in March 2013, INDECOM commented that its investigations into police shootings were hindered by its reliance on the JCF for "important parts" of its investigations, and found the JCF to be slow, uncooperative and "encouraging collusion" within the ranks (ibid. 29 Mar. 2013, iii, 7). INDECOM's report criticized JCF policies allowing officers involved in homicide to return to duty a few days after an incident, before completion of the investigations (ibid., 7). [...]



Further, in an article in the 19 May 2013 edition of the Gleaner, INDECOM's director of complaints made the following observations:

There are still police officers who fail to provide a statement within the prescribed 10 hours following incidents. "[T]he police force does not require its members, on an operation, to be separated before they give their first statement to investigators," allowing them time to "collude," which the Gleaner describes as an "often-repeated concern" for INDECOM. Officers are not required to remain on the scene after an incident takes place, which is "still a hindrance" to the investigation, as INDECOM investigators want to obtain statements promptly. The Gleaner indicated that these concerns of collusion had been reported to Parliament, and at the time of writing in May 2013, Parliament had not yet addressed the concerns (19 May 2013). [...]

In correspondence with the Research Directorate, a lawyer for Jamaicans for Justice (JFJ), a "non-profit, non-partisan, non-violent citizens' rights action organisation that advocates for good governance and improvements in state accountability and transparency" (JFJ n.d.), said that police complaints mechanisms in Jamaica include INDECOM, the JCF, the Public Defender, the Commissioner of Police Offices and the Inspectorate of Police (ibid. 9 Feb. 2015). He expressed the opinion that these complaints processes are "very ineffective" and that "complainants are often disappointed with the process and abandon their complaints"(ibid.). He said that circumstances have "somewhat" improved since INDECOM's inception, but noted that the agency faces resource constraints, causing it to focus primarily on police fatal shooting cases (ibid.). He said that fatal shooting cases take "years" to investigate and "even longer" to obtain a court ruling (ibid.). He explained that many other cases of police misconduct falling under the organization's jurisdiction go "unnoticed" (ibid.). [...]

➤ [Geneva Center for the Democratic Control of Armed Forces \(DCAF\), Jamaica Country profile, Information last updated 02/02/2015, 2 February 2015](#)

[...] Adding to the problem of a thriving gang scene is an inefficient and corrupt justice sector and a police force with a history of criminal ties and extrajudicial killings. This makes the public highly sceptical of both institutions' trustworthiness. [...]

Security Institutions [...]

In addition, the force is believed to have carried out extrajudicial killings, with Jamaica having one of the highest rates of police killings in the region [...]

Compounding the problem is the lack of justice police face for these acts; cases languish in the court system for years and it is rare for a conviction to be handed down, again suggesting high impunity rates [...]

### **General ineffectiveness of the police**

#### May 2016 CIG on Jamaica: Background information

[...] 2. Consideration of Issues

##### 2.1 Protection

2.1.1 The Jamaica Constabulary Force (JCF) has primary responsibility for internal security, assisted by the Island Special Constabulary Force. A series of measures have been taken to [sic] in recent years to enhance operational and administrative efficiency and reduce serious crime, including the successful merger of the Island Special Constabulary Force into the Jamaica Constabulary Force, and an increase in police recruitment, which had contributed to the ongoing improvement of crime statistics and decline in serious and violent crimes. Despite the progress made in recent years, there are reports that some police officers continue to be involved in corruption and criminal activity (see Police).

2.1.2 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; and for connected matters. It has been reported that the speed of investigations and prosecutions has quickened in recent years (see Avenues of redress).

2.1.3 The law provides for an independent Judiciary. The judicial system is headed by the Supreme Court and includes a court of appeals and several magistrates' courts. The courts are reported to be overburdened which can lead to delays in the justice system (see Judiciary).

2.1.4 In general, the authorities in Jamaica are willing and able to provide effective protection. In the country guidance case of AB (Protection-criminal gangs-internal relocation) Jamaica CG [2007] UKAIT 00018 the Tribunal, before going on to consider whether the Jamaican authorities can protect persons who face a real risk in the form of targeting by criminal gangs, 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 [para 150 of determination]. In doing so, the Tribunal reconfirmed the guidance given in JS (Victims of gang violence, Sufficiency of protection) Jamaica [2006] UKAIT 00057 (21 July 2006) which found that 'There is clear evidence that in general the Government of Jamaica is not only willing, but also able to provide through its legal system a reasonable level of protection from ill-treatment to its citizens who fear criminal acts in Jamaica and to those who fear retribution for testifying against criminals.'

2.1.5 See also country information on Police and Judiciary.

2.1.6 For further information on assessing the availability or not of state protection, see the Asylum Instruction on Assessing Credibility and Refugee Status [...]

3. Policy summary

3.1.1 In general, a person is likely to be able to access effective state protection against persecution or serious harm by non-state actors or rogue state actors. [...]

The guidance provided in sub-sections '2.1 Protection' and '3. Policy summary' fails to engage with the COI included in Section 8 of the CIG addressing the ineffectiveness of the Jamaican police force in general. The following COI included in paragraphs 8.1.5 and 8.5.3 questions the effectiveness of the Jamaican police force and recognises that protection might not always be available [emphasis added]:

May 2016 CIG on Jamaica: Background information

[...] 8. Security Apparatus

8.1 Police [...]

8.1.5 The US Overseas Security Advisory Council 2015 Crime and Safety Report, released 3 November 2015, noted:

'Organized crime and other criminal elements are prevalent and extremely active. Most criminal activity is gang-related. **The police are only able to resolve (make arrests) in 45 percent of homicides annually, and they only convict perpetrators in seven percent of the homicide cases. This leads both the public and police to doubt the effectiveness of the criminal justice system leading to vigilantism, which only exacerbates the cycle of violence. Based on their past experiences, most civilians fear that at best, the authorities cannot protect them from organized criminal elements, and at worst, are colluding with criminals, leading citizens to avoid giving evidence or witness testimonies.**

'...Police are unable to patrol and protect most neighborhoods adequately, and as a result, burglaries are quite common. Most wealthy residents hire private, armed guard forces to deter criminals.

'...Police support for foreign victims of crimes runs between semi-responsive and responsive due to a shortage of manpower, training, vehicles, and other resources. Although the police receive some training from U.S and U.K law enforcement entities, **they endure a lack of funding, resources, and management.**

'Police corruption and police involvement in criminal activity is not uncommon. Consequently, citizens are often indifferent to police authority, adding to a perceived sense of lawlessness. **The Jamaica Constabulary Force is considered to be underpaid, poorly trained, and corrupt.**' [...]

8.5 Avenues of redress [...]

8.5.3 The US State Department 2014 Human Rights Report noted:

'**It usually took many years to bring police officers to trial for alleged unlawful killings, and since 2006 the courts had convicted only one police officer of an extrajudicial killing until the November murder conviction of two police officers.** During the year, however, the pace of prosecutions quickened, and through the end of September, the DPP [Director of Public Prosecutions] and INDECOM filed criminal charges against 21 police officers for their alleged involvement in unlawful killings. In July courts convicted eight officers for failing to comply with INDECOM's investigation into their alleged involvement in the 2010 fatal shooting of two civilians. In November a court convicted a deputy superintendent of police for obstructing INDECOM in carrying out its duties when he failed to hand over to INDECOM investigators firearms involved in a fatal police shooting in St. Catherine.

‘...A July 2013 Constitutional Court ruling confirming INDECOM’s power to file charges directly, rather than through the DPP, streamlined the judicial process, as the DPP issued its rulings on cases involving security forces on average 27 months after the final submission of files from the Bureau of Special Investigations or INDECOM. **As of September INDECOM was pursuing more than two thousand investigations into allegations of abuse by agents of the state.**’ [...]

The United States Department of State Bureau of Diplomatic Security (OSAC)’s ‘Jamaica 2015 Crime and Safety Report’, a source quoted above in paragraph 8.1.5, provided additional information regarding the ineffectiveness of the police force, which was not included in the CIG:

- [United States Department of State Bureau of Diplomatic Security \(OSAC\), Jamaica 2015 Crime and Safety Report, 3 November 2015](#)

[...] Police response [...]

The general perception is that the majority of crime victims do not report crimes against them due to fear of reprisals by the police, the belief that police are corrupt, or the feeling that nothing would come from such reports. Reporting crime can seem archaic and lengthy process and is widely believed a waste of time except for the most serious of crimes where a police report is required for insurance purposes [...]

Additional sources available in the public domain between January 2014 to June 2016 provide useful information about the general ineffectiveness of the police as follows:

- [Inter-American Commission on Human Rights \(IACHR\), Annual Report 2014, 7 May 2015](#)

[...] Chapter V Follow-up of recommendations issued by the IACHR in its country or thematic reports, Report on the situation of human rights in Jamaica [...]

A. Background [...]

16. The high level of violence in Jamaica causes citizens great concern, and undermines the confidence in the State’s capacity to protect the citizenry. Civil society organizations have identified that there is unequal access to measures of security and protection for vulnerable populations. [...]

- [UN Human Rights Council, Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 \(c\) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, 12 February 2015](#)

[...] C. Implementation of international human rights obligations, taking into account applicable international humanitarian law

1. Equality and non-discrimination

9. Inter-American Commission on Human Rights reported that deep inequalities pervading Jamaican society were exacerbated by the State’s inadequate measures to protect and guarantee human rights of women, children and other vulnerable groups. [...]

- [Overseas Development Institute \(ODI\), Securing communities and transforming policing cultures: A desk study of community policing in Jamaica, May 2014](#)

[...] Key messages [...]

Some early indications suggest that crime is reducing and police-community relations are improving, though it is difficult to attribute this to community policing.

Community policing is also yet to transform policing culture in Jamaica, which remains primarily paramilitary in nature. [...]

### **Issues besetting the justice system**

May 2016 CIG on Jamaica: Background information

[...] 2. Consideration of Issues

2.1 Protection [...]

2.1.3 The law provides for an independent Judiciary. The judicial system is headed by the Supreme Court and includes a court of appeals and several magistrates' courts. **The courts are reported to be overburdened which can leads to delays in the justice system** (see Judiciary). [...]

Whilst the 'Guidance' section at paragraph 2.1.3 mentions the backlog of cases, it fails to refer to the lack of resources, corruption and inefficiency besetting the justice system. COI included in the CIG highlight the following inter-related issues affecting the Jamaican justice system and thus hampering access to justice:

- Lack of resources (paragraphs 9.1.2, 9.1.4, 9.2.1)
- Corruption (paragraph 9.3.1)
- Inefficiency (paragraphs 8.5.2, 9.1.3, 9.1.4, and 9.3.1)

Sources included at paragraph 9.1.3 noted additional deficiencies with the Jamaican justice system, which were not included in the CIG:

- [U.S. Department of State, Country Reports on Human Rights Practices 2014: Jamaica, Last updated: 2 July 2015](#)  
[...] Role of the Police and Security Apparatus [...]  
Overburdened, underresourced, and inefficient judicial system and frequent lengthy delays in trials.  
[...] It usually took many years to bring police officers to trial for alleged unlawful killings, and since 2006 the courts had convicted only one police officer of an extrajudicial killing until the November murder conviction of two police officers [...]
- [Geneva Center for the Democratic Control of Armed Forces \(DCAF\), Jamaica Country profile, Information last updated 02/02/2015, 2 February 2015](#)  
[...] Adding to the problem of a thriving gang scene is an inefficient and corrupt justice sector and a police force with a history of criminal ties and extrajudicial killings. This makes the public highly sceptical of both institutions' trustworthiness [...]

The following additional sources from January 2014 to June 2016 found in the public domain provide additional information on the issues affecting the efficiency of the justice system:

- [U.S. Department of State, 2016 Trafficking in Persons Report: Jamaica, 30 June 2016](#)  
[...] JAMAICA: Tier 2 Watch List [...]  
PROSECUTION  
Chronic delays in the justice system seriously impeded trafficking and other violent crime prosecutions. [...]
- [U.S. Department of State, Country Reports on Human Rights Practices for 2015: Jamaica, 13 April 2016](#)  
Executive Summary [...]  
The most serious human rights issues were an overburdened, under-resourced, and dysfunctional judicial system, which obstructed access to justice for victims of crime and their families, and allegedly unlawful killings by government security forces [...]  
Section 1. Respect for the Integrity of the Person, Including Freedom from: [...]  
d. Arbitrary Arrest or Detention [...]  
Role of the Police and Security Apparatus [...]  
Lengthy trials with numerous delays continued to be a systemic problem, not confined to cases involving police officers. [...]  
e. Denial of Fair Public Trial [...]  
Trials were often delayed for years, and at times cases were even dismissed due to delay tactics, including no-shows by witnesses, challenges 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 were not acceptable. Storage facilities were inadequate and understaffed, and evidence occasionally disappeared, deteriorated in the warehouse, or could not be located when needed. [...]

➤ [U.S. Bureau of International Narcotics and Law Enforcement Affairs, 2016 International Narcotics Control Strategy Report \(INCSR\), Country Report Jamaica, 2 March 2016](#)

A. Introduction [...]

The government and law enforcement authorities are committed to combating narcotics and illicit trafficking. However, their efforts were only moderately effective in 2015 because of a lack of sufficient resources, corruption, an inefficient criminal justice system, and the inability of lawmakers to adopt meaningful legislation to combat corruption. [...]

B. Drug Control Accomplishments, Policies, and Trends

1. Institutional Development [...]

Progress in combating narcotics, illicit trafficking and corruption was hobbled by an underfunded, overburdened and sluggish criminal justice system with limited effectiveness in obtaining criminal convictions. The conviction rate for murder was approximately 15 percent in 2015, and the courts continued to be plagued with a culture of trial postponements and delay. This lack of efficacy within the criminal courts contributed to impunity for many of the worst criminal offenders and gangs, an abnormally high rate of violent crimes, lack of cooperation by witnesses and potential jurors, frustration among police officers and the public, a significant social cost and drain on the economy, and a disincentive for tourism and international investment. [...]

➤ [Amnesty International, Report 2015/16, The State of the World's Human Rights, 23 February 2016](#)

[...] Jamaica [...]

Justice system

[...] 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. [...]

➤ [Bertelsmann Stiftung, BTI 2016 — Jamaica Country Report. Gütersloh: Bertelsmann Stiftung, 2016](#)

This report is part of the Bertelsmann Stiftung's Transformation Index (BTI) 2016. It covers the period from 1 February 2013 to 31 January 2015. The BTI assesses the transformation toward democracy and a market economy as well as the quality of political management in 129 countries. [...]

I. Political transformation [...]

3 Rule of Law [...]

A weak and inefficient court management system is being reformed under the leadership of the current chief justice, especially to address the inadequate number of courts and judges, which has led to a backlog of thousands of cases. Recent appointments of more judges at the local level and the introduction of night courts have taken place. The consequent delay in justice leads many, especially in the lower-income class, to feel that they are being denied justice. This is compounded (1) by the very high fees charged by lawyers; and (2) by the class and pro-police bias of some judges. The appointment of judges is done by an independent and accepted method. There are no reports substantiated by evidence of members of the judiciary being influenced by politics or money, or not being trusted by citizens. The 2013 Global Corruption Barometer reports that 47% of respondents in Jamaica felt that the judiciary was corrupt [...]

Young black men living in poorer communities, members of the Rastafarian community, and members of the lesbian, gay, bisexual and transgender communities are often denied access to fully exercise their rights under the law or to protection under the law. They often face discrimination and sometimes physical abuse not only from agents of the state (police and army) but members of the public. The right to seek recourse in the courts exists, but such citizens could face further discrimination within the administrative structures of the system, and may not be able to afford private legal counsel. The state-funded Legal Aid Clinic is not adequately funded to provide the legal services required by some detainees. [...]

➤ [Inter-American Commission on Human Rights \(IACHR\), Annual Report 2014, 7 May 2015](#)

[...] IV. ADMINISTRATION OF JUSTICE

B. Challenges to conducting prompt criminal investigations

73. Civil society organizations have criticized the culture of adjournments, as well as archaic and inefficient court administration practices which all contribute to the gridlock in conducting prompt criminal investigations [...]

- [UN Human Rights Council, Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 \(c\) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, 12 February 2015](#)

[...] C. Implementation of international human rights obligations, taking into account applicable international humanitarian law [...]

3. Administration of justice, including impunity

39. IACHR stated that justice in Jamaica was administered with one standard for the rich and another for the poor, and asserted that there was a link between the denial of justice, poverty and discrimination. IACHR was troubled by severe delays in the criminal justice, and stated that access to remedy was neither simple nor prompt. JS2 recommended that Jamaica amends its legal system to guarantee every citizen, and particularly LGBT people, access to justice, inter alia, by strengthening judicial capacity and infrastructure.

IACHR expressed it was troubled by the lack of state-provided legal assistance and legal aid. [...]

45. IACHR said that according to information received, many judges were appointed after serving in the office of the DPP, giving them strong ties to prosecutors and affecting their impartiality. JS1 stated that Jamaica's Supreme Court had a backlog of almost 500 cases due to infrequent sittings, inadequate juror availability, witness intimidation and absenteeism, and inadequate staffing and resources. [...]

### **Protection gaps for people fearing organised criminal gangs**

May 2016 CIG on Jamaica: Background information

[...] 2. Consideration of Issues

2.1 Protection [...]

2.1.4 In general, the authorities in Jamaica are willing and able to provide effective protection. In the country guidance case of [AB \(Protection-criminal gangs-internal relocation\) Jamaica CG \[2007\] UKAIT 00018](#) the Tribunal, before going on to consider whether the Jamaican authorities can protect persons who face a real risk in the form of targeting by criminal gangs, 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** [para 150 of determination]. In doing so, the Tribunal reconfirmed the guidance given in [JS \(Victims of gang violence, Sufficiency of protection\) Jamaica \[2006\] UKAIT 00057 \(21 July 2006\)](#) which found that "There is clear evidence that in general the Government of Jamaica is not only willing, but also able to provide through its legal system a reasonable level of protection from ill-treatment to its citizens who fear criminal acts in Jamaica and to those who fear retribution for testifying against criminals". [...]

Whilst the CIG includes COI on gang-related violence, links to the CIG on 'Jamaica: Fear of organised criminal gangs', published in July 2015, at paragraph 9.1.6, and based on the country guidance case of *AB* concludes at paragraph 2.1.4 that effective state protection is in general available, it fails to include the second point of the headnote of the country guidance case *AB*, namely that "unless reasonably likely to be admitted into the Witness Protection programme, a person targeted by a criminal gang will not normally receive effective protection in his home area".<sup>1</sup>

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<sup>1</sup> [AB \(Protection –criminal gangs-internal relocation\) Jamaica CG \[2007\] UKAIT 00018](#), Headnote

It should also be noted that the country guidance case of *JS* as cited in the CIG above should no longer be relied upon as in the ‘List of Country Guideline determinations’ (issued by the UK Courts and Tribunals Judiciary and last updated on 14<sup>th</sup> April 2016) it is stated that “*JS* (Victims of gang violence – Sufficiency of protection) Jamaica CG [2006] UKAIT 00057 set aside on 14 June 2007 by Consent Order in the Court of Appeal”.<sup>2</sup>

### **Protection gaps for women fearing domestic violence**

The CIG ‘Guidance’ section fails to mention the particular groups that face difficulties accessing state protection, such as women fleeing domestic violence, despite such guidance being provided in the July 2015 CIG ‘[Jamaica: Women fearing domestic violence](#)’ which states that “Women’s recourse to justice and effective protection is sometimes limited due to the inadequate enforcement of legislative provisions”.<sup>3</sup>

### **Protection gaps for LGBTI individuals**

The CIG ‘Guidance’ section fails to identify another group that is very unlikely to be able to access state protection: LGBTI individuals. COI and the UK Home Office Guidance can be found in the July 2015 CIG ‘[Jamaica: Sexual Orientation and gender Identity](#)’ which states that “Caselaw has established that where LGBTI persons do face a real risk of harm or ill treatment by non-state actors, the authorities do not provide effective protection”.<sup>4</sup> See also the Country Guidance cases [DW](#) and [SW](#), which respectively found that homosexuals and lesbians and those perceived as such, are likely to be at risk of persecution on return.<sup>5</sup>

## **2.2 Internal relocation**

### May 2016 CIG on Jamaica: Background information

[...] 2. Consideration of Issues

#### 2.2 Internal relocation

2.2.1 Decision-makers must 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.

2.2.2 The law provides for freedom of internal movement and the government respect these rights (see Freedom of movement).

2.2.3 In the country guidance case *AB*, the Tribunal found that whether a person will be able to avoid risk by relocating will depend on his particular circumstances, but the evidence does not support the view that internal relocation is an unsafe or unreasonable option in Jamaica in general; it is a matter for determination on the facts of each individual case.

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<sup>2</sup> See [Courts and Tribunals Judiciary, List of Country Guideline determinations](#), last update 14 April 2016, Jamaica

<sup>3</sup> See UK Home Office, [Country Information and Guidance, Jamaica: Women fearing domestic violence](#), July 2015, paragraph 2.3.4

<sup>4</sup> See UK Home Office, [Country Information and Guidance, Jamaica: Sexual Orientation and Gender Identity](#), July 2015, 3. Policy Summary

<sup>5</sup> See [DW \(Homosexual Men; Persecution; Sufficiency of Protection\) Jamaica CG \[2005\] UKAIT 00168 \(28 November 2005\)](#) and [SW \(lesbians - HJ and HT applied\) Jamaica CG \[2011\] UKUT 251 \(IAC\) \(24 June 2011\)](#)

2.2.4 For further information on considering internal relocation, see the Asylum Instruction on Assessing Credibility and Refugee Status and the Asylum Instruction on Internal Relocation

3. Policy summary [...]

**3.1.2 Internal relocation to another area of Jamaica is generally viable if the risk will not be present in the place of relocation.**

The guidance provided in this CIG fails to include the relevant headnotes from the Country Guidance case *SW*, which found that single women, newcomers in rural communities and more generally women who cannot show a heterosexual narrative may risk being perceived and identified as lesbians, and henceforth may require protection [emphasis added]:

- [SW \(lesbians - HJ and HT applied\) Jamaica CG \[2011\] UKUT 251 \(IAC\) \(24 June 2011\)](#)
  - (1) Jamaica is a deeply homophobic society. There is a high level of violence, and where a real risk of persecution or serious harm is established, the Jamaicans state offers lesbians no sufficiency of protection.
  - (2) Lesbianism (actual or perceived) brings a risk of violence, up to and including 'corrective' rape and murder.
  - (3) 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.
  - (4) **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.
  - (5) **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).**
  - (6) **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.**
  - (7) 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.



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