



OPERATIONAL GUIDANCE NOTE

JAMAICA

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1. Introduction

- 1.1** This document provides UK Border Agency caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Jamaica, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseowners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 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 Instruction 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.

2. Country assessment

2.1 Caseowners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

2.2 An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010>

2.3 Actors of protection

2.3.1 Case owners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

2.3.2 The Jamaica Constabulary Force (JCF) has primary responsibility for internal security and is assisted by the Island Special Constabulary Force (ISCF). The Jamaica Defence Force (JDF) 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 unless so ordered by the Prime Minister. The Jamaica Regiment (JDF infantry forces) was detached as part of a joint internal security operation to assist the JCF in patrolling certain communities. The Ministry of National Security oversees the JCF and the JDF.¹

2.3.3 The Jamaican crime statistics show that in 2010 there were 1,428 murders – 15% reduction on 2009 when 1,682 murders were reported. Reported cases of shooting were down 10 per cent in 2010, when compared to 2009; rape declined by 4 per cent; carnal abuse was down 7 per cent; robbery declined by 6 per cent; break-ins were down 1 per cent and larceny declined by 30 per cent. Some 685 firearms were recovered in 2010, as against 569 in 2009, while 35,488 rounds of ammunition were recovered, as against 6,068 rounds in 2009.²

2.3.4 The Jamaica Constabulary Force (JCF) attributes the reduction in crime to enhanced crime fighting measures which have been introduced. The JCF reported a 36 per cent increase in operations in 2010, compared to 2009. From January to October 2010, a total of 6,628 operations were conducted as against 4,752 in 2009.³

2.3.5 Some of the major operations which were conducted included mobile patrols, with a 16 per cent increase. Some 253,856 patrols were conducted up to October 2010, as against 218,390 for the similar period in 2009. Foot patrols accounted for 43,846 in 2010, as against

¹ COIS Jamaica Country Report December 2009 (Human Rights: Security Forces & Military Service) & U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011)

² Caribbean Press Releases 'Jamaica: Reduction in major crimes in 2010': 6 January 2011

³ Caribbean Press Releases 'Jamaica: Reduction in major crimes in 2010': 6 January 2011

41,971 in 2009, a 4 per cent increase. Spot checks also increased with 177,777 in 2010, as against 104,904 in 2009.⁴

- 2.3.6** Motor cycle patrols, raids and searches also increased. There were 43,548 motor cycle patrols, an increase of 33 per cent over the 32,704 conducted in 2009. The police reported that a total of 114,484 raids were conducted as against 46,737 in 2009, an increase of 67,747. The police reported 68 curfews, as against 4 in 2009.⁵
- 2.3.7** There was also a significant increase in arrests and charges during the operations conducted in 2010. Approximately 38,475 persons were arrested and charged during those operations, as against 29,515 in 2009, a difference of 8,910.⁶
- 2.3.8** The JCF Anti-Corruption Branch, headed by a British police officer hired as assistant commissioner of police, has responsibility for addressing corruption in the force, and improvements have been noted. However, suspicions of corruption and impunity within the force remained, despite a notable increase in the number of arrests of officers for corruption.⁷
- 2.3.9** In January 2010 the JCF began implementing a three year anti-corruption strategy aimed at restoring public safety and confidence.⁸ In 2010, the Jamaica Constabulary Force (JCF) handled 397 disciplinary cases involving its members. The police statistics showed that 17 were convicted on criminal charges while 13 police personnel were retired in the public interest. Fourteen were demoted and 38 were reprimanded but 141 were allowed to re-enlist. The Police Commissioner is reported as saying that the number of disciplinary actions initiated by the force is a clear sign that it is serious about weeding out corrupt and unprofessional members.⁹
- 2.3.10** It is reported that the JCF's Bureau of Special Investigations (BSI) investigate all police killings, and when appropriate, forwarded some to the Director of Public Prosecutions (DPP) for prosecution. The BSI completed 308 investigations during the year and sent 291 to the DPP for further consideration. However, it takes many years to bring police officers to trial for unlawful killings. Although there was progress during the year in bringing some cases to trial, there were no convictions, and no police officer accused of human rights violations has been convicted since 2006.¹⁰ In August 2010 the government created an Independent Commission of Investigations (INDECOM), with the power to take over and direct BSI investigations.¹¹
- 2.3.11** Despite these efforts, Amnesty International reports that around 12 per cent of all killings are attributed to the police each year, but convictions of police officers for unlawful killings are extremely rare. In the past 10 years, only four police officers have been convicted for their involvement in killings out of a total of more than 1,900 reports of fatal shootings.¹²
- 2.3.12** In a visit to Jamaica in 2010, the UN Special Rapporteur on torture expressed concern that "many investigations are not prompt or effective, and that prosecutions in cases involving the security forces are rare".¹³ Similarly, the Inter-American Commission on Human Rights (IACHR), highlighted "the high number of cases of civilians being shot by the police and the lack of accountability in many of these cases have contributed to a situation of impunity that

⁴ Caribbean Press Releases 'Jamaica: Reduction in major crimes in 2010': 6 January 2011

⁵ Caribbean Press Releases 'Jamaica: Reduction in major crimes in 2010': 6 January 2011

⁶ Caribbean Press Releases 'Jamaica: Reduction in major crimes in 2010': 6 January 2011

⁷ U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011

⁸ Caribbean Press Releases 'Jamaica: Reduction in major crimes in 2010': 6 January 2011

⁹ Jamaica Gleaner. 'Jamaica Constabulary Force disciplines almost 400 cops in 2010' 10 January 2011

¹⁰ U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011

¹¹ U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011

¹² Amnesty International, Jamaica: Submission to the UN Universal Periodic Review: Ninth session of the UPR Working Group of the Human Rights Council, November-December 2010, 19/04/2010 section C. Promotion and protection of human rights on the ground

¹³ Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, on his mission to Jamaica, 11/10/2010 para 35

undermined the credibility of the police and the confidence of the public". The IACHR also noted that this had "caused individuals to refrain from pursuing a legal remedy before the courts" making it difficult to obtain witness testimony for criminal trials.¹⁴

- 2.3.13** Amnesty International also documented reprisal killings of women, whose family members were involved in gang violence or who themselves were believed to be so-called informers.¹⁵ It noted that women and girls in inner-city communities are "often victims of reprisal crimes, including sexual violence, for being perceived as having reported or actually reporting criminal activity to the police, or in relation to a personal or family vendetta."¹⁶
- 2.3.14** A Witness Protection Programme is provided for by the Justice Protection Act (Act 23 of 2001). The U.S. Department of State has reported that some criminal trials were dismissed because witnesses failed to come forward as a result of threats, intimidation, or murder. Some of those who came forward qualified for the witness protection program, but many either refused protection or violated the conditions of the program. According to the JCF, no participant in the witness protection program who abided by the rules of the program has ever been killed.¹⁷
- 2.3.15** Following a mission to Jamaica in 2008, the IACHR reported "severe deficiencies in the criminal justice process, ranging from the inability to assure witness protection to extended delays in criminal cases".¹⁸ The Assistant Commissioner of Police, Owen Ellington, also stated in 2008 that "the protection of witnesses is being breached by the practice of accused criminals who gain access to sensitive witness information"¹⁹. In January 2011 Ellington further stated that the guidelines governing the operations of the Witness Protection Programme were not being properly followed by police personnel and this "resulted in delays in the processing of witnesses waiting to be placed on the programme as well as to the programme itself".²⁰

2.4 Internal relocation.

- 2.4.1** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.4.2** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-

¹⁴ Office of the United Nations High Commissioner for Human Rights (OHCHR), Universal Periodic Review - Jamaica: Summary of stakeholders' information, 10/08/2010 para 22

¹⁵ Amnesty International, 'Let them kill each other': Public security in Jamaica's inner cities, April 2008, chapter 3: Living with violence in the intercity, and Amnesty International, Sexual Violence against Women and Girls in Jamaica: "just a little sex", 22/06/2006, Guns gangs and rising levels of violence.

¹⁶ Amnesty International, Jamaica: Submission to the UN Universal Periodic Review: Ninth session of the UPR Working Group of the Human Rights Council, November-December 2010,, Violence against women and girls.

¹⁷ U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011

¹⁸ Inter-American Commission on Human Rights (IACHR), IACHR Issues Preliminary Observations on Visit to Jamaica, 05/12/2008, section, *Administration of Justice*

¹⁹ Jamaica Gleaner, Witnesses exposed - Protection being breached as case files change hands, 11/07/2008

²⁰ Jamaica Observer, 'Cops not observing rules of Witness Protection Programme', 29/01/2011

treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

2.4.3 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).²¹

2.4.4 The law provides for freedom of movement within the country.²² It may be practicable for applicants who may have a well-founded fear of persecution in one area to relocate to other parts of Jamaica where they would not have a well-founded fear and, taking into account their personal circumstances, it would not be unduly harsh to expect them to do so.

2.5 Country guidance 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.

McPherson v Secretary Of State for Home Department [2001] EWCA Civ 1955 (19 December 2001). The Court of Appeal held in the case of a woman from Jamaica fleeing domestic violence that remedies against domestic violence in the country of return must be "practical and effective" if state protection is considered to be in place, with the resources and attitude of the police to domestic violence as relevant as the fact that, as a matter of law, domestic violence was criminalized and civil remedies were also available.

DW (Homosexual Men; Persecution; Sufficiency of Protection) Jamaica CG [2005] UKAIT 00168 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 was given.

HJ (Iran) v Secretary of State for the Home Department (Rev 1) [2010] UKSC 31

In this case, the Supreme Court established the test which should be applied when assessing a claim based on fear of persecution because of an applicant's sexual orientation which is as follows:

- (i) Is the applicant gay or someone who would be treated as gay by potential persecutors in the country of origin?
- (ii) If yes, would gay people who live openly be liable to persecution in that country of origin?
- (iii) How would the applicant behave on return? If the applicant would live openly and be exposed to a real risk of persecution, he has a well-founded fear of persecution even if he could avoid the risk by living discreetly.
- (iv) If the applicant would live discreetly, why would he live discreetly? If the applicant would live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee.

3. Main categories of claims

²¹ COIS Jamaica Country Report December 2009 (Background Information: Geography)

²² COIS Jamaica Country Report December 2009 (Freedom of Movement)

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Jamaica. 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 Policy Instruction on considering the protection (asylum) claim and assessing credibility).
- 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** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

3.5 Credibility

- 3.5.1** 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 Policy Instruction on considering the protection (asylum) claim and assessing credibility. Caseowners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Criminal gang violence

- 3.6.1** Applicants may 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
- 3.6.2** **Treatment.** Jamaica has extremely high rates of violent crime and high rates of gang-related violence fuelled by money from drugs which remains a major challenge to Jamaican stability, and has direct links to crime in the UK.²³
- 3.6.3** The JCF reported a 36 per cent increase in operations in 2010, compared to 2009. From January to October 2010, a total of 6,628 operations were conducted as against 4,752 in 2009. The Jamaican crime statistics show that in 2010 there were 1,428 murders – 15% reduction on 2009 when a record 1,682 murders were reported. Reported cases of shooting were down 10 per cent in 2010, when compared to 2009; and some 685 firearms were recovered in 2010, as against 569 in 2009, while 35,488 rounds of ammunition were

²³ FCO Jamaica country profile

recovered, as against 6,068 rounds in 2009.²⁴

- 3.6.4** At least 120 criminal gangs are thought to be active and responsible for 80 per cent of all major crimes in the country. Most victims of violent crime live in deprived and excluded inner-city areas where unemployment rates are high and access to basic services – water, electricity and security of housing tenure – are often poor. Criminal gangs not only control communities through fear and violence, they also control access to what few services are available. Many are “garrison communities” where the ruling gangs have for years flourished under the patronage of one or other of the political parties. Gang violence and shootings are usually concentrated in inner city neighbourhoods, including West Kingston, Grant’s Pen, August Town, Harbour View, Spanish Town and certain parts of Montego Bay. Public order incidents and demonstrations, sometimes violent, can occur in Kingston, Spanish Town and Montego Bay.²⁵
- 3.6.5** Some neighbourhoods have been neglected by the state for years, and many have effectively become the fiefdoms of gang leaders. This was evident in the case of suspected Jamaican drug lord Christopher “Dudus” Coke. According to the US authorities, Coke stepped into his father’s shoes, running the Shower Posse and developing extensive business interests, including an entertainment company and a construction company. He allegedly enjoyed substantial protection from the ruling JLP and Prime Minister Bruce Golding, whose parliamentary constituency is Tivoli Gardens, a West Kingston district that the Shower Posse controls. Coke has many supporters in his West Kingston stronghold. When the Jamaican government bowed to heavy US pressure and announced in May 2010 that it would extradite Coke, the Shower Posse and his supporters attacked police stations in Tivoli Gardens. Despite the military assault on Tivoli Gardens, Coke was able to escape. The assault prompted the declaration of a state of emergency in Kingston and the biggest mobilisation of the security forces in Jamaican history. Hundreds of soldiers were deployed to help the capital’s police force sweep through Tivoli Gardens and surrounding areas in search of Coke. The troops fought pitched battles for several days with heavily-armed gunmen, who barricaded the streets. Thousands of people were trapped in the area and the clashes resulted in the deaths of more than 70 people. Despite the assault, Coke was able to escape and went on the run. He was eventually arrested nearly four weeks later by policemen “acting on intelligence” at a vehicle checkpoint on the outskirts of Kingston.²⁶
- 3.6.6** Operation Kingfish was launched in 2004 as a counter narcotics and major crimes investigation task force. Operation Kingfish is a joint programme including members of the Jamaica Constabulary Force (JCF), the Jamaica Defence Force (JDF) and law enforcement agencies in the United Kingdom and the United States of America. The broad objective of Operation Kingfish is the dismantling of organised criminal groups, their leaders and their associates who are destroying communities with drugs, guns and extortion.²⁷
- 3.6.7** The JCF continued a community policing initiative to address the long-standing antipathy between the security forces and many poor inner-city neighbourhoods. Through a recently established Community Safety and Security Branch, the JCF conducted targeted training of 200 officers in 38 communities, trained community safety officers, and assigned JCF officers to targeted schools as resource officers to stop school violence. These officers also served as liaisons between the students, faculty, parents, and police. The government bolstered these efforts through public education and by nominating deputy divisional commanders with responsibility to introduce community policing to all the communities within their division.²⁸
- 3.6.8** The JCF’s website states that Operation Kingfish is the dismantling of organised crime groups, their leaders and their associates who are destroying communities with drugs, guns

²⁴ Caribbean Press Releases ‘Jamaica: Reduction in major crimes in 2010’: 6 January 2011

²⁵ Jamaica Observer 8 January 2010 – Jamaica Records Highest Ever Murder Rate in 2009, Amnesty International July 2009 – Public Security Reforms and Human Rights in Jamaica, Freedom in the World – Jamaica 2010 and Home Office COI Service (COIS) Jamaica Country of Origin Information Report Jamaica 24 December 2009

²⁶ BBC News-Profile: Christopher ‘Dudus’ Coke – 23 June 2010

²⁷ COIS Jamaica Country Report December 2009 (Human Rights: Security Forces – Operation Kingfish)

²⁸ U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011

and extortion. According to the Minister of National Security, Derrick Smith, Operation Kingfish was praised as being one of the most successful and celebrated national security projects ever introduced in the country. Since its inception they have received more than 2000 actionable calls and have mounted more than 2000 operations leading to the recovery of nearly 300 firearms and in excess of 21,000 rounds of ammunition, 567 arrests, the seizure of thousands of pounds of drugs and some 100 wanted persons have been apprehended. For the period January to September 2009, Operation Kingfish carried out 607 operations and firearms, drugs and ammunition were seized. Mr Smith also commended the task force on its highly successful prosecution rate, noted that the organisation has not lost a single case in court.²⁹

- 3.6.9** However according to Amnesty International the JCF has not only failed to protect people from violent crime, it has contributed to the public security problem. A large number of people are killed by the police every year. In many cases the available evidence indicates that fatal shootings were probably the result of excessive use of force and some may have amounted to extrajudicial executions. Amnesty International goes on to say that flawed investigations, corruption and a failing justice system have contributed towards police impunity.³⁰

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

- 3.6.10 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. Claimants who fear a criminal gang who are able to demonstrate that the gang poses a real and serious threat may be at risk of persecution in Jamaica. Unless reasonably likely to be admitted into the Witness Protection Programme, a person targeted by an organised criminal gang will not normally receive effective protection in his home area.
- 3.6.11** It may be 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, taking into account their personal circumstances, it would not be unduly harsh to expect them to do so.
- 3.6.12** Criminal gangs are very largely concentrated within their own areas or 'turfs', so internal relocation would, in most cases, be a reasonable option. Only high profile cases are likely to be at real risk of being detected in a new area. However, it is important that case owners refer to the most up to date country information to ascertain whether, in the circumstances prevailing at the time the decision is made and according to the individual profile of the claimant, effective protection is available and whether internal relocation would not be unduly harsh.
- 3.6.13** Claims, especially those where it is clear that the fear is of a small group of thugs rather than an organised criminal gang, and where it is found that the individual can internally relocate to avoid any threat are 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 Tribunal 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 if the applicant cannot establish an arguable case that he or she cannot access effective state protection and/or internally relocate. However, if an applicant who is at risk of reprisals demonstrates an arguable case that there is a reasonable degree of likelihood that

²⁹ COIS Jamaica Country Report December 2009 (Human Rights: Security Forces – Operation Kingfish)

³⁰ Amnesty International July 2009: Public Security Reforms and Human Rights in Jamaica

he or she will not be admitted into the Witness Protection Programme, he or she will arguably not be able to access state protection and certification should not occur. Further, in reaching a conclusion on internal relocation, case owners will still need to consider if the applicant has established that there is arguably a reasonable degree of likelihood that he or she would be found by the gang if they relocated internally and that it would not be unduly harsh to expect them to do so.

3.6.15 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. Likewise if a man establishes that there is a reasonable degree of likelihood that internal relocation is not a reasonable option, his case should not be certified on this basis.

3.7 Gay men, lesbians, bisexual and transgender persons

3.7.1 Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution as gay men, lesbians, bisexual or transgender persons in Jamaica.

3.7.2 *Treatment.* Although it is not illegal to be a gay man in Jamaica, the Offences Against Persons Act prohibits “acts of gross indecency” between men, in public or in private, which are punishable by ten years in prison. No laws target lesbians or lesbian conduct.³¹

3.7.3 Jamaica has a reputation for having an aggressive homophobic culture on top of its extremely high crime and murder rate. The Jamaican Forum for Lesbians, All Sexuals, and Gays (J-FLAG) continue to report human rights abuses including arbitrary detention, mob attacks, stabbings, harassment of gay patients by hospital and prison staff and targeted shootings of gay men. According to J-FLAG, the police often do not investigate such incidents. During 2010, J-FLAG received 43 reports of sexually motivated harassment or abuse, which included 26 cases of attempted or actual assault, including three murders and three cases of rape. This violence creates a climate of fear that has prompted many gay persons to emigrate, while the gross indecency laws leave those who remain vulnerable to extortion from neighbours who threaten to report them to the police unless they were paid off. Amnesty International has also identified gay men as a marginalized group that are targeted for extreme harassment and violence.³²

3.7.4 Numerous sources document the fact that a large proportion of the Jamaican police force is homophobic. Reports published in 2008 from Human Rights Watch and Jane’s Sentinel note that police officers have been actively involved in violence against lesbians and gay men.³³ Human Rights Watch also noted that “... gay men are targeted for extortion by both police and private individuals. Due to fear that their homosexuality might be publicised, the paucity of available legal assistance, and the possibility of being prosecuted, gay men are unlikely to formally report the extortion. The report also stated that Jamaica’s sodomy laws and discrimination by health care workers impede access to health care for gay men and lesbians.”³⁴

3.7.5 The Executive Director of J-Flag, has stated that around 40 cases of physical assaults against LGBT people are reported to J-Flag on an annual basis, including rapes of lesbians³⁵. The Jamaican LGBTI, Sex Workers and PLWHIV Coalition also documented

³¹ COIS Jamaica County Report December 2009 – Lesbian, Gay, Bisexual and Transgender (LGBT) Persons AND USSD 2009 (Societal Abuses....)

³² U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011 and Freedom House: Freedom in the World – Jamaica 2010

³³ COIS Jamaica County Report December 2009 – Lesbian, Gay, Bisexual and Transgender (LGBT) Persons & U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011

³⁴ COIS Jamaica County Report December 2009 – Lesbian, Gay, Bisexual and Transgender (LGBT) Persons & U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011

³⁵ Immigration and Refugee Board of Canada, Jamaica: How police treat complaints made by lesbian, gay, bisexual, and transgender (LGBT) people (2007 - 2010), 10/12/2010.

cases of rape of lesbians, where the women subsequently did not report the act to the police for “fear of further victimisation by the police”.³⁶

See also: [Actors of protection](#) (section 2.3 above)
[Internal relocation](#) (section 2.4 above)
[Caselaw](#) (section 2.5 above)

- 3.7.6 Conclusion.** Case owners must refer to the Asylum Instruction on sexual orientation and gender identity in the asylum claim.
- 3.7.7** In general the Jamaican authorities do not provide gay men, lesbians and bisexuals or those perceived as such with effective protection. There are also likely to be difficulties in finding safety through internal relocation. The law provides for freedom of movement within the country and Government generally respects this right in practice.³⁷ However, in the case of *DW (Homosexual Men; Persecution; Sufficiency of Protection)*, it was found that in a country like Jamaica, where homophobic attitudes are prevalent across the country, it would be unduly harsh to expect a gay man or someone who is perceived as such to relocate. In addition, the Supreme Court in the case of *HJ (Iran)* made the point that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.
- 3.7.8** If there is a real risk that a gay man, lesbian or bisexual sexual relationship or those perceived as such, has, or will, become known, the applicant would on return to Jamaica face a real risk of discrimination and violence by members of the public or criminal gangs, to the extent that this would amount to persecution. As gay men, lesbians and bisexuals in Jamaica may be considered to be members of a particular social group, they should be granted asylum.
- 3.7.9** However, if an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation.
- 3.7.10** If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well founded fear of persecution due to their sexual orientation.

3.8 Victims of domestic violence

- 3.8.1** Some female applicants may 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 may 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 perpetuate violence against women, including spousal abuse. Violence against women is widespread but many women are reluctant to acknowledge or report abusive behaviour, leading to wide variations in estimates of its extent. Amnesty International, expressed concern “at the high incidence of sexual violence against women and girls in Jamaica”³⁸ and noted that a study on the relationship between adolescent pregnancy and sexual violence showed that “49 per cent of the 750 girls aged

³⁶ LGBTI, Sex Workers and PLWHIV Coalition (Jamaica), Submission by stakeholder LGBTI, Sex Workers and PLWHIV Coalition for the United Nations Universal Periodic Review of Jamaica, 03/09/2010, section III, para. 10 ii.

³⁷ COIS Jamaica Country Report December 2009 (Freedom of Movement)

³⁸ Amnesty International, Jamaica: Submission to the UN Universal Periodic Review: Ninth session of the UPR Working Group of the Human Rights Council, November-December 2010, 19/04/2010, section C, Violence against women and girls.

between 15 and 17 surveyed had experienced sexual coercion or violence”.³⁹

- 3.8.3** There is comprehensive legislation against domestic violence in Jamaica and threatening; assaulting, injuring, and wounding are all criminal offences. Rape is illegal and carries a penalty of up to 25 years imprisonment.
- 3.8.4** As well as criminal sanctions against abusers, other remedies are available. The Domestic Violence (Amendment) Act 2004 widened 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 Act 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 Act 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 ten thousand Jamaican dollars and six months’ imprisonment.⁴⁰
- 3.8.5** The Sexual Offences Act 2009 reforms and incorporates various laws relating to rape, incest and other sexual offences. Although women’s organisations welcomed the Act, they also expressed concerns about the restrictive definition of rape. The Act criminalises rape within marriage, but only in certain circumstances.⁴¹ The Jamaican crime statistics show that in 2010 there were 1,650 cases of reported rape – a reduction of 4% on the previous year.⁴²
- 3.8.6** The Bureau of Women’s Affairs (BWA) is responsible for catalysing government efforts in addressing women’s problems faced by women, such as employment, domestic violence, rape and sexual harassment. The Bureau also aims to help women achieve their full potential in Jamaica’s social, cultural and economic areas. The BWA also operates a crisis hotline and manages a public education campaign to raise the profile of domestic violence and the NGO Woman Inc. operated a shelter that receives some government funding. There is 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 were the protection of victims of sexual abuse, participation of women in the political process and legislative reforms affecting women.⁴³
- 3.8.7** The Women’s Media Watch (WMW), in collaboration with the BWA is spearheading a comprehensive and innovative project with the long-term vision of reducing gender based violence in Jamaica. The project focuses specifically on domestic violence, sexual violence and sexual harassment. WMW has trained media workers, teachers, counsellors, trainers and community leaders on the relevant national policies, laws, and UN conventions which speak to violence against women, in an effort to reduce the tolerance of violence against women within these communities. WMW has implemented a public education and awareness raising campaign on gender and violence using the media, public forums, magazines, and the internet to disseminate its message. In addition to this, they have created and published innovative training materials on gender based violence.⁴⁴
- 3.8.8** Other sources highlight the lack of implementation of legislation and that state protection is not effective (see also section 3.6 on criminal gang violence). Amnesty International

³⁹ Amnesty International, Amnesty International Report 2010: Jamaica, 27/05/2010.

⁴⁰ COIS Jamaica Country Report December 2009 (Human Rights: Women) & USSD 2009: Jamaica

⁴¹ U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011 and Amnesty International – Jamaica: Submission to the UN Universal Periodic Review – December 2010

⁴² Caribbean Press Releases ‘Jamaica: Reduction in major crimes in 2010’: 6 January 2011

⁴³ COIS Jamaica Country Report December 2009 (Human Rights: Women) & U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011

⁴⁴ COIS Jamaica Country Report December 2009 (Human Rights: Women)

recommended the effective application of the law [particularly the Sexual Offences Act] by all relevant authorities and the “satisfactory investigation and prosecution of cases of gender-based violence”. The UN Working Group on the Universal Periodic Review on Jamaica urged the Jamaican government to “Step up the implementation of legislative, policy and administrative measures aimed at combating gender-based violence”⁴⁵ and recommended the establishment “within the Police Service [of] a domestic violence and victims support unit.”⁴⁶ The UN Special Rapporteur on Torture highlighted the absence of a national plan of action to combat domestic violence and concluded that the “effectiveness of the enforcement mechanisms” to address domestic and gender-based violence “remains unclear”.⁴⁷

3.8.9 Similarly, it also appears that inadequate shelters exist to accommodate victims of domestic violence as Amnesty International urged the Jamaican government to “ensure the immediate establishment of more shelters for women victims of physical and sexual violence” and noted that “there is currently only one shelter located in Kingston”, Jamaica’s capital.⁴⁸ The UN Working Group on the Universal Periodic Review on Jamaica also recommended that more shelters be established as a matter of priority.⁴⁹

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

3.8.10 Conclusion. Case owners must refer to the Asylum Policy Instructions on gender.

3.8.11 The effectiveness of protection available to victims of domestic violence through the enforcement of legislative provisions and the availability of access to shelters and assistance will need to be considered in the context of the individual circumstances of the applicant.

3.8.12 Domestic violence is widespread in Jamaica. While protection can be effective in individual cases and internal relocation can be an option for those facing domestic violence, the grant of asylum or Humanitarian Protection may be appropriate where there are specific reasons why effective protection would not be available to the individual applicant or where it would be unduly harsh to expect them to relocate internally.

3.8.13 While it is generally possible for applicants to relocate to other parts of Jamaica to escape domestic violence, the personal circumstances of an individual applicant should be taken into account when assessing whether it would not be unduly harsh to expect them to internally relocate.

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

⁴⁵ Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Working Group on the Universal Periodic Review on Jamaica, 04/01/2011, section II, paras. 99.28 and 99.29.

⁴⁶ Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Working Group on the Universal Periodic Review on Jamaica, 04/01/2011, section II, para. 99.26.

⁴⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, on his mission to Jamaica, 11/10/2010, section V, A, para. 75.

⁴⁸ Amnesty International, Jamaica: Submission to the UN Universal Periodic Review: Ninth session of the UPR Working Group of the Human Rights Council, November-December 2010, 19/04/2010, section C. Violence against women and girls and section D. Recommendations for action by the State under review.

⁴⁹ Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Working Group on the Universal Periodic Review on Jamaica, 04/01/2011, section II, para. 99.27.

Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

- 3.9.3 Consideration.** Prison conditions remained poor, primarily due to overcrowding and poor sanitation. For example, at the end of 2010, Tower Street Adult Correctional Centre, in Kingston housed approximately 1,600 inmates, nearly double the capacity for which it was built. Men and women are incarcerated in separate facilities but conditions in female facilities are generally better than those for males. Cells in some facilities have little natural light, inadequate artificial light and poor ventilation.⁵⁰ Reports indicate that there was no clear separation of detainees according to the different stages of criminal procedure. Persons detained without charges, those on remand, and convicted persons are held together in the same facility, and often in shared cells. Although the law prohibits the incarceration of children in adult prisons, some juveniles are held in adult jails reportedly because there are no juvenile facilities with adequate security.⁵¹
- 3.9.4** In general, the government allows private groups, voluntary and religious organisations, local and international human rights organisations, and the media to visit prisons and monitor prison conditions; and in February 2010 invited a UN Special Rapporteur to conduct a fact-finding mission regarding detention facilities.⁵²
- 3.9.5** In October 2010, the UN Special Rapporteur reported that he had found “many cases, corroborated by medical evidence, of people being subjected to different degrees of beatings for the purpose of punishment, which can also amount to torture.” He also noted that conditions in police stations “can generally be regarded as inhuman and the treatment arbitrary” and that he found detainees “held in cells that were overcrowded, filthy and infested with rats, cockroaches and lice. In addition, many of the cells were in complete darkness, and had poor ventilation and an unbearable stench.” He concluded that, “despite differences in the conditions of the police lock-ups visited, none complied with international standards with regard to the treatment of detainees.”⁵³
- 3.9.6** Male inmates deemed by prison wardens to be gay were held in a separate facility for their protection. The method used for determining their sexual orientation was subjective and not regulated by the prison system, although inmates were said to confirm their homosexuality for their own safety. There were numerous reports of violence against gay inmates, perpetrated by the wardens and by other inmates, but few inmates sought recourse through the prison system.⁵⁴
- 3.9.7 Conclusion** Prison conditions in Jamaica are poor with overcrowding, hygiene and poor basic facilities being particular problems. Some detainees may be subjected to beatings for the purpose of punishment which can amount to torture. Conditions in police stations are likely to reach the Article 3 threshold. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual to suffer treatment contrary to Article 3 - relevant factors to consider being the likely length of detention, the type of detention facility and the individual’s age, gender, sexual orientation and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

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.

⁵⁰ U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011

⁵¹ COIS Jamaica Country Report December 2009 (Human Rights: Prison Conditions) & U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011:

⁵² U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011

⁵³ Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, on his mission to Jamaica, 11/10/2010

⁵⁴ U.S. Department of State, 2010 Human Rights Report: Jamaica, 8/4/2011

(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 (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Jamaica. Those who cannot be returned should, if they do not qualify for leave on any more favourable 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 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. Treatments for a wide range of conditions including HIV/AIDS, cardiac disease and mental health are generally available in Jamaica.⁵⁵
- 4.4.3** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country 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** There is no policy which precludes the enforced return to Jamaica of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** 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.
- 5.3** Jamaica nationals may return voluntarily to any region of Jamaica at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own

⁵⁵ COIS Jamaica Country Report December 2009 (Human Rights: Medical Issues)

arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.

- 5.4** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any 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 Refugee Action. Details can be found on Refugee Action's web site at:

www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

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