



OPERATIONAL GUIDANCE NOTE

JAMAICA

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1. Introduction

- 1.1** This document summarises the general, political and human rights situation in Jamaica and provides information on the nature and handling of claims frequently received from nationals/residents of that country. It must be read in conjunction with any COI Service Jamaica country information at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.2** This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
 API on Humanitarian Protection
 API on Discretionary Leave
 API on the European Convention on Human Rights

- 1.3** Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.
- 1.4** With effect from 1 April 2003, Jamaica is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002. Asylum and human rights claims must be considered on their individual merits. However, if following consideration a claim made after 1 April 2003 by someone entitled to reside in Jamaica is refused, caseworkers should certify the claim as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. The information set out below contains relevant country information, the most common types of claim and guidance from the courts, including guidance on whether cases are likely to be clearly unfounded.

Source documents

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

2. Country assessment

- 2.1 Jamaica is a constitutional parliamentary democracy. The Head of State is the British Monarch and is locally represented by the Governor-General. The legislature is bicameral and comprises the upper chamber or the Senate and the lower chamber or the House of Representatives. The Senate consists of 21 Senators, 13 of whom are appointed by the Governor-General on the advice of the Prime Minister and 8 by the Governor-General on the advice of the leader of the opposition. The House of Representatives consists of 60 elected members called Members of Parliament.¹
- 2.2 The People's National Party (PNP, social democrat) has held power since February 1989, with former Prime Minister P J Patterson holding office for an unprecedented four terms between 1992 and 2006. Upon Mr Patterson's retirement from office, Mrs Portia Simpson Miller was elected leader of the PNP and was sworn in as Prime Minister on 30 March 2006. She announced her new cabinet the same day. The next scheduled elections are due to take place by October 2007, but could be called earlier should the Government so decide. The main Opposition party is the Jamaica Labour Party (JLP), which previously held power from 1980 to 1989. The JLP appointed a new leader, Mr Bruce Golding, in March 2005. He was elected to parliament in April 2005 following his victory in the West Kingston by-election.²
- 2.3 The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice; however, the judicial system is reported to be overburdened and operates with inadequate resources.³ Jamaica retains the death penalty (by hanging), although the last reported execution was in 1988.⁴
- 2.4 The fundamental human rights and freedoms are enshrined in the Constitution.⁵ Although the Government generally respects the human rights of its citizens there continue to be reports of police brutality, excessive use of force and extrajudicial killings. Although the Government moved to investigate incidents of police abuses and punish some of those police involved, continued impunity for police who commit abuses remained a problem. Detainees continued to be held for extremely long periods without being brought to trial.⁶
- 2.5 Jamaica's serious economic problems have exacerbated social problems and have become the subject of public debate. High unemployment - averaging 15.5% - rampant underemployment, growing debt, and high interest rates are the most serious economic problems.⁷
- 2.6 Crime and violence dominates thinking on Jamaica and affects everything from investment to morale. The murder rate is one of the highest in the world (about 50 per 100,000). Traffickers of illicit drugs have made use of Jamaica's location as a major trans-shipment route for cocaine from South America to North America and Europe. As such, Jamaica faces a high rate of gang related violence fuelled by drugs money. The Jamaican Government announced a new crackdown on organised crime in October 2004, Operation Kingfish.⁸

¹ COIS Jamaica Country Report April 2006 paras. 5.09 – 5.12

² FCO Country Profile 3 April 2006

³ COIS Jamaica Country Report para. 5.14 – 5.18

⁴ COIS Jamaica Country Report paras 5.31 – 5.36

⁵ COIS Jamaica Country Report para. 5.01 – 5.06

⁶ COIS Jamaica Country Report paras 6.01 – 6.11

⁷ COIS Jamaica Country Report para 5.09 – 5.10

⁸ FCO Country Profile 3 April 2006 & COIS Jamaica Country Report paras. 5.63 – 5.81

- 2.7** Corruption is also a major concern, and the Jamaican police have in the past been criticised for excessive use of force. A series of reforms and investigation has seen the police's Crime Management Unit disbanded and a number of police officers currently face a range of charges, including murder and corruption. But Jamaica's police and legal system remains in need of further reform and funding.⁹

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Jamaica. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant API's, 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 claimant 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 API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)
- 3.5** All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

3.6 Criminal gang violence

- 3.6.1** Many claimants will make an asylum and/or human rights claim based on a fear of ill treatment amounting to persecution at the hands of criminal gangs in Jamaica and claim that the police are unable to provide sufficient protection.
- 3.6.2 *Treatment.*** In the period 1 January 2005 to 10 November 2005, there were 1,448 persons killed, with near one-sixth of those murders taking place in the St Andrew South Police Division in the Corporate Area. The Police Division includes the tough inner city communities of Olympic Gardens, Waterhouse and Seaview Gardens.¹⁰ Since the start of 2005 the St Andrew South police have recorded 240 murders. This is 11% more than the corresponding period in 2004. The old capital of Spanish Town in the central parish of St

⁹ FCO Country Profile 3 April 2006 & COIS Jamaica Country Report paras. 5.37 – 5.62

¹⁰ COIS Jamaica Country Report paras. 6.06 – 6.07

Catherine has recorded 204 killings - 3% more than 2004. The western parish of St James comes next with 120 murders. However the eastern parish of Portland has been the parish with the lowest murder figure, with eight persons killed up to mid-November 2005.¹¹ Much of the violence is perpetrated by street gangs vying for control of lucrative drug and extortion rings. Community youth gangs have also emerged to fight over turf and account for 20-25% of homicides. Criminal gangs linked with US 'posses', UK 'yardies', and elements of the Colombian drugs trade menace the entire fabric of society.¹²

- 3.6.3** News that murders fell nearly 23% in January 2006, compared to the same period in 2005, has bolstered the police force's confidence in light of plans announced on 31 January 2006 to reduce the homicide rate by 5% in 2006. So far there have been at least 113 murders in January 2006, down by 33, when compared to the corresponding period in 2005. Major crimes also fell by 11% over the comparative period, according to statistics revealed by the Police High Command. The same crime statistics indicate that youths, some as young as twelve, are the main perpetrators of criminal activity in recent years. Figures show that 350 persons arrested for murder in 2005 are between 12 and 25 years old. Seven of those arrested in 2004 were between 12 and 15 years old.¹³
- 3.6.4** *Sufficiency of protection.* The Jamaica Constabulary Force (JCF) is responsible for the maintenance of law and order, assisted by the Island Special Constabulary Force (ISCF). The Jamaica Defence Force (JDF) comprises the army, air wing, and coast guard. It is charged with national defence, marine narcotics interdiction, and support of the JCF. It has no mandate to maintain law and order and no powers of arrest, but does support the JCF in patrolling certain communities.¹⁴
- 3.6.5** The JCF maintains divisions focusing on community policing, special response, intelligence gathering, and internal affairs. However, it has not been particularly effective in the face of a rapidly increasing rate of killings. The perception of corruption and impunity within the force are serious problems that contribute to a lack of public confidence in the institution. Human rights groups have identified systematically poor investigative procedures, weak oversight mechanisms, and failure to protect witnesses which has led to the dismissal of criminal trials, despite Jamaican government assurances that its witness protection programme is effective.¹⁵
- 3.6.6** Following varying degrees of success with a new national crime plan announced in 2002, in October 2004 the Jamaican government unveiled a further crime-fighting initiative: Operation Kingfish. Targeting the leaders of an estimated 85 active criminal gangs located across inner-city communities island wide, the main aim of Operation Kingfish was to break up the organised criminal gangs that are at the root of most gun violence.¹⁶ By 5 November 2005 Operation Kingfish had led to 235 arrests and the apprehension of 32 other suspected criminals for various serious crimes including illegal possession of firearms and ammunition, drug offences, murders, shootings, and others.¹⁷ In December 2005 it was reported that another crime-fighting unit was to take to the streets of Jamaica searching for perpetrators of vicious crimes committed across the island. The new unit – the Major Investigation Team (MIT) comprises some of the most skilled detectives of the Jamaica Constabulary Force (JCF).¹⁸
- 3.6.7** Kingfish has led to the prosecution of further suspected members of the Jamaican criminal underworld in 2005. As a result of Operation Kingfish, prosecutions have been launched against suspected leaders of criminal gangs in Jamaica. For instance Matthew's Lane strongman, Donald 'Zekes' Phipps, has been charged with murder. He has been charged

¹¹ COIS Jamaica Country Report para. 6.05

¹² COIS Jamaica Country Report para. 6.196

¹³ COIS Jamaica Country Report paras. 6.15 – 6.16

¹⁴ COIS Jamaica Country Report para. 5.37

¹⁵ COIS Jamaica Country Report paras 5.40 – 5.41; 5.51 – 5.62

¹⁶ COIS Jamaica Country Report paras 5.74 – 5.81

¹⁷ COIS Jamaica Country Report para. 5.76

¹⁸ COIS Jamaica Country Report para. 5.81

with the 15 April 2005 double killing of Rodney Farquharson and Deighton Williams, whose burnt bodies were discovered in an open lot on Rose Lane, West Kingston.¹⁹

- 3.6.8** A Witness Protection Programme is provided for by the Justice Protection Act (Act 23 of 2001). As stated in the Justice Protection Act, it is an “Act to Establish a programme or assistance to certain witnesses and other persons”. In July 2005, Witness Protection Programme was described a solid and effective one, where those who opt to go into the programme are assured of a standard of living similar to or in some instances better than that which they enjoyed prior to entering the programme. Assistant Commissioner of Police, George Williams, in charge of the Criminal Investigation Bureau (CIB), said that the programme is a credible one that is strongly recommended for persons who are witnesses in major cases and have come forward to give evidence on behalf of the State. ACP Williams also stated “We have not had a witness who is on the programme and who remains on the programme, injured, killed or hurt in any way”. In February 2006, the UK Foreign and Commonwealth Office stated that anyone who wants to testify in court and fears for his/her life is eligible for the programme. The witness is evaluated to make sure protection is needed and able to follow the rules of the programme. The FCO noted that a witness is required to remain in the programme until after the case is tried and it is deemed safe for that person to leave the programme.²⁰
- 3.6.9** Although generally the civilian authorities maintained effective control of the security forces, some security service personnel committed human rights abuses.²¹ While the government generally respected the human rights of its citizens 2005, there were serious problems in relation to the police and security forces, namely: unlawful killings committed by members of the security forces; abuse of detainees and prisoners by police and prison guards and continued impunity for police who commit crimes. Investigations into alleged extrajudicial executions remains inadequate. Police officers often failed to protect crime scenes, allowing forensic evidence to be destroyed, lost or damaged. Statements from officers involved in fatal shootings were often taken after long delays. A government pledge to strengthen investigations into police killings failed to materialise.²²
- 3.6.10** For claimants who fear, or who have experienced, ill-treatment as a result of criminal gang violence in Jamaica there is, in the light of ongoing initiatives by the Jamaican Government, a general sufficiency of protection.
- 3.6.11 *Internal relocation.*** Jamaica has an area of 10,991 sq km and a population of 2,731,832. 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).²³ Over 70% of murders in Jamaica take place in the Kingston Metropolitan Region (KMR), or “Metro area”, which comprises Kingston and St. Andrew and parts of St. Catherine. Over half of Jamaica's population lives in this notorious crime black spot.²⁴
- 3.6.12** The Jamaican Constitution provides for freedom of movement within the country and the Government generally respects this right in practice.²⁵ It is therefore practicable for claimants who may have a well-founded fear of persecution in one area to relocate to other parts of Jamaica where gang violence is less prevalent and where they would not have a well-founded fear and, except where the circumstances of an individual claimant indicate otherwise, it would not be unduly harsh to expect them to do so.

¹⁹ COIS Jamaica Country Report para. 6.280

²⁰ COIS Jamaica Country Report para. 5.53 – 5.55

²¹ COIS Jamaica Country Report para. 5.37 & 6.01

²² COIS Jamaica Country Report para. 6.01 – 6.02

²³ COIS Jamaica Country Report para. 2.01; DiscoverJamaica.com

²⁴ COIS Jamaica Country Report paras 6.15 – 6.26 & 6.195 – 6.213

²⁵ COIS Jamaica Country Report para. 6.105

3.6.13 *Caselaw*

NR (Jamaica) [2006] UKIAT 00008 promulgated 6 January 2005. Gang warfare – Witness – Risk on return. The Tribunal agreed with the Adjudicator that the police would wish to protect the appellant and were willing and able to apply their resources to protect him, having regard to operational resources and the constraints on the provision of police protection. That is in line with the test in *Horvath*. The appellant's evidence did not establish that there was a continuing risk to him today, given his minor role in the abortive criminal proceedings against the opposing gang. The appellant's evidence of current risk is too vague to succeed, even in the light of the difficulties which the police have with Jamaican gang warfare.

3.6.14 *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. For claimants who fear or who have experienced ill-treatment as a result of criminal gang violence in Jamaica there is a general sufficiency of protection and internal relocation would in most cases be a reasonable option. Applications under this category are therefore likely to be clearly unfounded and as such should be certified.

3.6.15 However claims by those who fear a 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 such cases certification may be possible on grounds of sufficient state protection and/or internal relocation is clearly an effective way of avoiding the threat and is clearly reasonable. In reaching a conclusion on internal relocation caseworkers will need to have established that there is real reason, supported by evidence, to believe that the claimant would not be found by the gang if they relocated internally and that it would not be unduly harsh to expect them to do so. In the case of female claimants it is unlikely that it could not at least be argued that it would be unduly harsh to expect them to relocate internally and while it may nonetheless be found that internal relocation may be a reasonable option for a woman, claims from women should not be certified on this basis.

3.7 *Gay men and lesbians*

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

3.7.2 *Treatment.* Although it is not illegal to be homosexual in Jamaica, the Offences Against Persons Act criminalises homosexual intercourse between men, with a penalty of up to ten years' imprisonment with hard labour. The law also criminalises "acts of gross indecency" between men - in public or in private. The number of prosecutions, if any, brought under this legislation is not reported. Homosexual activity between women is not mentioned.²⁶

3.7.3 Jamaican society is strongly disapproving of homosexuality – a 2001 poll found 96% of the population was opposed to legalising homosexual activity. Physical and verbal abuse of gay men is widespread, including beatings, armed attacks and murder. Gay men and lesbians have been forced from their homes and towns. There have been allegations of police harassment, arbitrary detention, mob attacks, and harassment of homosexual patients by hospital and prison staff.²⁷

3.7.4 *Sufficiency of protection.* Police often do not investigate human rights abuses against gay men and lesbians. Victims are often afraid to seek police protection as in some cases the police themselves harass and attack men they perceived to be homosexual. There are also allegations that police actively support homophobic violence, fail to investigate complaints of abuse, and instead arrest and detain the victims for their homosexual conduct. In some

²⁶ COIS Jamaica Country Report paras 6.149 – 6.155

²⁷ COIS Jamaica Country Report paras 6.156 – 6.164

cases, homophobic police violence is a catalyst for violence and serious—sometimes lethal—abuse by others.²⁸

- 3.7.5** There have been reports that health workers do not actively promote services for gay men because the law impedes such work and because the police actively impede government-supported peer HIV prevention efforts among gay men and sex workers. AIDS outreach workers reported that the possession of condoms - a key tool in HIV prevention - can result in police harassment, arrest and criminal charges. The government has denied that the authorities have been soft on police abuses of gay men and persons affected by HIV/AIDS while the Police Federation called for charges to be brought against the human rights organisations that alleged abuses.²⁹
- 3.7.6** There are however examples of the police investigating crimes against gay men. On 9 June 2004, Brian Williamson, a prominent homosexual rights activist and founding member of J-FLAG, was found stabbed to death at his home in Kingston. Human rights groups believed that the brutality of Williamson's death indicated a hate crime although the police maintained that it was a robbery. A suspect was arrested and in custody at the end of 2004 but no further information is available. In February 2004 police were attacked when they arrived to save a gay teenager who was being attacked by fellow students, apparently at the instigation of the boy's own father. The police however declined to take further action, claiming it was a family matter.³⁰ Another example of police investigation in response to a high-profile murder of a gay rights activist was after the 30 November 2005 murder of prominent HIV/AIDS activist Steve Harvey.³¹
- 3.7.7** In what was portrayed as a radical shift in attitude by the Jamaican government, having previously refused point blank to enter into a debate about the law on homosexual acts, in July 2005 a parliamentary committee headed by a junior minister proposed a debate on the issue in the context of the battle against HIV/AIDS.³²
- 3.7.8** Where a gay man or lesbian is able to establish a real risk of persecution or Article 3 treatment, the lack of evidence that there is a sufficiency of protection for gay men and lesbians means that sufficiency of protection cannot be relied upon.
- 3.7.9 *Internal relocation.*** Alleged gay men and lesbians in inner city areas are at particular risk of homophobic violence.³³ The Jamaican Constitution provides for freedom of movement within the country and the Government generally respects this right in practice.³⁴ It is therefore practicable for claimants to relocate to other parts of Jamaica where homophobic violence is less prevalent and where they would not face treatment that would amount to persecution. Whether it would be a viable option for them to do so will depend on individual circumstances. For example, there is no evidence that lesbians face serious mistreatment but where they do have a localised well-founded fear of mistreatment it will in most cases be possible for them to avoid the threat by moving to a different part of Jamaica and it may be reasonable for them to do so. Equally, a gay man who is habitually 'discreet' about his sexuality but who has a well-founded fear of mistreatment because it has been 'discovered' locally can move to another part of the country where his sexuality is not publicly known and it would not be unduly harsh to expect him to do so. But where a gay man would readily be identified as such wherever he lived, internal relocation would not be an option.

3.7.10 *Caselaw.*

QBD Admin Court Determination: R (On the application of Garfield Dawkins) v IAT (18/2/2003) held that the mere fact that Jamaica criminalises homosexual behaviour was not sufficient to require

²⁸ COIS Jamaica Country Report paras 6.156 – 6.164

²⁹ COIS Jamaica Country Report paras 6.156 – 6.164

³⁰ COIS Jamaica Country Report paras 6.165 – 6.168

³¹ COIS Jamaica Country Report paras 6.169 – 6.173

³² COIS Jamaica Country Report paras 6.163

³³ COIS Jamaica Country Report para. 6.156 – 6.162

³⁴ COIS Jamaica Country Report para. 6.105

the UK to grant immigration status to all practising homosexuals in Jamaica – the applicant has to either show a breach of Article 3 or show that he would be subject to substantial discrimination and/or violence and abuse.

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

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

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

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

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

3.7.15 The fact of being a gay Jamaican man will not of itself mean that a claimant would be persecuted, or that the claim may not be certified as clearly unfounded. However, claims from gay Jamaican men should not be certified on the basis of sufficiency of protection nor generally should they be certified on the basis of internal relocation. Only if it clearly could not reasonably be argued that a claimant would experience persecution or ill-treatment were he to relocate (e.g. from the inner city to another area), and it is clear that it would not be unduly harsh for him to relocate, should a claim be certified on this basis.

3.7.16 There is no evidence that lesbians generally face serious ill treatment in Jamaica and in the absence of evidence to the contrary may be certified as clearly unfounded. Where a lesbian is able to establish a real risk of treatment amounting to persecution or Article 3 treatment,

sufficiency of protection cannot be relied upon. Where the well-founded fear is a localised one it may be possible for the claimant to avoid the threat by moving to a different part of Jamaica. However, only if it clearly could not reasonably be argued that a claimant would experience persecution or ill-treatment were she to relocate and it is clear that it would not be unduly harsh for her to do so should a claim be certified on this basis. Where exceptionally it is found that a lesbian does have a well-founded fear of persecution in Jamaica and that she could not avoid the threat by internal relocation or it would be unreasonable for her to do so, as lesbians in Jamaica may be considered to be a particular social group a grant of asylum would be appropriate.

3.8 Victims of domestic violence

- 3.8.1** Some female claimants seek asylum on the grounds that they are the victims of domestic violence and are unable to seek protection from the authorities. Occasionally the claimant will state that the abuser is involved with a criminal gang and that this would also prevent the claimant from gaining protection.
- 3.8.2 *Treatment.*** Social and cultural traditions mean patterns of violence against women persist. Such violence is widespread but many women are reluctant to acknowledge or report abusive behaviour, leading to wide variations in estimates of its extent. Between January and November 2005, 160 women were murdered, 34 more than the number killed for the corresponding period in 2004 and almost double the 81 women murdered for the similar period in 2003. During 2005, 735 incidents of rape were reported (not including statutory rape), a decrease of 15 percent, but NVOs stressed that the vast majority of rapes were not reported. Moreover, these statistics may be misleading because often a significant decrease may be due to decreased reporting indicative of a lack of confidence in the police.³⁵
- 3.8.3** According to statistics from the Police Commissioner's office, one woman is raped every twelve hours in Jamaica. The statistics show that up to 23 October 2005, there were 606 reported cases of rape. UNICEF cited statistics up to September 2005 as 835 reported cases of sexual crimes against Jamaican women, of which 557 involved girls, with 291 being raped, 258 carnally abused and eight being victims of incest.³⁶
- 3.8.4 *Sufficiency of protection.*** There is comprehensive legislation against domestic violence in Jamaica. Rape, threatening, injuring, wounding, sex with girls under 16 are all criminal offences. Reports of the penalties for rape vary from 25 years with hard labour to life. Protection is available to both single and married women. Currently the offence of rape is restricted to vaginal intercourse. Planned amendments to the Offences Against Person's Act would broaden the definition of rape and make it gender-neutral.³⁷
- 3.8.5** As well as criminal sanctions against abusers, other remedies are available. The Domestic Violence Act and Matrimonial Causes Act provide for abused spouses to apply to the court for orders to exclude an abuser from the home in which both parties had been living or from going to or near to the workplace, school, or any other specified location where the abused spouse or child may be found. The Domestic Violence (Amendment) Act 2004 widened the scope of the Domestic Violence Act to provide for a protection order against any person who resides in the respondent's household or who is in a visiting relationship with the respondent (in addition to legally recognised marriages, many couples form 'visiting unions', in which the man visits the woman, often at the parental home, or common-law marriages, many of which develop out of visiting unions). 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

³⁵ COIS Jamaica Country Report para 6.112 – 6.120

³⁶ COIS Jamaica Country Report para 6.121 & 6.123

³⁷ COIS Jamaica Country Report para 6.115 – 6.116

occupation orders. Breaching a restraining order is punishable by a fine of up to approximately \$160 (J\$10,000) and six months' imprisonment. Family Courts, where the emphasis is on counselling and reconciliation, handle most cases of domestic violence.³⁸

- 3.8.6** The JCF rape investigative and juvenile unit, which was headed by a female deputy superintendent, handled sex crimes. Several women's groups, including Women's Media Watch, applauded the December 2005 ratification by parliament of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women.³⁹
- 3.8.7** Efforts to raise awareness about violence against women continued in 2005. The government's Bureau of Women's Affairs operates crisis hotlines and shelters and manages a public education campaign to raise the profile of domestic violence. In most cases the police refer women to a crisis centre run by Woman Incorporated, a registered charitable non-governmental organisation. *Woman Inc* operate two centres, one in Kingston and one in Montego Bay. The crisis centres provide temporary residence, counselling, advice and legal aid to women who have been victims of domestic violence, rape, incest and domestic crisis. They are open during office hours and also maintain a 24-hour hotline. When the incident occurs during the night, the counsellor on the Hotline may refer the victim to the Police who will escort the person to the Shelter, when necessary, providing there is space available.⁴⁰
- 3.8.8** In July 2005 'Women Incorporated' held a three-day domestic violence intervention training programme for law enforcement officers who were due to be assigned to a new model police station under construction. A spokeswoman for the organisation said that in the past police officers have disregarded complaints from victims of domestic violence through ignorance – the training sessions aimed to change that. Amnesty International launched a campaign called '*Stop Violence Against Women*' in March 2004 and announced that they would be broadcasting a series of radio public service announcements in Jamaica. Clarendon residents established a crime prevention committee as part of the Ministry of National Security's parish crime prevention programme which as well as addressing major crimes focuses on issues such as domestic violence.⁴¹
- 3.8.9** In light of the above there is a general sufficient protection available to victims of domestic violence through enforcement of legislative provisions and availability of governmental and non-governmental shelters, advice, and legal aid and counselling. There is no evidence to suggest that the involvement of the abuser with a criminal gang would prevent the claimant from gaining protection although consideration needs to be given to the individual circumstances of an applicant's claim.
- 3.8.10 Internal relocation.** The Jamaican Constitution provides for freedom of movement within the country and the Government generally respects this right in practice.⁴² It is therefore practicable for claimants to relocate to other parts of Jamaica to escape domestic violence and except where the circumstances of an individual claimant indicate otherwise, it would not be unduly harsh to expect them to do so.
- 3.8.11 Conclusion.** Domestic violence is widespread in Jamaica but there is in general sufficient protection and internal relocation is also an option where in the particular circumstances of the claimant it is not considered unduly harsh for them to relocate. The grant of asylum or Humanitarian Protection is unlikely therefore to be appropriate and unless there are specific reasons why sufficient protection would not be available to the individual claimant *and* why it would be unduly harsh to expect them to relocate internally, such claims may be certified as clearly unfounded.

³⁸ COIS Jamaica Country Report paras 6.117 – 6.119

³⁹ COIS Jamaica Country Report paras 6.116

⁴⁰ COIS Jamaica Country Report paras 6.126 – 6.130; Woman Incorporated.

⁴¹ COIS Jamaica Country Report paras 6.154 – 6.165

⁴² COIS Jamaica Country Report para. 6.105

3.9 Prison conditions

- 3.9.1** Claimants may state 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 *Consideration.*** Prison conditions remained poor in 2005, primarily due to overcrowding and poor sanitary conditions. The Department of Correctional Services took measures during 2005 to improve catering services and medical care for inmates. A 31 March 2005 escape attempt at Kingston's maximum security prison was foiled but resulted in the deaths of three inmates and one prison guard. The media labelled the event a riot.⁴³
- 3.9.3** Men and women were incarcerated in separate facilities under similar conditions in 2005, except that women's prisons were generally not overcrowded. Although the law prohibits the incarceration of children in adult prisons, some juveniles were held with adults, particularly when juvenile facilities were filled to capacity. The majority of pretrial detainees were held in police custody, either in police stations or in remand centers, generally separate from convicted prisoners. During 2005 at least three detainees died while in police custody, though there was no evidence of negligence. 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 2005.⁴⁴
- 3.9.4** Male inmates deemed by prison wardens to be homosexual are held in a separate facility for their protection. The method used for determining their sexual orientation is subjective and not regulated by the prison system, although inmates were said to admit their homosexuality for their own safety. There were numerous reports of violence against homosexual inmates, perpetrated both by the wardens and by other inmates, but few inmates sought recourse through the prison system.⁴⁵
- 3.9.5 *Conclusion.*** Whilst prison conditions in Jamaica are poor with overcrowding and poor basic facilities being particular problems, conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Jamaica a grant of Humanitarian Protection will not generally be appropriate. Similarly where the risk of imprisonment is for reason of one of the five Refugee Convention grounds, a grant of asylum will not be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3 or for reason of one of the five Refugee Convention grounds, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate unless the risk of imprisonment is for reason of one of the five Refugee Convention grounds in which case a grant of asylum will be appropriate. Only where it clearly cannot be argued that an individual will face treatment which reaches the Article 3 threshold, should a claim of this kind be certified.

3.10 Death penalty

- 3.10.1** Jamaica retains the death penalty but this has not been implemented since 1988. A court ruling in 1993 held that keeping prisoners on death row for more than five years was inhumane and that their sentences should be commuted to life imprisonment. The

⁴³ COIS Jamaica Country Report para. 5.82

⁴⁴ COIS Jamaica Country Report paras 5.82 - 5.90

⁴⁵ COIS Jamaica Country Report paras 5.90

Jamaican Government has contended that it is not possible to complete the appeal process against a murder conviction within that five-year time frame.⁴⁶

3.10.2 A 1992 amendment to the Offences Against the Person Act paved the way for two categories of murder - capital murder, which attracts the death penalty and non-capital murder for which the sentence is life imprisonment. In July 2004 the UK Privy Council ruled that the mandatory death sentence was unconstitutional and unlawful, based on the 1992 amendment to the Act. The ruling means that the sentence for capital murder is discretionary. This means that all 60 prisoners currently on death row must have their sentences reviewed by the Court of Appeal and they must be given the opportunity to challenge the sentence. Amnesty International has reported poor conditions on death row with little ventilation, no proper sanitation, lack of sufficient medical care and brutality by the guards.⁴⁷

3.10.3 Caseworkers should consider applications made on the grounds that the claimant would face the death penalty if returned to Jamaica in accordance with the API on Humanitarian Protection. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Humanitarian Protection.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave)

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 not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate care and support arrangements in place.

4.3.2 The Jamaican government are committed to improving children's welfare and the Child Care and Protection Act was passed by Parliament on 14 March 2004 and replaced the Adoption of Children Act and the Juvenile Act. The Act generally provided for more support for the family unit and the improved safety of children, including prohibitions against trafficking in minors. It also established mechanisms, including a central child abuse registry and an Office of Children's Advocate, to monitor and defend the well being of children.⁴⁸

4.3.3 The Child Care and Protection Act (CCPA) also facilitates the prosecution of parents who deliberately neglect their children. The act reaffirms that children are the subjects of rights and that collectively, individuals, families, communities, institutions and the government are duty-bound to ensure that these rights are promoted, protected and upheld. Under the act, it is mandatory that persons with information of neglect or abuse of children report such situations to the relevant authorities. It also places a duty on every person responsible for the maintenance of a child to provide the child with adequate food, clothing, lodging and health care appropriate to the age and needs of the child. Section 28 of the act states that

⁴⁶ COIS Jamaica Country Report paras 5.31 – 5.36

⁴⁷ COIS Jamaica Country Report paras 5.31 – 5.36

⁴⁸ COIS Jamaica Country Report paras 6.131 – 6.142

*'Every person having the custody, charge or care of a child between the ages of four and 16 years shall take such steps as are necessary to ensure that the child is enrolled at, and attends, school'. ...If a person is financially unable to provide for a child, the law states that the person can apply to the Minister (of Education) for assistance.*⁴⁹

- 4.3.4** A public educational programme to inform the public about the Child Care and Protection Act provisions was officially launched on 23 June 2004 with the aim of increasing awareness of the rights of children and the responsibility of adults to respect and uphold these rights. There are 57 Child Care Institutions in Jamaica licensed by the Children's Services Division, Ministry of Health. Some are owned and operated by the State while others are owned by private individuals or organisations. The Institutions are subject to regular monitoring by the State. There are two types of child care institutions. Children's Homes which are established for the long term accommodation and maintenance of children for a period up to 18 years; and Places of Safety which are intended to accommodate juveniles on a temporary basis.⁵⁰
- 4.3.7** Children's Services Division of the Ministry of Health would make efforts to identify relatives who would be willing and able to care for any lone child returning to Jamaica. If there were no relatives, and the child has to be returned to Jamaica, the Child Services Division would meet him or her at the airport and arrange for reception in care of the State. The case would be referred to the Juvenile or Family Court for an order to allow for alternate placement. The child would automatically gain entrance into an educational institution.⁵¹
- 4.3.8 Conclusion.** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of twelve months or until their 18th birthday, whichever is the shorter period.
- 4.4 Medical treatment**
- 4.4.1** Claimants 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. Secondary and tertiary care is offered via 23 government hospitals and the teaching hospital of the University of the West Indies, with a combined capacity of 4,802 beds. The government also operate a National Health Insurance Programme (NHIP) which is a contributory health financing plan aimed at covering all residents of Jamaica for a necessary medical services. It is designed to assist individuals and families in meeting the costs of health care without suffering financial distress and to provide dedicated resources for enhancing the availability and quality of health services. It is a critical component of the overall Health Reform Programme currently being implemented to improve the delivery, management and financing of health services. Through its National Health Fund the government also provide substantial subsidies on items such as pharmaceutical items as well as on infrastructure. Treatments for a wide range of conditions including for HIV/AIDS, cardiac disease and mental health are generally available in Jamaica.⁵²
- 4.4.3** The Article 3 threshold will not be reached in the great majority of medical cases and a grant of Discretionary Leave will usually not be appropriate. However, where a caseworker considers that the circumstances of the individual claimant reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

⁴⁹ COIS Jamaica Country Report paras 6.131 – 6.142

⁵⁰ COIS Jamaica Country Report paras 6.131 – 6.142

⁵¹ COIS Jamaica Country Report paras 6.131 – 6.142

⁵² COIS Jamaica Country Report paras 5.101 – 5.154

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.
- 5.2** Jamaican nationals may return voluntarily to any region of Jamaica at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Jamaica. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Jamaican nationals wishing to avail themselves of this opportunity for assisted return to Jamaica should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

6. List of source documents

- UK Foreign and Commonwealth Office (FCO) Jamaica Country Profile 3 April 2006 at: <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1020338002724>
- UK Home Office RDS-COIS Country Of Origin Report on Jamaica April 2006 http://www.ind.homeoffice.gov.uk/ind/en/home/0/country_information/country_reports.html
- Women Incorporated: 22 June 2005 http://www.jamaica-gleaner.com/gleaner/gateway_ads/womaninc.html
- DiscoverJamaica.com www.discoverjamaica.com/gleaner/discover/geography/polgol.htm

Asylum and Appeals Policy Directorate
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