



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. The Jamaica Defence Force (JDF) is charged with national defence, maritime narcotics interdiction, and JCF support. The JDF routinely conducts joint patrols and checkpoints in conjunction with the JCF. As the minister of defence, and outside of a state of emergency, the prime minister is the approval authority for all JDF operations in support of the JCF. The Ministry of National Security exercises the prime minister's authority for oversight of the JCF and JDF.¹
- 2.3.3** Between January and June 2011, major crimes in Jamaica (murder, shooting, rape, carnal abuse, robbery, break-ins and larceny) declined by 12.6 per cent, compared to the same period in 2010. Some 189 major crimes per 100,000 Jamaicans were committed over the period, down from 216 per 100,000 over the corresponding period in 2010. The murder rate for the period was 19 per 100,000 of the population, down by 39.5 per cent from the 31 per 100,000 population over the similar period in 2010, continuing the downward trend in crime rates that began in June 2010.²
- 2.3.4** On 8 April 2011 the BBC news website reported that there had been a sharp drop in Jamaica murder rate after a crackdown on gangs. The government said there had been a 44% drop in the number of killings in the first quarter of 2011 compared to the same period in 2010. Police statistics showed there were 238 murders during the first three months of 2011 compared to 426 during the same period in 2010. The government said its policy of saturating gang-dominated areas with police and soldiers was succeeding. However, human rights groups said extra-judicial killings and other abuses by security forces had increased.³
- 2.3.5** Amnesty International, in their submission to the UN Human Rights Committee in

¹ US State Department Human Rights Report 2010; Jamaica (section 1d)

<http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

² The Afro News, Major crimes in Jamaica decline by 12% , 5 September 2011 <http://www.theafronews.eu/caribbean-news/major-crimes-in-jamaica-decline-by-12>

³ BBC News, Sharp drop in Jamaica murder rate after gang crackdown, 8 April 2011 <http://www.bbc.co.uk/news/world-latin-america-13008780>

September 2011, reported that the number of people killed by the police was a record high in 2010. According to police statistics, 320 people were killed by the police. This figure does not include the 73 people killed in West Kingston between 24 and 25 May 2010, which was the result of pitched battles between the police and gang members.⁴ The UN Human Rights Committee expressed concerns in November 2011 at “continued reports of cases of extrajudicial executions by law enforcement officers. It further regrets that allegations of extra-judicial killings have, in most cases, not been effectively investigated, which perpetuates impunity.”⁵ The Committee also highlighted “the continued occurrence of torture and ill-treatment by law enforcement authorities, the limited number of convictions of those responsible, and the insufficient sanctions imposed on the perpetrators”.⁶

2.3.6 The JCF conducted administrative and criminal investigations into all incidents involving fatal shootings by police. The JCF’s Bureau of Special Investigations (BSI) addressed police shootings, but no officer was found criminally liable during the year. The BSI, unable to keep up with its caseload, had a backlog of approximately 932 cases with 37 full-time and nine part-time investigating officers. In August 2010 Independent Commission of Investigations (INDECOM) replaced the civilian Police Public Complaints Authority; the new body has the power to take over and direct BSI investigations.⁷

2.3.7 The JCF continued a community policing initiative to address the long-standing antipathy between the security forces and many poor inner-city neighbourhoods. Through the Community Safety and Security Branch, during the year the JCF conducted targeted training of 309 officers in 38 communities, trained community safety officers, and assigned JCF personnel to targeted schools as resource officers to stem 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.⁸

2.3.8 The Jamaica Constabulary Force (JCF) issued a press release in October 2011 based on information from its Anti-Corruption Branch, and it revealed the following (for the period January – September, 2011):

- ☐ 62 persons had been denied the opportunity to re-enlist in the JCF
- ☐ 34 members of the JCF were charged with corruption
- ☐ 7 members of the JCF were dismissed for corruption
- ☐ 18 civilians were charged with corrupting JCF staff

The Anti-Corruption Branch of the JCF had indicated they have been making significant strides in sensitising its members and the public on corruption and ethics-related issues (as it relates to the JCF).⁹ Despite these efforts, Freedom House noted in 2011 that corruption “remains a serious problem in Jamaica”.¹⁰

2.3.9 The judicial system is headed by the Supreme Court and includes a court of appeals and

⁴ Amnesty International, Jamaica Submission to the UN Human Rights Committee, September 2011
<http://www.amnesty.org/en/library/info/AMR38/004/2011/en>

⁵ UN Human Rights Council, Consideration of reports submitted by States parties under article 40 of the Covenant Concluding observations of the Human Rights Committee, November 2011, paragraph 16.
<http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.JAM.CO.3.doc>

⁶ UN Human Rights Council, Consideration of reports submitted by States parties under article 40 of the Covenant Concluding observations of the Human Rights Committee, November 2011, paragraph 21.
<http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.JAM.CO.3.doc>

⁷ US State Department Human Rights Report 2010; Jamaica (Section 1d)
<http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

⁸ US State Department Human Rights Report 2010; Jamaica (Section 1d)
<http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

⁹ Jamaica Police Watchdog, JCF Anti-Corruption Update, 18 October 2011 <http://www.jamaicanpolice.com/2011/10/jcf-anti-corruption-update/>

¹⁰ Freedom House, Freedom House, Freedom in the World 2011 - Jamaica,
<http://www.unhcr.org/refworld/country....JAM.,4e12dd9436.0.html>

several magistrates' courts. The Trinidad-based Caribbean Court of Justice became the highest appellate court for Jamaica in 2005. A growing backlog of cases and a shortage of court staff at all levels continue to undermine the justice system.¹¹ In November 2011, the UN Human Rights Committee noted with concern "the inordinate delays in the dispensation of justice" and the limited availability of legal aid services.¹² The U.S. Department of State highlighted that "Trials in many cases were delayed for years, and other cases were dismissed because files could not be located or had been destroyed. Some trials suffered as a result of antiquated rules of evidence as well as from lack of equipment for collecting and storing evidence. Evidence also went missing, rotted in the warehouses, or could not be located when needed".¹³

2.3.10 Jamaica has an established Witness Protection programme which was introduced in November 2001 to offer protection or assistance to witnesses whose lives come under threat before, during, or after a trial. Witnesses to major crimes are placed in safe locations, sometimes overseas, with fictitious names if police investigators determine that they are at risk of being killed or intimidated by defendants or their associates.¹⁴ 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.¹⁵

2.3.11 In June 2011, the Director of Public Prosecutions, Paula Llewellyn, called for more resources to be channelled into the Witness Protection Programme, due to increases in witness intimidation and the number of key witnesses to major crimes who refuse to enter the programme. Her comments followed those of the Police Commissioner, Owen Ellington, who criticised members of the constabulary for their handling of witnesses under the Programme. He noted that the procedures and guidelines governing the operations of the Witness Protection Programme were not being properly followed, resulting in delays in the processing of witnesses waiting to get on the programme.¹⁶ In April 2010, the Assistant Commissioner of Police, Les Green, referred to the witness protection programme as being "limited".¹⁷

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

¹¹ Freedom House, Freedom in the world 2011: Jamaica

<http://www.unhcr.org/refworld/country,,,JAM,,4e12dd9436,0.html>

¹² UN Human Rights Council, Consideration of reports submitted by States parties under article 40 of the Covenant Concluding observations of the Human Rights Committee, November 2011, paragraph 24.

<http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.JAM.CO.3.doc>

¹³ US State Department Human Rights Report 2010; Jamaica (Section 1e)

<http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

¹⁴ Jamaica Observer, DPP laments lack of resources for witness protection, 19 June 2011

http://www.jamaicaobserver.com/news/DPP-laments-lack-of-resources-for-witness-protection_9026572

¹⁵ US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

¹⁶ Jamaica Observer, DPP laments lack of resources for witness protection, 19 June 2011

http://www.jamaicaobserver.com/news/DPP-laments-lack-of-resources-for-witness-protection_9026572

¹⁷ The Jamaican Gleaner, Murder Toll Soars Despite Police Efforts, 01/04/2010. <http://jamaica-gleaner.com/gleaner/20100401/lead/lead7.html>

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-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** The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice.¹⁸
- 2.4.4** 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. The discrimination and exclusion faced by women in society¹⁹ should be taken account of when assessing whether it would not be unduly harsh to expect female applicants to internally relocate. A Country of Origin Information request should be submitted to the Country of Origin Information Service if more information is needed.
- 2.4.5** Internal relocation will not enhance safety where a single woman with no male partner or children is perceived as a lesbian, whether or not that is the case. See *SW (lesbians – HJ and HT applied)* in 2.5 below. There are also likely to be difficulties for men who would be perceived as being homosexual in finding safety through internal relocation. See *DW (Homosexual men; Persecution; Sufficiency of Protection)* in 2.5 below.

2.5 Country guidance caselaw

[SW \(lesbians - HJ and HT applied\) Jamaica CG \[2011\] UKUT 251 \(IAC\) \(24 June 2011\)](#)

The Tribunal found that:

- (1) Jamaica is a deeply homophobic society. There is a high level of violence, and where a real risk of persecution or serious harm is established, the Jamaicans state offers lesbians no sufficiency of protection;
- (2) Lesbianism (actual or perceived) brings a risk of violence, up to and including 'corrective' rape and murder;
- (3) Not all lesbians are at risk. Those who are naturally discreet, have children and/or are willing to present a heterosexual narrative for family or societal reasons may live as discreet lesbians without persecutory risk, provided that they are not doing so out of fear;
- (4) Single women with no male partner or children risk being perceived as lesbian, whether or not that is the case, unless they present a heterosexual narrative and behave with discretion;
- (5) Because the risks arise from perceived as well as actual lesbian sexual orientation, internal relocation does not enhance safety. Newcomers in rural communities will be the subject of speculative conclusions, derived both by asking them questions and by observing their lifestyle and unless they can show a heterosexual narrative, they risk being identified as lesbians. Perceived lesbians also risk social exclusion (loss of employment or being driven from their homes);
- (6) A manly appearance is a risk factor, as is rejection of suitors if a woman does not have a husband, boyfriend or child, or an obvious and credible explanation for their absence;
- (7) In general, younger women who are not yet settled may be at less risk; the risk increases with age. Women are expected to become sexually active early and remain so into their sixties,

¹⁸ US State Department Human Rights Report 2010; Jamaica (Section 2d)
<http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

¹⁹ For further information regarding discrimination against women please see, U.S. Department of State, Country Report on Human Rights Practices 2010: Jamaica, 08/04/2011, Section 6 Discrimination, Societal Abuses, and Trafficking in Persons. http://www.ecoi.net/local_link/158159/260593_en.html

unless there is an obvious reason why they do not currently have a partner, for example, recent widowhood;

- (8) Members of the social elite may be better protected because they are able to live in gated communities where their activities are not the subject of public scrutiny. Social elite members are usually from known families, wealthy, lighter skinned and better educated; often they are high-ranking professional people.

AB (Protection, criminal gangs, internal relocation) Jamaica CG [2007] UKAIT 00018 (22 February 2007)

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.

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.

3. Main categories of claims

- 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 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/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

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 'establishing the facts of the claim (material and non-material facts)' in the Asylum Instruction 'considering the protection (asylum) claim' and 'assessing credibility'. Case owners 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 anon-biometric visa. Asylum applications matches 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.²⁰
- 3.6.3** Kingston's insular "garrison" communities remain the epicentre of most violence and serve as safe havens for gangs. Jamaica is a transit point for cocaine shipped from Colombia to U.S. markets, and much of the island's violence is the result of warfare between drug gangs known as posses. Contributing factors include the deportation of Jamaican-born criminals from the United States and an illegal weapons trade.²¹
- 3.6.4** 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 recovered, as against 6,068 rounds in 2009.²²
- 3.6.5** According to a government source, criminal gangs are thought to be 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. Some of these neighbourhoods have been neglected by the state for years, and many have effectively become the fiefdoms of gang leaders. 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.²³
- 3.6.6** Jamaica's police and army began a major crackdown on criminal gangs in May 2010 during their pursuit of the suspected drugs lord Christopher "Dudus" Coke.²⁴ Mr Coke ran the Shower Posse, which derived its name from "showering" communities with bullets and was blamed for more than 1,000 murders during the 1980s. Until 2010 he enjoyed substantial protection from the ruling Jamaican Labour Party and Prime Minister Bruce Golding, whose parliamentary constituency is Tivoli Gardens, a West Kingston district that the Shower

²⁰ FCO Jamaica country profile June 2011, <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/north-central-america/jamaica?profile=all>

²¹ Freedom House Jamaica Country report 2011, <http://www.unhcr.org/refworld/country,,,JAM,,4e12dd9436,0.html>

²² Caribbean Press Releases, Jamaica: Reduction in major crimes in 2010, 6 January 2011 <http://www.caribbeanpressreleases.com/articles/7977/1/Jamaica-Reduction-in-major-crimes-in-2010/Page1.html>

²³ COIS Jamaica Country Report May 2011 (para 8.07) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²⁴ BBC News, Sharp drop in Jamaica murder rate after gang crackdown, 8 April 2011 <http://www.bbc.co.uk/news/world-latin-america-13008780>

Posse controls. When the Jamaican government bowed to heavy US pressure and announced in May 2010 that it would extradite Mr Coke, the Shower Posse and his supporters attacked police stations in Tivoli Gardens. 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 Mr 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, Mr 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. He is scheduled to be sentenced on 28 February 2012, when he could face up to 23 years in prison.²⁵

- 3.6.7** Intelligence suggests that there are 268 active gangs in Jamaica, a five-fold increase in prevalence compared to the 1998 estimate of 49 active gangs. There are approximately 12 organised crime groups on the island; estimates in 1998 were that there were 7 highly organised gangs. While there is no validated estimate of the overall number of gang members in Jamaica, some observers have claimed that gang membership could be as high as 20,000, with estimates for Kingston ranging from 6,000 to 10,000. More recent studies yield more conservative figures.²⁶
- 3.6.8** In October 2004 the armed forces and the police launched 'Operation Kingfish', an intelligence-based task force intended to reduce the ever-rising crime rate. The initiative was particularly targeted at dismantling the estimated 13 major criminal networks on the island, which were thought to be responsible for much of the crime.²⁷
- 3.6.9** In April 2011 the Jamaican government said there had been a 44% drop in the number of killings in the first quarter of the year compared to the same period in 2010. It said its policy of saturating gang-dominated areas with police and soldiers was succeeding. But human rights groups say extra-judicial killings and other abuses by security forces have increased.²⁸
- 3.6.10** Families and sometimes entire communities have been forced to flee their homes and seek refuge as a result of threats and violence from gangs. Sometimes the threats are triggered by conflict between rival political factions; sometimes they are the result of criminal activities.²⁹ Women and girls in inner-city communities are particularly exposed to gang violence. A number of different sources report women's fear of being labelled as traitors or police informers and of being subjected to reprisals on that basis.³⁰

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

- 3.6.11 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.

²⁵ BBC News, Profile: Christopher 'Dudus' Coke, 1 September 2011 <http://www.bbc.co.uk/news/10146172>

²⁶ COIS Jamaica Country Report May 2011 (para 8.08) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²⁷ COIS Jamaica Country Report May 2011 (para 3.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²⁸ BBC News, Sharp drop in Jamaica murder rate after gang crackdown, 8 April 2011 <http://www.bbc.co.uk/news/world-latin-america-13008780>

²⁹ COIS Jamaica Country Report May 2011 (para 8.07) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

³⁰ See for example, The Jamaica Online Star, Tivoli women under threat: Some labelled as informers by returning thugs, 26/08/2010 <http://jamaica-star.com/thestar/20100826/news/news1.html> and Women Resource and Outreach Centre (WROC), Strengthening Understandings of how Borders and Boundaries affect the Lives of Women and Men in the Lyndhurst/Greenwich Park Community, January 2010, <http://www.iansa-women.org/sites/default/files/newsviews/jamaica-borders-and-boundaries-wroc-2010.pdf>

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. Given continuing concerns around corruption as well as the resourcing and effectiveness of the Witness Protection Programme, case owners should 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 through the Witness Protection Programme.

- 3.6.12** 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. The particular risks and difficulties facing female applicants, as set out at 2.4.4 and 2.4.5, should be considered in this respect.
- 3.6.13** 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.
- 3.6.14** 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.
- 3.6.15** 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 law enforcement operations.

3.7 Gay men, lesbians, bisexual and transgender persons

- 3.7.2** 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.
- 3.7.3** **Treatment.** The law prohibits 'acts of gross indecency' (generally interpreted as any kind of physical intimacy) between men, in public or in private, which are punishable by 10 years in prison. Jamaican law contains specific prohibitions on certain sexual activities. These prohibitions have been used to target homosexuals and trans-gendered individuals. Violations can result in lengthy imprisonment.³¹
- 3.7.3** The Jamaica Forum for Lesbians, All Sexuals, and Gays (J-FLAG) continued to report human rights abuses, including arbitrary detention, mob attacks, stabbings, harassment of gay and lesbian patients by hospital and prison staff, and targeted shootings of such persons. Police often did 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 created a climate of fear that prompted many gay persons to emigrate, while the gross indecency laws left those who remained vulnerable to extortion from neighbours who threatened to report them to the police unless they were paid off.³²
- 3.7.4** The Amnesty International annual report covering events in 2010 stated that scores of

³¹ COIS Jamaica Country Report May 2011 (para 20.05) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

³² US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

homophobic attacks, harassment and threats against of lesbian, gay, bisexual and transgender (LGBT) people were reported to LGBT organisations, including at least three cases of “corrective” rapes of lesbians. On 3 September 2010, a woman was raped by a gang of six men who had previously verbally abused her. She also suffered genital mutilation after the rape. A survey of 11 lesbian, bisexual and transgender women victims of violence found that only one had reported the rape to the police and after two years she was still waiting for the court hearing. The others had not reported the crime because they feared being criminalized on account of their sexual orientation.³³

- 3.7.5** International and local human rights organisations provide details on several cases in which the police failed to adequately protect LGBT people from mob violence. According to the international NGO Youth Coalition for Sexual Reproductive Rights (YCSRR), the Jamaican police have not laid charges against anyone responsible for mob-related killings of LGBT people. Similarly, the Executive Director of J-FLAG states that there have not been any prosecutions of participants of mob violence against LGBT people.³⁴
- 3.7.6** J-FLAG members also suffered attacks on their property and home intrusions, as people demanded to know the number of persons and beds in a home. Victims reported numerous cases of threats and intimidation to J-FLAG. In many instances family members expelled their own relatives from homes because of sexual orientation. In other cases neighbours drove gay and lesbian persons out of their communities, slashing tires and hurling insults. Many gays and lesbians faced death and arson threats, with some threats also directed at J-FLAG offices. As a result of such threats, J-FLAG elected not to publicize its location, and one of its officials reported feeling unsafe having meetings with clients at the organisation’s office.³⁵
- 3.7.7** 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.³⁶
- 3.7.8** Gay men were hesitant to report incidents against them because of fear for their physical well-being. Human rights NGOs and government entities agreed that brutality against such persons, primarily by private citizens, was widespread in the community.³⁷
- 3.7.9** Gender discrimination also disproportionately affects transgender individuals. In December 2010, the police discovered the dead body of a transgender individual hidden behind a building. The victim was chopped to death. Recently, a group of men raped a thirteen-year-old transgender individual in Kingston. News coverage of these incidents did not reveal that any police investigation into these deaths had occurred, and Jamaican activists are not aware of any action taken to seek accountability for these murders of transgender individuals.³⁸
- 3.7.10** JFlag claimed that transgendered persons are coming out, but fear prevents them from fully expressing their gender identity. The gay lobby estimates that up to 270,000 lesbian, gay, bisexual, and transgendered people live in Jamaica. That represents “between three to 10 per cent of the population”. Of that figure a “smaller percentage” are transgendered persons

³³ Amnesty International Annual Report 2011; Jamaica <http://www.amnesty.org/en/region/jamaica/report-2011#section-69-7>

³⁴ Immigration and Refugee Board of Canada, Jamaica: How police treat complaints made by lesbian, gay, bisexual, and transgender (LGBT) people (2007-2010), <http://www.unhcr.org/refworld/country.COI...JAM,4562d94e2,4d2abcb52,0.html>

³⁵ US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

³⁶ US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

³⁷ US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

³⁸ United Nations Human Rights Committee, Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report, October 2011 http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBT_Jamaica103.pdf

which includes transvestites (cross-dressers) and transsexuals (surgical augmentation).³⁹

3.7.11 In an article on J-FLAG's website regarding the International Day for Tolerance Message on 16 November 2011 they noted that they would like to "use this opportunity to celebrate the progress that has been made in protecting and promoting the human rights of Jamaicans who are lesbian, gay, bisexual and transgender." J-Flag claims that this progress "is evident in a number of public activities held without incident since April 2009 to raise the awareness of the issues being faced by the LGBT community and our allies. The Jamaica Constabulary Force now recognises and is more supportive of the rights of LGBT people in exercising their duties. More constructive conversations, articles and letters with regards to the rights of lesbian and gay Jamaicans are being published and broadcasted. Key leaders, including political representatives, in our society have accepted our invitation and extended a helping hand to have conversation with us and support our advocacy and programmes. Nonetheless, people continue to report incidents of harassment, violence, home evictions, and mob attacks, among others because they are lesbian, gay, bisexual, transgender."⁴⁰

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

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

[Caselaw](#) (section 2.5 above)

3.7.12 Conclusion. In general the Jamaican authorities do not provide gay men, lesbians, bisexuals and transgender persons 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.⁴¹ 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. The 2011 country guidance case of *SW (lesbians – HJ and HT applied)* found that single women with no male partner or children risk being perceived as lesbian, whether or not that is the case, unless they present a heterosexual narrative and behave with discretion and because the risks arise from perceived as well as actual lesbian sexual orientation, internal relocation does not enhance safety. It was also found that perceived lesbians also risk social exclusion (loss of employment or being driven from their homes). 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.

3.7.13 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.

3.7.14 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.

3.7.15 If an individual chooses to live discreetly because he/she fears persecution if he/she were

³⁹ Jamaica Observer, Dancehall impacts the rise of transgender, 6 December 2009 community

<http://www.jamaicaobserver.com/Entertainment/Dancehall-impacts-the-rise-of-transgender-Jflag>

⁴⁰ J-Flag, J-FLAG's International Day for Tolerance Message, 16 November 2011 <http://www.jflag.org/2011/11/j-flag%e2%80%99s-international-day-for-tolerance-message/>

⁴¹ US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

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 norms perpetuated violence against women, including spousal abuse. Violence against women was widespread, but many women were reluctant to acknowledge or report abusive behaviour, leading to wide variations in estimates of its extent. The law prohibits domestic violence and provides remedies including restraining orders and other noncustodial sentencing. Breaching a restraining order is punishable by a fine of up to J\$10,000 (approximately £74) and six months' imprisonment.⁴²
- 3.8.3** Police were generally reluctant to become involved in domestic issues, which led to cases not being pursued vigorously when reported. The Bureau of Women's Affairs (BWA) operated crisis hotlines and managed a public education campaign to raise the profile of domestic violence, while the NGO Woman Inc. operated a shelter that received some government funds.⁴³
- 3.8.4** Rape is illegal and carries a maximum penalty of 25 years' imprisonment. The 2009 Sexual Offenses Act criminalises spousal rape, but only in certain circumstances. Human rights groups continued to advocate for a more comprehensive law. While that law replaced an existing patchwork of laws relating to sexual assault, rape, and incest, the authorities had yet to implement many of its provisions. The number of rapes victims reported declined slightly to 668, compared with 695 in 2009. NGOs believed the actual numbers were much higher, but no other statistics were available. The JCF Rape Investigative and Juvenile Unit, which was headed by a female deputy superintendent, handled sex crimes.⁴⁴
- 3.8.5** There is no legislation that addresses sexual harassment, and the BWA reported that it had become a 'disturbing problem.' There were anecdotal reports of sexual harassment of women by the police as well as in the workplace, but few statistics were available. The BWA and NGOs such as Woman Inc. and Women's Media Watch believed that women often did not report such incidents because there was no legal remedy.⁴⁵
- 3.8.6** Amnesty International, in their Submission to the UN Universal Periodic Review November-December 2010, raised concerns at the high incidence of sexual violence against women and girls in Jamaica. Women's organisations believe that many sexual crimes still go unreported, despite some improvements in police reception of cases.⁴⁶
- 3.8.7** Women and girls in inner-city communities are particularly exposed to gang violence. They 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. Women and girls often experience sexual coercion by gang members, as refusal could result in punishment against themselves and their families. A study on the relationship between adolescent pregnancy and sexual violence carried out by healthcare

⁴² US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

⁴³ US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

⁴⁴ US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

⁴⁵ COIS Jamaica Country Report May 2011 (para 22.31) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁴⁶ Jamaica: Amnesty International Submission to the UN Universal Periodic Review November- December 2010

<http://www.amnesty.org/en/library/asset/AMR38/001/2010/en/6969d78c-036a-48d9-a4b1-3bd618f99352/amr380012010en.pdf>

researchers in 2009 showed that 49 per cent of the 750 girls, aged between 15 and 17, who were surveyed had experienced sexual coercion or violence.⁴⁷

3.8.8 Amnesty International report that positive steps over recent years in combating sexual violence and providing assistance to victims include the establishment of the Centre for Sexual Offences and Child Abuse (CISOCA), within the police service, which is responsible for counselling victims and investigating sexual crimes; the implementation of several awareness raising and education programmes under the supervision of the Bureau of Women Affairs; and the adoption in July 2009 of the Sexual Offences Act. However, the high incidence of violence, combined with the low clear-up rate for sexual crimes and reticence in reporting of sexual crimes, suggests that more vigorous efforts are needed to enforce the law and to bring perpetrators to justice.⁴⁸ These concerns were also raised by the UN Working Group on the Universal Periodic Review on Jamaica which concluded that the Government needed to “Step up the implementation of legislative, policy and administrative measures aimed at combating gender-based violence and sexual harassment.”⁴⁹ Furthermore, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concluded that the “effectiveness of the enforcement mechanisms” to address domestic and gender-based violence “remains unclear”.⁵⁰ According to many women’s organisations, more resources should be invested in promoting rights awareness among women and girls and in the creation of more shelters for women victims of violence⁵¹ (there is currently only one shelter located in Kingston which can only accommodate 12 people at a time and can only keep a family for 10 days⁵²).

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

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

[Caselaw](#) (section 2.5 above)

3.8.9 Conclusion. Domestic violence is widespread in Jamaica. Concerns have been raised about the effectiveness of protection available to victims of domestic violence through the enforcement of legislative provisions and regarding the lack of access to shelter and assistance.

3.8.10 While it may be possible for a woman to relocate to other parts of Jamaica to escape domestic violence, the personal circumstances of the individual applicant should be taken into account when assessing whether it would be unduly harsh to expect them to do so. In this respect, the discrimination and exclusion faced by women in society in general should be considered. Internal relocation will not be appropriate where a single woman with no male partner or children is likely to be perceived as a lesbian, whether or not that is the case. See *SW (lesbians – HJ and HT applied)* in 2.5.

3.8.11 A grant of asylum or Humanitarian Protection will be appropriate where there are specific

⁴⁷ Jamaica: Amnesty International Submission to the UN Universal Periodic Review November- December 2010 <http://www.amnesty.org/en/library/asset/AMR38/001/2010/en/6969d78c-036a-48d9-a4b1-3bd618f99352/amr380012010en.pdf>

⁴⁸ Jamaica: Amnesty International Submission to the UN Universal Periodic Review November- December 2010 <http://www.amnesty.org/en/library/asset/AMR38/001/2010/en/6969d78c-036a-48d9-a4b1-3bd618f99352/amr380012010en.pdf>

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, paragraphs 99.28 and 99.29. http://www.ecoi.net/file_upload/1930_1299428540_q1110090.pdf

⁵⁰ 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, paragraph 75. <http://www2.ohchr.org/english/issues/torture/rapporteur/docs/A-HRC-16-52-Add3.pdf>

⁵¹ Jamaica: Amnesty International Submission to the UN Universal Periodic Review November- December 2010 <http://www.amnesty.org/en/library/asset/AMR38/001/2010/en/6969d78c-036a-48d9-a4b1-3bd618f99352/amr380012010en.pdf>

⁵² Jamaica Observer, Women’s Inc’s crisis shelter, 8 December 2008 http://www.jamaicaobserver.com/magazines/allwoman/143450_WOMAN-Inc-s-crisis-shelter

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.

3.9 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 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. Tower Street Adult Correctional Centre, located in downtown Kingston, housed approximately 1,600 inmates, nearly double the capacity for which the facility was built. Men and women were incarcerated in separate facilities under similar conditions. Female prisoners were generally incarcerated under better conditions than their male counterparts. Cells in some facilities had little natural light, inadequate artificial light, and poor ventilation.⁵³ Homosexuals or those perceived to be homosexual are at risk of violence from both wardens and other inmates (see 3.7 for further information)
- 3.9.4** In his report dated 11 October 2010, the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment found in places of detention “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” . The Rapporteur was particularly concerned at the conditions of detention in police stations which he generally regarded as “inhuman” and the treatment “arbitrary”. Conditions reflected a complete disrespect for the human dignity of detainees and prisoners, made worse by a general atmosphere of violence and aggression from both the police and detainees. In correctional facilities, the conditions differed significantly between facilities, although they were generally better than in police stations.⁵⁴ The U.S. Department of State also noted that “reports of physical abuse of prisoners by guards continued”⁵⁵ and Freedom House stated that “conditions in detention centres and prisons are abysmal”.⁵⁶ In November 2010, Jamaicans for Justice, reported that “there exists a problem of inhumane living conditions and overcrowding in prisons and police holding cells”.⁵⁷
- 3.9.5** Hunt's Bay Lockup held prisoners in a cage-like structure open to the rain and sun and the gazes of passersby. The women's prison, Fort Augusta, with about 200 inmates, had no indoor water supply. Inmates had to obtain water from a central source in containers they provided themselves. Inmates who did not own a container could not bathe.⁵⁸
- 3.9.6** Prison food was poor, and wardens were observed serving themselves generously with whatever meat was available, leaving only leftover gravy for the inmates. Mattresses were not provided; inmates slept on the concrete floors. Those with access to funds and outside

⁵³ US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

⁵⁴ COIS Jamaica Country Report May 2011 (para 12.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁵⁵ US State Department Human Rights Report 2010: Jamaica, Section 1

<http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

⁵⁶ Freedom House, Freedom House, Freedom in the World 2011 - Jamaica

<http://www.unhcr.org/refworld/country,...JAM,,4e12dd9436,0.html>

⁵⁷ Jamaicans for Justice / Shareholder Coalition, Submission by Shareholder Coalition for the United Nations Universal Periodic Review of Jamaica, 03/09/2010, paragraph 35.

http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/JM/JFJ_Jamaicansforjustice_Submission.pdf

⁵⁸ US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

contacts were permitted to purchase thin foam mattresses that often became infested with bedbugs. Ringworm was a common malady.⁵⁹

- 3.9.7** Prison medical care was also poor, primarily a result of having only three full-time doctors, one full-time nurse, and one psychiatrist to cover 12 facilities (eight adult, four juvenile) with almost 5,000 inmates across the island. Prisoners in need of dentures and unable to eat the prison food encountered difficulties in gaining access to a dentist.⁶⁰
- 3.9.8** Although the law prohibits the incarceration of children in adult prisons in most cases, some juveniles as young as 13 years old were held in adult jails because there were no juvenile facilities with adequate security. At St. Andrew Juvenile Remand Centre, notorious for repression and corporal punishment, boys were kept indoors at all times, never being permitted activity in the open air. Nonviolent youth offenders were under the jurisdiction of the social services agency and were generally sent to unsecured halfway houses (called "places of safety" or "juvenile remand centres") after they were removed from their homes. However, because the law does not clearly define an "uncontrollable child," a large number of minors were classified as uncontrollable and detained for long periods of time without regard to the nature of their offenses.⁶¹
- 3.9.9** Reliable reports indicated that there was no clear separation of detainees according to the different stages of criminal procedure. Persons detained without charges, remandees, and convicted persons were held together in the same facility, and often shared cells.⁶²
- 3.9.10** In general the government allowed private groups, voluntary and religious organisations, local and international human rights organisations, and the media to visit prisons and monitor prison conditions, and such visits took place during the year. Prisoners were able to make complaints to the Public Defender's Office without censorship, and representatives generally were able to enter the detention centres and interview prisoners without problems. Although access was denied after a riot at the Horizon Remand Centre, the prime minister subsequently ordered the centre to restore access.⁶³
- 3.9.11 Conclusion** Conditions in prisons and police stations in Jamaica are extremely 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 both prisons and 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. (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

⁵⁹ US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

⁶⁰ US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

⁶¹ US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

⁶² US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

⁶³ US State Department Human Rights Report 2010; Jamaica <http://www.state.gov/g/drl/rls/hrrpt/2010/wha/154511.htm>

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 Ministry of Health and Environment is responsible for ensuring the provision of a health service for the population of Jamaica. The delivery of health services has been de-centralised to four statutory regional Health Authorities covering the island. Under the new status, the Ministry's two largest programmes: Primary, and Secondary and Tertiary Health Care have been integrated into a new programme – Health Service Delivery.⁶⁴ Services are provided through the government's network of twenty-three hospitals and over three hundred and fifty health centres and specialised institutions.⁶⁵

4.4.3 Regarding treatment for HIV/AIDS, the UNGASS Country Progress Report 2010 stated that in 2009, 23 treatment sites were providing multidisciplinary care in Jamaica and laboratory capacity was improved to provide tests such as CD4 count and viral loads. Based on programme monitoring, 6,895 persons (6,459 adults and 436 children) with advanced HIV (49% of persons with advanced HIV) were started on treatment by the end of December 2009.⁶⁶

4.4.4 Mental health services in Jamaica are delivered through a three-pronged system consisting of: i) a residential hospital – Bellevue Hospital, ii) Out-patient community mental health services at primary health care facilities island wide and iii) Residential out-patient rehabilitation units – Ken Royes Rehabilitation Centre.⁶⁷

4.4.5 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

⁶⁴ COIS Jamaica Country Report May 2011 (para 25.01) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁶⁵ COIS Jamaica Country Report May 2011 (para 25.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁶⁶ COIS Jamaica Country Report May 2011 (para 25.13) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁶⁷ COIS Jamaica Country Report May 2011 (para 25.23) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

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** Jamaican 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 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

Country Specific Litigation Team
Immigration Group
UK Border Agency
February 2012