



# OPERATIONAL GUIDANCE NOTE

## JAMAICA

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#### 1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Jamaica and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Jamaica Country of Origin Information at: [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instructions on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.
- 1.4** With effect from 1 April 2003, Jamaica is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002. If, following consideration, a claim made on or after 1 April 2003 by someone who is entitled to reside in Jamaica is refused, case owners should certify it as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. Guidance on whether certain types of claim are likely to be clearly unfounded is set out below.

#### Source documents

**1.5** A full list of source documents cited in footnotes is at the end of this note.

## **2. Country assessment**

- 2.1** Jamaica is a constitutional parliamentary democracy. The Head of State is the British Monarch and is locally represented by the Governor-General. The legislature is bicameral and comprises the upper chamber or the Senate and the lower chamber or the House of Representatives. The Senate consists of 21 Senators, 13 of whom are appointed by the Governor-General on the advice of the Prime Minister and 8 by the Governor-General on the advice of the leader of the opposition. The House of Representatives consists of 60 elected members called Members of Parliament.<sup>1</sup>
- 2.2** On 3 September 2007, the Jamaica Labour Party (JLP) won the General Election. The JLP's leader, Mr Bruce Golding, was sworn in as Jamaica's eighth Prime Minister on 11 September and announced his new cabinet the following day. The JLP previously held power from 1980 to 1989. The main opposition party is the People's National Party (PNP, social democrat). The PNP held power between February 1989 and September 2007, with former Prime Minister P J Patterson holding office for an unprecedented four terms from 1992 to 2006. Upon Mr Patterson's retirement from office, Mrs Portia Simpson Miller was elected leader of the PNP and served as Prime Minister from March 2006 until September 2007.<sup>2</sup>
- 2.3** The Constitution provides for an independent judiciary, and in 2006 the Government generally respected this provision in practice, however, the judicial system is reported to be overburdened and operates with inadequate resources.<sup>3</sup> Jamaica retains the death penalty (by hanging), although the last reported execution was in 1988.<sup>4</sup>
- 2.4** The fundamental human rights and freedoms are enshrined in the Constitution. The Government generally respects the human rights of its citizens, but in 2006 there were some reports of unlawful killings committed by the security forces; mob violence against and vigilante killings of those suspected of breaking the law; and impunity for police who committed crimes.<sup>5</sup>
- 2.5** Jamaica's serious economic problems have reportedly exacerbated social problems and have become the subject of political debate. High unemployment - averaging 15.5% - rampant underemployment, growing debt, and high interest rates are reported to be the most serious economic problems.<sup>6</sup>
- 2.6** Crime and violence remains a major challenge in Jamaica. The murder rate remains among the highest in the world, though 2006 saw a reduction in the overall number of homicides, compared to the previous year. Traffickers of illicit drugs have reportedly made use of Jamaica's location as a major trans-shipment route for cocaine from South America to North America and Europe. As such, Jamaica faces a high rate of gang related violence fuelled by drugs money. The Jamaican Government announced a new crackdown on organised crime in October 2004, Operation Kingfish.<sup>7</sup>
- 2.7** Corruption is also a major concern, and the Jamaican police has been criticised for excessive use of force. A series of reforms has seen police officers face a range of criminal

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<sup>1</sup> Home Office COI Service Jamaica Country of Origin Information Report 2007 (Background Information: Constitution & Political System) & Foreign and Commonwealth Office (FCO) Country Profile 2007: Jamaica

<sup>2</sup> COIS Jamaica Country Report 2007 (Background Information: History & Recent Developments) & FCO Country Profile 2007: Jamaica

<sup>3</sup> COIS Jamaica Country Report 2007 (Human Rights: Judiciary)

<sup>4</sup> COIS Jamaica Country Report 2007 (Human Rights: Death Penalty)

<sup>5</sup> COIS Jamaica Country Report 2007 (Background Information: Constitution & Human Rights: Introduction)

<sup>6</sup> COIS Jamaica Country Report 2007 (Background Information: Political System)

<sup>7</sup> COIS Jamaica Country Report 2007 (Human Rights: Crime & Security Forces) & FCO Country Profile 2007: Jamaica

investigations, but Jamaica's criminal justice system remains in need of further reform and funding.<sup>8</sup>

### 3. **Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Jamaica. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Considering the Asylum Claim).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them (For guidance on credibility see the Asylum Instructions on Considering the Asylum Claim).
- 3.5** All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:  
<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6 Criminal gang violence**
- 3.6.1** Many applicants will make an asylum and/or human rights claim based on a fear of ill- treatment amounting to persecution at the hands of criminal gangs in Jamaica and claim that the police are unable to provide sufficient protection. In some cases, the applicant may state that such treatment is politically motivated with the respective criminal gang affiliated to either the Jamaica Labour Party (JLP) or the People's National Party (PNP).
- 3.6.2 *Treatment.*** The murder rate in Jamaica exceeded 45 per 100,000 persons in 2006, a reduction from the 2005 rate of 62 per 100,000. On 30 October 2007, The Jamaica Observer reported that a total of 1,105 persons had been murdered on the island in 2007. Much of the violence is reportedly perpetrated by street gangs vying for control of lucrative drug and extortion rings or fighting for turf. There are known areas of confrontations such as Maxfield Avenue and Tivoli Gardens in Kingston. Parts of the parishes of St Catherine and St Andrew are also regarded as so-called gang 'battle zones'. Some of these gangs are also associated with political parties. The One Order gang, with connections to the JLP, has been involved in a turf war in Spanish Town with Klansman gang, which has connections to PNP sympathisers. Police crime statistics indicate that youths, some as young as 12, have

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<sup>8</sup> COIS Jamaica Country Report 2007 (Human Rights: Security Forces & Corruption) & FCO Country Profile 2007: Jamaica

been the main perpetrators of criminal activity in recent years and 350 persons arrested for murder in 2005 were between 12 and 25 years old.<sup>9</sup>

- 3.6.3 Sufficiency of protection.** The JCF is responsible for the maintenance of law and order, assisted by the Island Special Constabulary Force (ISCF). The Jamaica Defence Force (JDF) comprises the army, air wing, and coast guard. It is charged with national defence, marine narcotics interdiction, and support of the JCF. It has no mandate to maintain law and order and no powers of arrest, but does support the JCF in patrolling certain communities.<sup>10</sup>
- 3.6.4** The JCF maintains divisions focusing on community policing, special response, intelligence gathering, and internal affairs. Faced with a high rate of killings in 2006, the JCF generally was not effective. Although the homicide rate declined from 2005, the perception of corruption and impunity within the force was reportedly a serious problem that contributed to a lack of public confidence in the institution. Human rights groups have also identified systematically poor investigative procedures and weak oversight mechanisms.<sup>11</sup>
- 3.6.5** In October 2004, the Jamaican Government unveiled Operation Kingfish as a crime-fighting initiative to break up the criminal gangs responsible for much of Jamaica's inner-city gun-violence. A year after its launch, Operation Kingfish had led to 235 arrests and the apprehension of 32 other suspected criminals for various crimes including illegal possession of firearms and ammunition, drug offences, murders, shootings, and others. In February 2006, the Commissioner of Police unveiled a further eight-point action plan designed to reduce the country's murder rate by five per cent by the end of 2006. To be included in the strategy was a 'crime hot spot secretariat' in the JCF, to improve the management and analysis of information about serious crimes and ensure deployment of police where they are most needed, and the establishment of a Major Investigation Taskforce (MIT) in Kingston and St Andrew, to improve the JCF's investigation of murders, shootings and other serious crimes.<sup>12</sup>
- 3.6.6** Operation Kingfish has been successful in disrupting major criminal networks and by November 2005 had been credited with disrupting the Gideon Warriors, the One Order and the Klansman gangs in Spanish Town. Operation Kingfish also led to the prosecution of further suspected members of the Jamaican criminal underworld in 2005 and disrupted the 'Spanglers' gang by arresting Donald 'Zekes' Phipps on two counts of murder. In addition, Operation Kingfish has reportedly helped improve the relationship between the police and the community.<sup>13</sup>
- 3.6.7** A Witness Protection Programme is provided for by the Justice Protection Act (Act 23 of 2001). As stated in the Justice Protection Act, it is an 'Act to Establish a programme or assistance to certain witnesses and other persons'. According to the U.S. Department of State, there remained a general lack of public confidence in the programme in 2006, which led to the dismissal of a number of cases involving killings. In a culture in which it is widely believed that 'informers will die' some criminal trials were dismissed in 2006 because witnesses failed to come forward as a result of threats and intimidation. Some of those who came forward qualified for the witness protection programme, but many either refused protection or violated the conditions of the programme. Still, it was reported in June 2007 that nearly 1,500 persons have benefited from the witness protection programme and no witness under government protection has been killed or harmed.<sup>14</sup>
- 3.6.8** The civilian authorities generally maintain effective control of the security forces, but some security service personnel have reportedly committed human rights abuses. While the Government generally respected the human rights of its citizens in 2006, there were some

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<sup>9</sup> COIS Jamaica Country Report 2007 (Human Rights: Crime)

<sup>10</sup> COIS Jamaica Country Report 2007 (Human Rights: Security Forces & Military Service)

<sup>11</sup> COIS Jamaica Country Report 2007 (Human Rights: Crime, Security Forces & Corruption)

<sup>12</sup> COIS Jamaica Country Report 2007 (Human Rights: Security Forces)

<sup>13</sup> COIS Jamaica Country Report 2007 (Human Rights: Security Forces)

<sup>14</sup> COIS Jamaica Country Report 2007 (Human Rights: Security Forces)

reports of unlawful killings committed by the security forces; abuse of detainees and prisoners by police; and impunity for police who committed crimes.<sup>15</sup>

**3.6.9** The Jamaican Government has made efforts to address the problem of police corruption, however. Since its inception in 2005, the Anti-Corruption Division of the JCF's Professional Standards Branch has been pursuing an aggressive anti-corruption drive aimed at ensuring incidents of police misconduct are dealt with promptly and with transparency. Existing as an alternative avenue of complaint, the Police Public Complaints Authority is an independent, non-police agency with the power to investigate allegations of misconduct filed by members of the public against members of the JCF and its Auxiliaries. Investigations are impartial and are conducted by the Authority's Investigative staff, made up solely of civilian employees.<sup>16</sup> For applicants who fear, or who have experienced, ill-treatment as a result of criminal gang violence in Jamaica there is, in the light of the ongoing initiatives by the Jamaican Government, a general sufficiency of protection.

**3.6.10 *Internal relocation.*** Jamaica has an area of 10,991 sq km and an estimated population of 2.8 million. The country is divided into fourteen parishes: Clarendon, Trelawny, Portland, St James, Manchester, St Ann, St Thomas, St Andrew, Kingston, St Catherine, Westmoreland, St Elizabeth, St Mary and Hanover. Jamaica's principal urban areas are the capital Kingston, Spanish Town and Portmore (both in St Catherine parish) and Montego Bay (in St James parish).<sup>17</sup> Gang violence in Jamaica is generally localised and there are known areas of confrontations such as Maxfield Avenue and Tivoli Gardens in Kingston. Parts of the parishes of St Catherine and St Andrew are also regarded as so-called gang 'battle zones'.<sup>18</sup>

**3.6.11** The Jamaican Constitution provides for freedom of movement within the country and in 2006 the Government generally respected this right in practice.<sup>19</sup> It is therefore practicable for applicants who may have a well-founded fear of persecution in one area to relocate to other parts of Jamaica where gang violence is less prevalent and where they would not have a well-founded fear and, except where the circumstances of an individual applicant indicate otherwise, it would not be unduly harsh to expect them to do so.

### **3.6.12 *Caselaw.***

**AB (Jamaica CG) [2007] UKAIT 00018.** The Tribunal found that the authorities in general are willing and able to provide effective protection. However, 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. Whether such a person will be able to achieve protection 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.

**NR (Jamaica) [2005] UKIAT 00008 promulgated 6 January 2005. Gang warfare – Witness – Risk on return.** The Tribunal agreed with the Adjudicator that the police would wish to protect the appellant and were willing and able to apply their resources to protect him, having regard to operational resources and the constraints on the provision of police protection. That is in line with the test in Horvath. The appellant's evidence did not establish that there was a continuing risk to him today, given his minor role in the abortive criminal proceedings against the opposing gang. The appellant's evidence of current risk is too vague to succeed, even in the light of the difficulties which the police have with Jamaican gang warfare.

<sup>15</sup> COIS Jamaica Country Report 2007 (Human Rights: Introduction & Security Forces) & U.S. Department of State report on Human Rights Practices (USSD) 2006: Jamaica (Section 1)

<sup>16</sup> COIS Jamaica Country Report 2007 (Human Rights: Security Forces & Corruption)

<sup>17</sup> COIS Jamaica Country Report 2007 (Background Information: Geography) & DiscoverJamaica.com

<sup>18</sup> COIS Jamaica Country Report 2007 (Human Rights: Crime)

<sup>19</sup> COIS Jamaica Country Report 2007 (Human Rights: Freedom of Movement)

**3.6.13 Conclusion.** General lawlessness, poverty or a lack of access to resources will not, in themselves, be sufficient to warrant the grant of asylum or humanitarian protection. As stated in AB, applicants who fear a criminal gang would firstly need to demonstrate that the gang poses a real and serious threat. It is not sufficient to show that the gang dislikes an individual or that they have made threats of violence. It has to be shown that the criminal gang has a real intent to inflict the threatened serious harm and to carry out its threats. For those who can demonstrate this real intent, but who are likely to be admitted to the Witness Protection Programme, there is a general sufficiency of protection. In AB, the Asylum and Immigration Tribunal (AIT) also found that criminal gangs are very largely concentrated within their own areas or 'turfs', so internal relocation would also, in most cases, be a reasonable option. The AIT found that only high profile cases were at real risk of being detected in a new area. In the light of the findings in AB applications under this category, especially where it is clear that the fear is of a small group of thugs rather than an organised criminal gang, are therefore likely to be clearly unfounded and as such should be certified.

**3.6.14** However, claims by those who fear a serious and specific threat of gang violence on return, particularly where there is evidence that they are an informer or perceived informer, should not be certified as clearly unfounded unless there is evidence that the particular gang feared has been severely disrupted by Operation Kingfish. In AB, the AIT noted that a significant number of persons at risk of reprisals have been able to relocate within Jamaica, without being detected or at least subject to reprisal. Certification may therefore be possible on grounds of sufficient state protection (if the applicant is reasonably likely to be admitted into the Witness Protection Programme) and/or internal relocation, which in most cases is an effective and reasonable way of avoiding the threat. In reaching a conclusion on internal relocation, however, case owners will still need to have established that there is real reason, supported by evidence, to believe that the applicant would not be found by the gang if they relocated internally and that it would not be unduly harsh to expect them to do so. In the case of female applicants, for example, it is unlikely that it could not at least be argued that it would be unduly harsh to expect them to relocate internally and while it may nonetheless be found that internal relocation may be a reasonable option for a woman, claims from women should not be certified on this basis.

### **3.7 Gay men and lesbians**

**3.7.1** Applicants express a fear of return to Jamaica because, as a consequence of their homosexuality or bisexuality, they face societal prejudice, discrimination or violence by members of the public or criminal gangs, and are denied protection against this by the Jamaican authorities.

**3.7.2 Treatment.** Although it is not illegal to be a gay man in Jamaica, the Offences Against Persons Act criminalises homosexual intercourse between men, with a penalty of up to ten years' imprisonment with hard labour. The law also criminalises "acts of gross indecency" between men - in public or in private. Homosexual activity between women is not mentioned in the Offences Against Persons Act.<sup>20</sup>

**3.7.3** In 2006 and 2007, there continued to be reports of police harassment, arbitrary detention, mob attacks, stabbings, harassment of gay patients by hospital and prison staff, and targeted shootings of gay men.<sup>21</sup>

**3.7.4 Sufficiency of protection.** Police often do not investigate human rights abuses against gay men and lesbians. In November 2004, a Human Rights Watch (HRW) report stated that victims of homophobic violence were often afraid to seek police protection for fear that they might be victims of abuse at the hands of the police, due to their sexuality. In response to

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<sup>20</sup> COIS Jamaica Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender persons)

<sup>21</sup> USSD 2006 (Section 5) & COIS Jamaica Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender persons)

the HRW report, however, the Government and the police denied the findings of abuse.<sup>22</sup>

- 3.7.5** No laws protect persons living with HIV/AIDS from discrimination and in 2006, human rights NGOs reported severe stigma and discrimination against this group. During 2006, the ILO worked with the Ministry of Labour on a programme to reduce the stigma of HIV/AIDS in the workplace and to assist employers in designing policies for workers with HIV/AIDS. Still, though health care facilities are prepared to handle patients with HIV/AIDS, health care workers often neglect such patients. AIDS outreach workers have also reported that the possession of condoms can result in police harassment, arrest and criminal charges. The Government has denied that the authorities have been soft on police abuses of gay men and persons affected by HIV/AIDS while the Police Federation has even called for charges to be brought against the human rights organisations that alleged abuses.<sup>23</sup>
- 3.7.6** There are, however, examples of the police investigating crimes against gay men. In May 2006, a court sentenced Dwight Hayden to life imprisonment for the 2004 killing of Brian Williamson, a prominent gay rights activist and founding member of the Jamaica Forum for Lesbians, All Sexuals, and Gays (J-FLAG). Human rights groups believed that the brutality of Williamson's death indicated a hate crime, however, the police maintained that it was a robbery. Another example of police investigation in response to a high-profile murder of a gay rights activist followed the 30 November 2005 murder of prominent HIV/AIDS activist Steve Harvey. The Jamaican authorities arrested and charged six suspects for the robbery and murder of Harvey and charged the same suspects for a similar robbery/murder in which a heterosexual man was killed. Police cited this as evidence that Harvey's murder was not a hate crime, but civil society groups have maintained that Harvey would not have been killed had he been heterosexual.<sup>24</sup>
- 3.7.7** In what was portrayed as a radical shift in attitude by the Jamaican Government, having previously refused point blank to enter into a debate about the law on homosexual acts, in July 2005, a parliamentary committee headed by a junior minister proposed a debate on the issue in the context of the battle against HIV/AIDS.<sup>25</sup> However, in February 2006 the Government stated that there would be no provisions in the proposed Charter of Rights and Freedoms, or otherwise, to decriminalise homosexuality or to pave the way for same-sex marriages.<sup>26</sup>
- 3.7.8** Where a gay man, lesbian or bisexual is able to establish a real risk of persecution or Article 3 treatment, the lack of evidence that there is a sufficiency of protection for gay men, lesbians or bisexuals means that sufficiency of protection cannot be relied upon.
- 3.7.9 *Internal relocation.*** Alleged gay men and lesbians in inner city areas are at particular risk of homophobic violence. The Jamaican Constitution provides for freedom of movement within the country and in 2006 the Government generally respected this right in practice.<sup>27</sup> It is therefore practicable for applicants to relocate to other parts of Jamaica where homophobic violence is less prevalent and where they would not face treatment that would amount to persecution. Whether it would a viable option for them to do so will depend on individual circumstances. For example, there is no evidence that lesbians face serious mistreatment but where they, or bisexual women, do have a localised well-founded fear of mistreatment it will in most cases be possible for them to avoid the threat by moving to a

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<sup>22</sup> USSD 2006 (Section 5) & COIS Jamaica Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender persons)

<sup>23</sup> USSD 2006 (Section 5) & COIS Jamaica Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender persons)

<sup>24</sup> USSD 2006 (Section 5) & COIS Jamaica Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender persons)

<sup>25</sup> The Jamaica Observer: 'New push for gay rights debate-Rhodd's committee wants discussion on legalising homosexuality, prostitution' dated 31 July 2005

<sup>26</sup> COIS Jamaica Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender persons)

<sup>27</sup> COIS Jamaica Country Report 2007 (Human Rights: Lesbian, Gay, Bisexual and Transgender persons & Freedom of Movement)

different part of Jamaica and it may be reasonable for them to do so. Equally, a gay or bisexual man who is habitually 'discreet' about his sexuality but who has a well-founded fear of mistreatment because it has been 'discovered' locally can move to another part of the country where his sexuality is not publicly known and it would not be unduly harsh to expect him to do so. But where a gay or bisexual man would readily be identified as such wherever he lived, internal relocation would not be an option.

### **3.7.10 Caselaw.**

**QBD Admin Court Determination: R (On the application of Garfield Dawkins) v IAT (18/2/2003)** held that the mere fact that Jamaica criminalises homosexual behaviour was not sufficient to require the UK to grant immigration status to all practising homosexuals in Jamaica – the applicant has to either show a breach of Article 3 or show that he would be subject to substantial discrimination and/or violence and abuse.

**DW (Jamaica) [2005] UKAIT 00168: CG (Homosexual Men – Persecution - Sufficiency of Protection).** Men who are perceived to be homosexual 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 homosexual and have not suffered past persecution may be at risk depending on their particular circumstances. The Secretary of State conceded that, as a general rule, the authorities do not provide homosexual men with a sufficiency of protection. There are likely to be difficulties in finding safety through internal relocation but in this respect no general guidance is given.

**3.7.11 Conclusion.** Jamaica is a deeply homophobic society. It is likely that a man who is perceived to be gay will be at risk of homophobic intolerance, harassment and ill-treatment. However, not every gay or bisexual man will be at real risk of treatment that would cross the threshold of persecution or Article 3 treatment. A person is not a refugee solely because the law in their country prohibits certain homosexual acts. The applicant would need to demonstrate that there are strong grounds for believing that they personally would be at risk of treatment that would pass the threshold for persecution or Article 3 ill-treatment. In the words of the AIT in the case of DW above, 'Every case will turn on both credibility and its particular circumstances.'

**3.7.12** Key factors will include the extent to which an individual would be perceived to be gay, for example through dress, behaviour or demeanour, the extent to which he associates with other gay men, whether he is a prostitute, and the extent to which he is perceived to flout what many people in Jamaica regard as the norm of acceptable heterosexual behaviour. The important point here is whether the applicant is perceived to be gay. The AIT also found that wealthy gay men may be tolerated in the social circles in which they move so long as they are not 'openly gay', although men in these circumstances may be susceptible to blackmail.

**3.7.13** A further important consideration will be whether the applicant has been subject to persecution in the past. Although this is not determinative, in the absence of a material change in circumstances, such a history will be strongly indicative of a well-founded fear of future persecution. The absence of such a history does not of itself mean that there will not be a well-founded fear in the future, but it is clearly an important consideration.

**3.7.14** Where a gay or bisexual man is able to establish a real risk of persecution or Article 3 treatment, the lack of evidence that there is a sufficiency of protection for gay men and lesbians means that sufficiency of protection should not be relied upon to refuse such claims. In some cases it may be reasonable to expect an applicant to relocate internally – for example where their lifestyle is discreet but their sexuality has become known locally. But where the factors outlined in paragraph 3.7.12 above mean that the applicant would readily be identified as gay wherever he lived, internal relocation would not be an option. Gay men in Jamaica should be regarded as a particular social group to whom sufficient protection is not available. Therefore, if a gay or bisexual man does have a well-founded fear of mistreatment and he could not avoid the threat by internal relocation or it would be unreasonable for him to do so, a grant of asylum will be appropriate.



- 3.7.15** The fact of being a gay or bisexual Jamaican man will not of itself mean that an applicant would be persecuted, or that the claim may not be certified as clearly unfounded. However, claims from gay or bisexual Jamaican men should not be certified on the basis of sufficiency of protection nor generally should they be certified on the basis of internal relocation. Only if it clearly could not reasonably be argued that an applicant would experience persecution or ill-treatment were he to relocate (e.g. from the inner city to another area), and it is clear that it would not be unduly harsh for him to relocate, should a claim be certified on this basis. Advice should always be sought from a Senior Caseworker before certifying such cases.
- 3.7.16** There is no evidence that lesbians generally face serious ill-treatment in Jamaica and in the absence of evidence to the contrary may be certified as clearly unfounded. Where a lesbian is able to establish a real risk of treatment amounting to persecution or Article 3 treatment, sufficiency of protection cannot be relied upon. Where the well-founded fear is a localised one it may be possible for the applicant to avoid the threat by moving to a different part of Jamaica. However, only if it clearly could not reasonably be argued that an applicant would experience persecution or ill-treatment were she to relocate and it is clear that it would not be unduly harsh for her to do so should a claim be certified on this basis. Where exceptionally it is found that a lesbian does have a well-founded fear of persecution in Jamaica and that she could not avoid the threat by internal relocation or it would be unreasonable for her to do so, as lesbians in Jamaica may be considered to be a particular social group a grant of asylum would be appropriate.

### **3.8 Victims of domestic violence**

- 3.8.1** Some female applicants seek asylum on the grounds that they are the victims of domestic violence and are unable to seek protection from the authorities. Occasionally the applicant will state that the abuser is involved with a criminal gang and that this would also prevent the applicant from gaining protection.
- 3.8.2 *Treatment.*** Social and cultural traditions mean patterns of violence against women persist. Such violence is reportedly widespread but many women are reluctant to acknowledge or report abusive behaviour, leading to wide variations in estimates of its extent. According to reports, 708 women were raped in 2006, but NGOs stressed that the vast majority of rapes were not reported. Moreover, these statistics may be misleading because often a significant decrease may be due to decreased reporting indicative of a lack of confidence in the police.<sup>28</sup>
- 3.8.3 *Sufficiency of protection.*** There is comprehensive legislation against domestic violence in Jamaica and rape, threatening, assaulting, injuring, and wounding are all criminal offences. Reports of the penalties for rape vary from 25 years with hard labour to life. Protection is available to both single and married women.<sup>29</sup>
- 3.8.4** As well as criminal sanctions against abusers, other remedies are available. On December 7 2004, Parliament passed the Domestic Violence (Amendment) Act 2004 which provides for the widening of the categories of persons who may apply for a protection order, to include any person who resides in the respondent's household or who is in a visiting relationship with the respondent. The bill also provides for applications for protection orders to be made by a constable or a person who is given leave to apply by the Court on behalf of a spouse, or other member of the respondent's household or a person who is in a visiting relationship with the respondent, upon the written consent of that person. The bill also provides for maintenance orders to be made in conjunction with protection and occupation orders. The law provides remedies for domestic violence, including restraining orders and other non-custodial sentencing. Breaching a restraining order is punishable by a fine of up to approximately \$166 (J\$10 thousand) and six months' imprisonment.<sup>30</sup>

<sup>28</sup> COIS Jamaica Country Report 2007 (Human Rights: Women)

<sup>29</sup> COIS Jamaica Country Report 2007 (Human Rights: Women) & USSD 2006 (Section 5)

<sup>30</sup> COIS Jamaica Country Report 2007 (Human Rights: Women)

- 3.8.5** In 2006, the JCF rape investigative and juvenile unit, which was headed by a female deputy superintendent, handled sex crimes. Several women's groups, including Women's Media Watch, applauded the December 2005 ratification by parliament of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.<sup>31</sup>
- 3.8.6** Efforts to raise awareness about violence against women continued in 2006. The Government's Bureau of Women's Affairs operated crisis hotlines and shelters and managed a public education campaign to raise the profile of domestic violence. There was also an active community of women's rights groups, including Women's Media Watch, the Women's Political Caucus, the St. Peter Claver Women's Housing Cooperative, the Women's Construction Collective, the Sistren Theatre Collective, Woman Inc., and the Centre for Gender and Development Studies at the University of the West Indies. Among the major concerns of these groups was the protection of victims of sexual abuse, participation of women in the political process, and legislative reforms affecting women.<sup>32</sup>
- 3.8.7** The Centre for Sexual Offences and Child Abuse (CISOCA), set up by the JCF in 1989, also has centres established in every parish central police station across the island. Staff members have received special training in dealing with survivors of sexual assault, however, the investigating officer is usually a police officer from the region in which the crime was committed, who may not have received specialist training in sexual assault investigations.<sup>33</sup>
- 3.8.8** In light of the above there is a general sufficiency of protection available to victims of domestic violence through enforcement of legislative provisions and availability of governmental and non-governmental shelters, advice, and legal aid and counselling. There is no evidence to suggest that the involvement of the abuser with a criminal gang would prevent the applicant from gaining protection although consideration needs to be given to the individual circumstances of an applicant's claim.
- 3.8.9 *Internal relocation.*** The Jamaican Constitution provides for freedom of movement within the country and in 2006 the Government generally respected this right in practice.<sup>34</sup> It is therefore practicable for applicants to relocate to other parts of Jamaica to escape domestic violence and except where the circumstances of an individual applicant indicate otherwise, it would not be unduly harsh to expect them to do so.
- 3.8.10 *Conclusion.*** Domestic violence is widespread in Jamaica but there is in general sufficient protection and internal relocation is also an option where in the particular circumstances of the applicant it is not considered unduly harsh for them to relocate. The grant of asylum or Humanitarian Protection is unlikely therefore to be appropriate and unless there are specific reasons why sufficient protection would not be available to the individual applicant and why it would be unduly harsh to expect them to relocate internally, such claims may be certified as clearly unfounded.

### **3.9 Prison conditions**

- 3.9.1** Applicants may claim that they cannot return to Jamaica due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Jamaica are so poor as to amount to torture or inhuman treatment or punishment.
- 3.9.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be

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<sup>31</sup> COIS Jamaica Country Report 2007 (Human Rights: Women)

<sup>32</sup> COIS Jamaica Country Report 2007 (Human Rights: Women)

<sup>33</sup> COIS Jamaica Country Report 2007 (Human Rights: Women)

<sup>34</sup> COIS Jamaica Country Report 2007 (Human Rights: Freedom of Movement)

considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

- 3.9.3 *Consideration.*** According to the U.S. Department of State, prison conditions remained poor in 2006, primarily due to overcrowding and poor sanitary conditions. The Department of Correctional Services took measures during 2006 to improve catering services and also entered into a new contract for insect and rodent control for all facilities. Medical care was reportedly poor; primarily a result of having few doctors on staff.<sup>35</sup>
- 3.9.4** The U.S. Department of State reported that men and women were incarcerated in separate facilities under similar conditions in 2006, except that women's prisons were generally not overcrowded. Although the law prohibits the incarceration of children in adult prisons, some juveniles were held with adults. The majority of pre-trial detainees were held in police custody, either in police stations or in remand centres, generally separate from convicted prisoners.<sup>36</sup>
- 3.9.5** When prisoners raise allegations of abuse by correctional officers, the charges are first reviewed by corrections officials, then by an inspector from the Ministry of National Security, and finally by the police. Authorities file charges against correctional officers for abuse if evidence is found to support the allegations. In 2006, the Government reportedly allowed private groups, voluntary and religious organizations, local and international human rights organizations, and the media to visit prisons and monitor prison conditions.<sup>37</sup>
- 3.9.6** Male inmates deemed by prison wardens to be gay are held in a separate facility for their protection. The method used for determining their sexual orientation is reportedly subjective and not regulated by the prison system, although inmates often admit their homosexuality for their own safety. There were numerous reports of violence against gay inmates during 2006, perpetrated both by the wardens and by other inmates, but few inmates sought recourse through the prison system.<sup>38</sup>
- 3.9.7 *Conclusion.*** Whilst prison conditions in Jamaica are poor with overcrowding and poor basic facilities being particular problems, conditions are unlikely to reach the Article 3 threshold. Therefore, even where applicants can demonstrate a real risk of imprisonment on return to Jamaica a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

### **3.10 Death penalty**

- 3.10.1** Jamaica retains the death penalty but this has not been implemented since 1988. A court ruling in 1993 held that keeping prisoners on death row for more than five years was inhumane and that their sentences should be commuted to life imprisonment. The Jamaican Government has contended that it is not possible to complete the appeal process against a murder conviction within that five-year time frame.<sup>39</sup>
- 3.10.2** A 1992 amendment to the Offences Against the Person Act paved the way for two categories of murder - capital murder, which attracts the death penalty and non-capital murder for which the sentence is life imprisonment. On 7 July 2004, the London-based Privy Council won a reprieve for more than 60 prisoners on death row after finding that the 1992

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<sup>35</sup> COIS Jamaica Country Report 2007 (Human Rights: Prison Conditions)

<sup>36</sup> COIS Jamaica Country Report 2007 (Human Rights: Prison Conditions)

<sup>37</sup> USSD 2006 (Section 1)

<sup>38</sup> COIS Jamaica Country Report 2007 (Human Rights: Prison Conditions)

<sup>39</sup> COIS Jamaica Country Report 2007 (Human Rights: Death Penalty)

Offences Against the Persons Act was inconsistent with section 17(1) of Jamaica's Constitution. As of February 2005, there were more than 29 prisoners on death row.<sup>40</sup>

**3.10.3 Conclusion.** Case owners should consider applications made on the grounds that the applicant would face the death penalty if returned to Jamaica in accordance with the Asylum Instructions on Humanitarian Protection. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Humanitarian Protection.

#### **4. Discretionary Leave**

**4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

**4.2** With particular reference to Jamaica the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should not imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.

#### **4.3 Minors claiming in their own right**

**4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Jamaica.

**4.3.2 Conclusion.** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favorable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

#### **4.4 Medical treatment**

**4.4.1** Applicants may claim they cannot return to Jamaica due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

**4.4.2** The Jamaican health system offers primary, secondary and tertiary care. The Government also operates a National Health Insurance Programme (NHIP) which is a contributory health financing plan aimed at covering all residents of Jamaica for a necessary medical services. It is designed to assist individuals and families in meeting the costs of health care without suffering financial distress and to provide dedicated resources for enhancing the availability and quality of health services. It is a critical component of the overall Health Reform Programme currently being implemented to improve the delivery, management and financing of health services. Treatments for a wide range of conditions including HIV/AIDS, cardiac disease and mental health are generally available in Jamaica.<sup>41</sup>

**4.4.3** Where a case owner considers that the circumstances of the individual applicant and the

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<sup>40</sup> COIS Jamaica Country Report 2007 (Human Rights: Death Penalty)

<sup>41</sup> COIS Jamaica Country Report 2007 (Human Rights: Medical Issues)

situation in Jamaica reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## **5. Returns**

**5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

**5.2** Jamaican nationals may return voluntarily to any region of Jamaica at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the Border and Immigration Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Jamaica. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Jamaican nationals wishing to avail themselves of this opportunity for assisted return to Jamaica should be put in contact with the IOM offices in London on 0800 783 2332 or [www.iomlondon.org](http://www.iomlondon.org).

## **6. List of source documents**

- Home Office COI Service Jamaica Country of Origin Information Report 2007 (dated 8 November 2007). [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- U.S. Department of State report on Human Rights Practices (USSD) 2006 (released on 6 March 2007). <http://www.state.gov/g/drl/rls/hrrpt/2006/78897.htm>
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