



OPERATIONAL GUIDANCE NOTE

JAMAICA

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1. Introduction

- 1.1** This document provides UK Border Agency case owners 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. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Case owners 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 case owners 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. Where a claim for asylum or Humanitarian Protection is being considered, case owners must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and

paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Case owners must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy. 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** Case owners 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://fcohrdreport.readandcomment.com/wp-content/uploads/2011/02/Cm-8339.pdf>

2.3 Actors of Protection

- 2.3.1** Case owners must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Case owners must 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** It has been reported in the 2011 US State Department Human Rights Report that the Jamaica Constabulary Force (JCF) had primary responsibility for internal security and was assisted by the Island Special Constabulary Force. The Jamaica Defence Force (JDF) was charged with national defence, maritime narcotics interdiction and JCF support. The JDF routinely conducted joint patrols and checkpoints in conjunction with the JCF. The Minister of Defence and outside of a state of emergency, the Prime Minister was the approval authority for all JDF operations in support of the JCF. The Ministry of National Security exercised the Prime Minister's authority for oversight of the JCF and JDF. The JCF was led by a

Commissioner who delegated authority through the ranks to constables. The force maintained divisions focusing on community policing, special response, intelligence gathering and internal affairs.¹

- 2.3.3** Jamaica, particularly the capital city Kingston, suffered from a high crime rate – including violent crime. Gang violence and shootings were usually concentrated in inner city neighbourhoods, including West Kingston, Grant's Pen, August Town, Harbour View, Spanish Town and certain parts of Montego Bay.²
- 2.3.4** 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 2010.³
- 2.3.5** It was reported by the Overseas Security Advisory Council (OSAC) in their report of 20 March 2012 that violent crime was a serious problem, particularly in Kingston. The capital of Jamaica has witnessed a decreased level of violent crime in 2011. However, the decrease may be attributed to numerous factors including a State of Emergency from 23 May 2010 and lasted approximately three months, police road blocks, prominently placing photographs or posters of wanted criminals in the news media, information offered to crime stoppers and an increase in police patrols.⁴
- 2.3.6** Crime can be attributed to several factors: poverty, retribution, drugs, gangs, and politics. Providing an environment conducive to crime and hard to police enabled criminal elements and gangs to infiltrate wealthier areas. Most violent crimes took place in these types of areas. Police were unable to patrol and protect most neighbourhoods adequately, and as a result, burglaries were quite common. Most wealthy residents hired private armed guard forces to deter criminals.⁵
- 2.3.7** 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.⁶

¹ US State Department Human Rights Report 2011 Jamaica, 24/05/2012 (Section 1)

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

² FCO Jamaica Travel Advice – 1 October 2012

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/north-central-america/jamaica>

³ 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>

⁴ Overseas Security Advisory Council (OSAC) Jamaica 2012 Crime and Safety Report, 20/3/2012

<https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=12216>

Date accessed 24 September 2012.

⁵ Overseas Security Advisory Council (OSAC) Jamaica 2012 Crime and Safety Report, 20/3/2012

<https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=12216>

Date accessed 24 September 2012.

⁶ BBC News, Sharp drop in Jamaica murder rate after gang crackdown, 8 April 2011 <http://www.bbc.co.uk/news/world-latin-america-13008780>

- 2.3.8** Amnesty International, in their submission to the UN Human Rights Committee in 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 did not include the 73 people killed in West Kingston between 24 and 25 May 2010, which were the result of pitched battles between the police and gang members.⁷ The UN Human Rights Committee expressed concerns in November 2011 at “continued reports of cases of extrajudicial executions by law enforcement officers. It further regretted that allegations of extra-judicial killings had, in most cases, not been effectively investigated, which perpetuated impunity.”⁸ 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”.⁹
- 2.3.9** Violent crime remained a serious concern in Jamaica and on many occasions the JCF employed lethal force in apprehending criminal suspects. The JCF’s Bureau of Special Investigations (BSI) and the Independent Commission (INDECOM) investigated all police killings, and when appropriate, sent cases to the Director of Public Prosecutions (DPP) for prosecution. However, it usually took many years to bring police officers to trial for alleged unlawful killings.¹⁰
- 2.3.10** In August 2010 the government created INDECOM to investigate actions by members of the security forces and other agents of the state that resulted in death or injury to persons or the abuse of the rights of persons. INDECOM gradually was replacing the JCF’s BSI as the main investigator of incidents involving fatal shootings by police. The BSI and INDECOM conducted administrative and criminal investigations into all incidents involving fatal shootings by police. The BSI, unable to keep up with its caseload, had a backlog of 841 cases with approximately 37 full-time and nine part-time investigating officers. During 2011 the BSI completed 308 investigations and sent 88 cases to the DPP.¹¹
- 2.3.11** INDECOM received 236 reports of fatal shootings by police officers, completed 92 investigations, and sent two to the DPP for further prosecution. INDECOM opened 724 cases for investigation and had a backlog of 632 cases at the end of 2011. INDECOM cited lack of resources to perform forensic analysis and identification of security personnel involved in incidents as major obstacles faced in its investigations of police killings. Rulings from the DPP on cases involving security forces were issued on average 27 months after the final submission of files from the BSI or INDECOM. At the end of 2011 INDECOM awaited rulings from the DPP on 40 cases. INDECOM also expressed concern that agents of the state concealed their identities in interaction with the public, including incidents of killings by security forces. A report released in August 2011 discussed how this anonymity contributed to the lack of accountability.¹²

⁷ Amnesty International, Jamaica Submission to the UN Human Rights Committee, September 2011

<http://www.amnesty.org/en/library/info/AMR38/004/2011/en>

⁸ 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>

⁹ 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>

¹⁰ US State Department Human Rights Report 2011 Jamaica 24/05/2012 (Section 1)

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

¹¹ US State Department Human Rights Report 2011 Jamaica 24/05/2012 (Section 1)

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

¹² US State Department Human Rights Report 2011, Jamaica 24/05/2012 (Section 1)

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

2.3.12 The JCF continued a community policing initiative to tackle the long-standing antipathy between the security forces and many poor inner-city neighbourhoods. Through the Community Safety and Security Branch, during 2011 the JCF conducted targeted training of 5,609 officers, 778 of whom were deployed in 360 communities in Jamaica. The branch trained community safety officers and assigned JCF workers to targeted schools as resource officers to curtail 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. All JCF officers were required to take a “graduated response” before the use of lethal force when possible. Officers were also required to take an Annual Refresher Course on the use of non-lethal equipment.¹³

2.3.13 The 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 related to the JCF).¹⁴ Despite these efforts, Freedom House noted in 2011 that corruption “remained a serious problem in Jamaica”.¹⁵

2.3.14 The law provides for an independent judiciary but the judicial system relied entirely on the Ministry of Justice for all resources.¹⁶ 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.¹⁷ 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 required”.¹⁸

2.3.15 Jamaica has an established Witness Protection programme which was introduced in November 2001 to offer protection or assistance to witnesses

¹³ US State Department Human Rights Report 2011 Jamaica 24/05/2012 (Section 1)
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

¹⁴ Jamaica Police Watchdog, JCF Anti-Corruption Update, 18 October 2011 <http://www.jamaicanpolice.com/2011/10/jcf-anti-corruption-update/>

¹⁵ Freedom House Freedom in the World 2011 Jamaica 05/07/2011
<http://www.unhcr.org/refworld/country,...JAM,,4e12dd9436,0.html>

¹⁶ US State Department Human Rights Report 2011 Jamaica 24/05/2012 (Section 1)
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

¹⁷ 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>

¹⁸ US State Department Human Rights Report 2011 Jamaica 24/05/2012 (Section 1)
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

whose lives came under threat before, during, or after a trial. Witnesses to major crimes were placed in safe locations, sometimes overseas, with fictitious names if police investigators determined that they were at risk of being killed or intimidated by defendants or their associates.¹⁹ 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.²⁰

- 2.3.16** 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 refused 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.²¹
- 2.3.17** In March 2012, the Head of Crime Stop, Prudence Gentles, noted that the “crawling” justice system continues to nurture the anti-informer culture and that “the chance of a witness being identified in court cases that are dragged out for years is high. Until there is improvement in this area, we will not benefit from an improved police force”.²² In August 2011, it was reported that in Spanish Town, “the threat these gangs pose to witnesses has resulted in the witness protection programme becoming overburdened”.²³ Furthermore, the September 2011 Civil Society Report on the Implementation of the ICCPR stated that “our experience has shown that such prosecutions are fraught with witness intimidation and coercion and have resulted in a poor rate of convictions. In the cases of which we are aware, it has been evident that the current legal system is not adequately equipped to deal justly and sensitively with situations where witnesses are intimidated by State Agents”.²⁴

2.4 Internal Relocation

- 2.4.1** Case owners must refer to the Asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for

¹⁹ 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

²⁰ US State Department Human Rights Report 2011 Jamaica 24/05/2012

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

²¹ 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

²² Jamaica Gleaner, The secret of the inner city - 'See and blind! Hear and deaf!', 25 March 2012

<http://jamaica-gleaner.com/gleaner/20120325/lead/lead2.html>

²³ Jamaica Gleaner, Castelle: Gangs pose challenges to Spanish Town police investigations, 8 August 2011

<http://jamaica-gleaner.com/latest/article.php?id=30811>

²⁴ Hear the Children's Cry/Independent Jamaican Council of Human Rights/Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG)/Jamaican Community of HIV Positive Women/Jamaicans for Justice (JFJ)/Mensana/Stand up for Jamaica/Women's Resource and Outreach Centre (WROC), Jamaica: Civil Society Report on the Implementation of the ICCPR, 20/09/2011, Paragraph 56

http://www2.ohchr.org/english/bodies/hrc/docs/ngos/JJSR_Jamaica_HRC103_Annex2.pdf

guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account. Case owners must refer to the Gender Issues in the asylum claim where this is applicable. 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 unreasonable 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.²⁵
- 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 society²⁶ 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 required.
- 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

²⁵ US State Department Human Rights Report 2011 Jamaica 24/05/2012 (Section 2D)
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

²⁶ For further information regarding discrimination against women please see, U.S. Department of State, Country Report on Human Rights Practices 2011: Jamaica, 24/05/2012, Section 6 Discrimination, Societal Abuses, and Trafficking in Persons <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525> and Hear the Children's Cry/Independent Jamaican Council of Human Rights/Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG)/Jamaican Community of HIV Positive Women/Jamaicans for Justice(JFJ)/Mensana/Stand up for Jamaica/Women's Resource and Outreach Centre (WROC), Jamaica: Civil Society Report on the Implementation of the ICCPR, 20/09/2011
http://www2.ohchr.org/english/bodies/hrc/docs/ngos/JJSR_Jamaica_HRC103_Annex2.pdf

of Protection) in 2.5 below.

2.5 Country Guidance Caselaw

Supreme Court. RT (Zimbabwe) & others v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

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, 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. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

- 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 '[Considering the asylum claim and assessing credibility](#)').
- 3.3** For any asylum cases which involve children either as dependents or as the main applicants, case owners must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UK Border Agency instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account

in all Agency activities.

- 3.4** 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 does not qualify for asylum, or Humanitarian Protection, consideration must be given to any claim as to whether he/she qualifies for leave to remain on the basis of their family or private life. Case owners must also consider if the applicant qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

- 3.4.1 Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR**
An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Case owners are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

- 3.4.2 Other severe humanitarian conditions and general levels of violence meeting the Article 3 threshold.**

There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.

- 3.4.3** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

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 'Section 4 – Making the Decision in the Asylum Instruction' ['Considering the 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 UK Border Agency file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications 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.²⁷
- 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.²⁸
- 3.6.4** According to the Overseas Security Advisory Council 2012 Crime and Safety Report, in 2011, there were murders (1,124), shootings (1,322), carnal abuse (637), rape, (738), robberies (3,033), break-ins (3,409), larceny (372) and fraud (121). With a population of approximately 2.7 million people, the number of murders and other violent crimes caused Jamaica to have one of the highest per capita homicide rates in the world. Most violent crimes, especially murder, involved firearms.²⁹
- 3.6.5** Amnesty International quoted a government source as saying that criminal gangs were thought to be responsible for 80 per cent of all major crimes in the country. Most victims of violent crime lived in deprived and excluded inner-city areas where unemployment rates were high and access to basic services – water, electricity and security of housing tenure – were often poor. Some of these neighbourhoods were neglected by the state for years, and many had effectively become the fiefdoms of gang leaders. Criminal gangs not only controlled communities through fear and violence, they also controlled access to what few services were available. Many were 'garrison communities' where the ruling gangs had for years flourished under the patronage of one or other of the political parties.³⁰
- 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.³¹ 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 reportedly enjoyed substantial protection from the ruling Jamaican Labour Party and Prime Minister Bruce

²⁷ FCO Jamaica Country Profile February 2012 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/north-central-america/jamaica?profile=all>

²⁸ Freedom House - Freedom in the World 2012 – Jamaica 22 August 2012 <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=503c722c2d>,

²⁹ Overseas Security Advisory Council (OSAC) Jamaica 2012 Crime and Safety Report 20/3/2012 <https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=12216>

³⁰ Amnesty International – Public Reforms and Human Rights in Jamaica – July 2009 <http://www.amnesty.org/en/library/asset/AMR38/001/2009/en/353c5156-8749-41e1-8de9-fa9a611c9c2f/amr380012009en.pdf>

³¹ BBC News, Sharp drop in Jamaica murder rate after gang crackdown 7 April 2011 <http://www.bbc.co.uk/news/world-latin-america-13008780>

Golding, whose parliamentary constituency was Tivoli Gardens, a West Kingston district that the Shower Posse controlled. 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.³²

- 3.6.7** Long-standing relationships between elected representatives and organised crime, in which criminal gangs guaranteed voter turnout in certain neighbourhoods in exchange for political favours and protection, received special scrutiny in recent years as the U.S. government pressed for the extradition of alleged drug trafficker, Christopher Coke. In April 2010, the Washington Post reported that a JLP Government Official had signed a \$400,000 contract with the U.S lobbying firm Manatt, Phelps & Phillips to fight Coke's extradition. The public outcry in the United States and Jamaica forced Golding in May 2010 to order Jamaican security forces into Tivoli Gardens to arrest Coke, leading to days of violence in which over 70 civilians and several police personnel were killed. Coke was finally detained in late June, reportedly on his way to surrender at the U.S embassy.³³ In August 2011 after being extradited to the United States, Mr Coke pleaded guilty to drug trafficking and assault charges.³⁴ He was sentenced to 20 years in a US prison on the trafficking charge and 3 years for conspiracy to commit assault with a dangerous weapon.³⁵
- 3.6.8** Prime Minister Golding suddenly announced his resignation in September 2011, a move widely interpreted as fallout from the Coke affair, which had caused Golding to lose support within his own party and among the electorate. Observers speculated that the managed transition to a successor was a pre-emptive political manoeuvre to keep the JLP as a viable political contender. In October 2011, the JLP elected Minister of Education, Andrew Holness, to become Golding's successor as party leader and Prime Minister. The transition to Holness, who was 39 years old, was seen by some as marking a generational shift within the JLP, and possibly within Jamaican party politics in general.³⁶ In general elections held on 29 December 2011, the opposition PNP won 42 of the 63 seats in the House of Representatives and PNP leader Portia Simpson Miller was sworn in as Prime Minister on 5 January 2012.³⁷
- 3.6.9** Intelligence suggested that there were 268 active gangs in Jamaica, a five-fold increase in prevalence compared to the 1998 estimate of 49 active gangs. There were approximately 12 organised crime groups on the island; estimates in 1998 were that there were 7 highly organised gangs. While there was 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.³⁸

³² BBC News Profile: Christopher 'Dudus' Coke 31 August 2011 <http://www.bbc.co.uk/news/10146172>

³³ Freedom House – Freedom in the World 2012 – Jamaica 22 August 2012

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=503c722c2d>

³⁴ Freedom House – Freedom in the World 2012 – Jamaica

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=503c722c2d>

³⁵ BBC News – Jamaican Drug Kingpin 'Dudus' Coke Jailed for 23 Years 8 June 2012

<http://www.bbc.co.uk/news/world-us-canada-18371383?print=true>

³⁶ Freedom House – Freedom in the World 2012 – Jamaica, 22 August 2012,

<http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=503c722c2d>

³⁷ US State Department Human Rights Report 2011 Jamaica 24/05/2012 (Section 3)

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

³⁸ Leslie Glaister. Confronting the Don: The Political Economy of Gang Violence in Jamaica, September 2010

- 3.6.10** In October 2004 the armed forces and the police launched ‘Operation Kingfish’, an intelligence-based task force meant to reduce the 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.³⁹
- 3.6.11** In April 2011 the Jamaican government 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 had increased.⁴⁰ The government also established the Independent Investigation of Commissions, to investigate incidents of civil shooting, though local human rights organisations have expressed doubt whether the organisation would have the resources it required to function effectively.⁴¹
- 3.6.12** Families and sometimes entire communities had been forced to flee their homes and seek refuge as a result of threats and violence from gangs. Sometimes the threats were triggered by conflict between rival political factions; sometimes they were the result of criminal activities.⁴² Women and girls in inner-city communities were 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.⁴³
- 3.6.13** In 2012, the Overseas Security Advisory Council stated that organised crime and other criminal elements are prevalent and extremely active. The police are only able to resolve (make arrests) in 44 percent of homicides annually, and they only convict perpetrators in five percent of the homicide cases. This leads both the public and police to doubt the effectiveness of the criminal justice system, leading to vigilantism, which only exacerbates the cycle of violence. Based on their past experiences, most civilians fear that, at best, the authorities cannot protect them from organised criminal elements and, at worst, are colluding with criminals, all of which leads citizens to avoid giving evidence or witness testimonies.⁴⁴

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

- 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. 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

<http://www.smallarmssurvey.org/fileadmin/docs/B-Occasional-papers/SAS-OP26-Jamaica-gangs.pdf>

³⁹ Contemporary Political History <http://www.europaworld.com/entry/jm.is.4>

⁴⁰ BBC News, Sharp drop in Jamaica murder rate after gang crackdown 7 April 2011 <http://www.bbc.co.uk/news/world-latin-america-13008780>

⁴¹ Freedom House – Freedom in the World 2012 – Jamaica, 22 August 2012,

<http://www.unhcr.org/cgi-bin/txis/vtx/refworld/rwmain?page=printdoc&docid=503c722c2d>,

⁴² Amnesty International – Public Reforms and Human Rights in Jamaica – July 2009 <http://www.amnesty.org/en/library/asset/AMR38/001/2009/en/353c5156-8749-41e1-8de9-fa9a611c9c2f/amr380012009en.pdf>

⁴³ 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>

⁴⁴ Overseas Security Advisory Council (OSAC) Jamaica 2012 Crime and Safety Report 20/3/2012 <https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=12216>

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.

- 3.6.15** 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.
- 3.6.16** 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.

3.7 Gay Men, Lesbians, Bisexual and Transgender (LGBT) Persons

- 3.7.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution as gay men, lesbians, bi-sexual or transgender persons in Jamaica.
- 3.7.2 Treatment** The law prohibits “acts of gross indecency” (generally interpreted as any kind of physical intimacy) between persons of the same sex, in public or in private, which are punishable by 10 years in prison. There is an “anti-buggery” law that prohibits consensual same-sex sexual conduct between men, but it is not widely enforced. Homophobia is widespread in Jamaica, and through the songs and the behaviour of some musicians, the country’s dancehall culture helped perpetuate this homophobia.⁴⁵ Jamaican law contains specific prohibitions on certain sexual activities. These prohibitions are used to target homosexuals and trans-gendered individuals. Violations can result in lengthy imprisonment.⁴⁶ The continuing existence of such laws is considered a violation against the right to equal protection under the International Covenant for Civil and Political Rights to which Jamaica is a party. Violence against homosexuals is frequently ignored by the police, who fail to make arrests in such cases.⁴⁷ According to the Shadow Report submitted to the Human Rights Committee, “judges allow their prejudice against victims of violence based on sexual orientation or gender identity to influence their decision to grant a lenient sentence to defendants in criminal proceedings. For example, defendants accused of murder are allowed to use the excuse of “self-defence” to secure lenient sentences. This defence is particularly common amongst those accused

⁴⁵ US State Department Human Rights Report 2011 Jamaica, 24/05/2011, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

⁴⁶ International Travel Information: Jamaica http://travel.state.gov/travel/cis_pa_tw/cis/cis_1147.html

⁴⁷ Freedom House – Freedom in the World 2012 – Jamaica, 22 August 2012 <http://www.unhcr.org/cgi-bin/teaxis/vtx/refworld/rwmain?page=printdoc&docid=503c722c2d>,

of crimes against LGBT individuals, who frequently claim self-defence against alleged sexual advances from the victim, thereby resulting in very few convictions for those who commit crimes against this group”.⁴⁸

- 3.7.3** The Jamaica Forum for Lesbians, All Sexuals, and Gays (J-FLAG) continued to report serious human rights abuses, including assault with deadly weapons, “corrective rape” of women accused of being lesbians, 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 2011 J-FLAG received 84 reports of sexually motivated harassment or abuse, which incorporated 71 cases of attempted or actual assault, including at least two killings and 21 reports of displacements. Members of the police force reportedly were the perpetrators in 12 cases. J-FLAG data showed that young people, between the ages of 18 to 29, continued to bear the brunt of violence based on sexual orientation. 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. Human rights non-governmental organisations (NGOs) and government entities agreed that brutality against such persons, primarily by private citizens, was widespread in the community.⁴⁹
- 3.7.4** In a December 2011 debate leading up to the national elections, the then PNP leader, Portia Simpson Miller, said that she would appoint cabinet ministers based on ability and that sexual orientation would not be an issue, in contrast to the former Prime Minister Golding’s statement saying that he would not appoint a “homosexual” to his cabinet. Portia Simpson Miller also said that she would permit parliament to re-examine the anti-buggery law and free members of her party to vote their conscience on this issue. After Simpson Miller’s statements became a campaign issue, some candidates and a local newspaper produced anti-LGBT campaign rhetoric and material.⁵⁰
- 3.7.5** 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 sexual orientation 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.⁵¹
- 3.7.6** According to Amnesty International in their Report, Fifty Years Without The Liberty To Love, the laws of Jamaica had been used to justify the arbitrary arrest,

⁴⁸ Jamaica Forum for Lesbians, All-Sexuals, & Gays (J-FLAG)/Women for Women (Kingston, Jamaica)/Heartland Alliance for Human Needs & Human Rights/International Gay and Lesbian Human Rights Commission (IGLHRC)/AIDS-Free World (AFW)/The George Washington University Law School International Human Rights Clinic, Human Rights Violations of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in Jamaica: A Shadow Report Submitted for consideration at the 103rd Session of the Human Rights Committee, October 2011, E. Article 14 (Right to Fair Trial) http://www2.ohchr.org/english/bodies/hrc/docs/ngos/LGBT_Jamaica103.pdf

⁴⁹ US State Department Human Rights Report 2011 Jamaica, 24/05/2012, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

⁵⁰ US State Department Human Rights Report 2011 Jamaica, 24/05/2012, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

⁵¹ US State Department Human Rights Report 2011 Jamaica, 24/05/2012, Section 6. Discrimination, Societal Abuses, and Trafficking in Persons <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

detention and even torture of individuals who were suspected of being a LGBT person. These laws also sent a message to the entire population that discrimination, harassment and violence against people who were, or who were perceived to be, 'different', was okay. As a result, LGBT persons faced disproportionately high levels of discrimination when accessing healthcare, housing, employment and other services. The perpetrators of the vast majority of these crimes were allowed to walk free with little or no investigation occurring when these occurrences were reported to the police.⁵²

- 3.7.7** Amnesty International continued that, the cause of the justification for continued discrimination was that human rights did not apply to sexual orientation, and that the rights of LGBT individuals were fringe, special interest or 'Western' rights, not compatible with Jamaican religious and cultural values. Understandably, people were entitled to their own religious, cultural and moral beliefs. However, these beliefs could not be used as a justification for differential treatment, for intolerance, violence or the criminalisation of intimacy between adults based on whom they love. LGBT persons have the right not to be discriminated against on the basis of sexual orientation; the right to equality before the law; the right to privacy; the right to health; the right to life, liberty and security of the person; and the right to be free from torture and inhuman treatment.⁵³
- 3.7.8** The Amnesty International Annual Report covering events in 2011 stated that the Charter of Fundamental Rights and Freedoms failed to include the right to non-discrimination on grounds of sexual orientation and gender identity. A petition was filed with the Inter-American Commission on Human Rights on behalf of two gay men to challenge the articles of the Offences Against the Person Act which was commonly known as the "buggery" law. A UN Human Rights Committee recommendation called on the state to amend the law and to provide protection for LGBT people and for human rights defenders working on their behalf.⁵⁴
- 3.7.9** According to Boris Dittrich, Advocacy Director in the LGBT Rights Program at Human Rights Watch, homophobia was so bad that human rights defenders advocating the rights of LGBT people were not safe in Jamaica and he states that Jamaica should act on its international obligations to prevent discrimination. The Jamaican media reported two homophobic incidents in June 2012 in which violence was threatened or used to injure innocent civilians, simply because they were suspected of being homosexual. On 21 June 2012, in Jones Town, Kingston, the police had to intervene as an angry crowd gathered in front of a house where five homosexuals were staying. Homophobic threats, including death threats, caused one of the most outspoken campaigners for the rights of LGBT people, Maurice Tomlinson, to flee Jamaica in January 2012. He fled to Canada, where he received two more death threats by email in February and March 2012. Upon the request of the former Assistant Police Commissioner, he returned briefly to Kingston for an investigation, but the police had not followed up with him.⁵⁵ In June 2012, it was noted that members of the LGBT community

⁵² Amnesty International – Fifty Years without the Liberty to Love – 17 May 2012
<http://www.amnesty.org/en/library/asset/AMR38/001/2012/en/49565034-6213-4e45-b917-8d78ccf39a40/amr380012012en.pdf>

⁵³ Amnesty International – Fifty Years without the Liberty to Love – 17 May 2012
<http://www.amnesty.org/en/library/asset/AMR38/001/2012/en/49565034-6213-4e45-b917-8d78ccf39a40/amr380012012en.pdf>

⁵⁴ Amnesty International Annual Report 2012 Jamaica, 24/05/2012. <http://www.amnesty.org/en/region/jamaica/report-2012>

⁵⁵ UNHCR Refworld – Human Rights Watch, Jamaica: Combat Homophobia – 18 July 2012
<http://www.unhcr.org/refworld/country....JAM.,500916232,0.html>

reported to J-FLAG that eight gay men had been murdered within the last three months, bringing to the fore the reality that despite progress towards greater tolerance, the LGBT community continues to be at great risk of violence.⁵⁶

- 3.7.10** International and local human rights organisations supplied 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 had not laid charges against anyone responsible for mob-related killings of LGBT people. Similarly, the Executive Director of J-FLAG stated that there had not been any prosecutions of participants of mob violence against LGBT people.⁵⁷
- 3.7.11** J-FLAG members also suffered attacks on their property and home intrusions, as people insisted 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.⁵⁸
- 3.7.12** Gender discrimination also disproportionately affected 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. 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 were not aware of any action taken to seek accountability for these murders of transgender individuals.⁵⁹
- 3.7.13** 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 the opportunity to celebrate the progress that had been made in protecting and promoting the human rights of LGBT Jamaicans." J-Flag claimed that this progress "was 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 JCF 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

⁵⁶ Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG), Gays saddened by recent murders, call on Prime Minister to act, 14 June 2012

<http://www.jflag.org/2012/06/>

⁵⁷ Immigration and Refugee Board of Canada, Jamaica: How police treat complaints made by lesbian, gay, bisexual, and transgender (LGBT) people (2007-2010), 10/12/2012

<http://www.unhcr.org/refworld/country,COI,,,JAM,4562d94e2,4d2abcb52,0.html>

⁵⁸ US State Department Human Rights Report 2010; Jamaica, 08/04/2011

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

⁵⁹ 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

representatives, in society have accepted our invitation and given 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 a LGBT person.”⁶⁰

- 3.7.14** The National Survey of Attitudes and Perceptions of Jamaicans Towards Same-Sex Relationships found that while Jamaicans continue to have strong negative attitudes towards homosexuality, one in every five Jamaican was tolerant of LGBT persons and would support an addendum to the charter of rights affording rights to the LGBT community. “These findings speak to the progress we are making as a people in respecting the humanity, dignity and equality of LGBT persons,” said Dane Lewis, J-FLAG’s executive director. “However, given that we have a vibrant LGBT community, much more still needs to be done so we can move forward as a cohesive and just society that intends to become the place of choice to live, work, raise families and do business.”⁶¹ Approximately 53% of the sample felt that professional help can change a homosexual’s sexual orientation to heterosexual; this represents an increase of about 6% compared to the previous study. Most business persons said that they were not likely to hire persons who were known to be non-heterosexual, mostly because they felt that it would make their co-workers uncomfortable. Most, however, said that they would not fire someone because of their sexual orientation.⁶²

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

- 3.7.15 Conclusion** LGBT persons are targeted for murder, attacks, “corrective rape”, arbitrary detention, extortion, harassment and discrimination. 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.⁶³ 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.

⁶⁰ 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/>

⁶¹ J-FLAG, New Study finds More Jamaicans Feel LGBT Persons Deserve Equal Rights and Protection of the Law – 05 September 2012 <http://www.jflag.org/news-events/>

⁶² JFLAG, National Survey of Attitudes and Perceptions of Jamaicans Towards Same Sex Relationships, 31/07/2012, *Executive Summary* <http://www.jflag.org/wp-content/uploads/2012/09/2012-ATTITUDES-AND-PERCEPTIONS-OF-JAMAICANS-TOWARDS-SAME-SEX-RELATIONSHIPS.pdf>

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

- 3.7.16** 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, bisexuals and transgender persons in Jamaica may be considered to be members of a particular social group, they should be granted asylum.
- 3.7.17** 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.
- 3.7.18** If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well founded fear of persecution due to their sexual orientation.

3.8 Victims of Domestic Violence

- 3.8.1** Some female applicants may seek asylum on the grounds that they are the victims of domestic violence and are unable to seek protection from the authorities. Occasionally the applicant may state that the abuser is involved with a criminal gang and that this would also prevent the applicant from gaining protection.
- 3.8.2 Treatment** Social and cultural norms perpetuated violence against women, including spousal abuse. The law prohibited domestic violence and offered remedies including restraining orders and other noncustodial sentencing. Breaching a restraining order was punishable by a fine of up to J\$10,000 and six months' imprisonment. The NGO Woman Inc. reported that women frequently complained that police failed to treat domestic violence as a crime and take the necessary reports. The JCF instituted a domestic abuse sensitivity training program for police officers in downtown Kingston. The Bureau of Women's Affairs (BWA) developed a draft National Plan of Action on Violence against Women and Gender-Based Violence, which aimed to provide a comprehensive strategy guiding the government's response to the problem. NGOs meanwhile expressed concerns that in the short term there was insufficient funding for police investigations of gender-based violence and for counselling and shelter for victims. Woman Inc., with a small subsidy from the government, operated the only shelter for battered women in the country.⁶⁴
- 3.8.3** The 2009 Sexual Offences Act criminalized spousal rape, but only in certain circumstances, namely when the parties have separated or when proceedings to dissolve the marriage or have it annulled had begun, when the husband is under

⁶⁴ US State Department Human Rights Report 2011 Jamaica, 24/05/2012 Section 6. Discrimination, Societal Abuses, and Trafficking in Persons <http://www.state.gov/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

a Court Order not to molest or cohabit with his wife, or when the husband knows he suffers from a sexually transmitted infection. Human rights groups continued to advocate for a more comprehensive law on spousal rape. The authorities reported 738 rapes and 637 cases of carnal abuse of women and girls, compared with 668 rapes and 531 cases of carnal abuse in 2010. The Bureau of Women's Affairs (BWA) believed that the true incidence was significantly higher than these statistics indicated, given the problem of under-reporting, due to fear of stigma, retribution, or further violence. The JCF Centre for Investigation of Sexual Offences and Child Abuse, which was led by a female Deputy Superintendent, handled sex crimes.⁶⁵

- 3.8.4** According to Freedom in the World 2012, legal protections for women were inadequately enforced, and violence and discrimination remain widespread. Women were under represented in government, holding just eight seats in the House of Representatives.⁶⁶ However, police statistics revealed a decrease in complaints of sexual crime against women and girls according to Amnesty International World Report 2012.⁶⁷ The Civil Society Report on the Implementation of the ICCPR noted that "Although there are specialist officers within the Police Force specifically mandated to investigate allegations of sexual violence, notwithstanding their training and specialization, we are aware of instances of discrimination and prejudice in the manner in which specific complaints are addressed and/or investigated. There have been instances where women have sought the protection of the police as the first response to these issues, only to be discriminated against, abused, and sent away."⁶⁸
- 3.8.5** There is no legislation that addresses sexual harassment and no legal remedy for victims of sexual harassment. The BWA carried out workshops to sensitize public sector workers to the issue of sexual harassment. NGOs have advocated for legislation on sexual harassment since the early 1990s and continue to advocate for the immediate drafting and enactment of such legislation.⁶⁹
- 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 believed that many sexual crimes still go unreported, despite some improvements in police reception of cases.⁷⁰
- 3.8.7** Women and girls in inner-city communities were particularly exposed to gang violence. They were often victims of reprisal crimes, including sexual violence, for being perceived as having reported or actually reporting criminal activity to the police. Women and girls often experience sexual coercion by gang members, as

⁶⁵ US State Department Human Rights Report 2011 Jamaica, 24/05/2012 Section 6. Discrimination, Societal Abuses, and Trafficking in Persons <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

⁶⁶ Freedom House, Freedom in the World 2012 – Jamaica, 22 August 2012 <http://www.unhcr.org/refworld/category,COI,,,JAM,503c722c2d,0.html>

⁶⁷ Amnesty International Annual Report 2012, 24/05/2012 <http://www.amnesty.org/en/region/jamaica/report-2012>

⁶⁸ Hear the Children's Cry/Independent Jamaican Council of Human Rights/Jamaica Forum of Lesbians, All-Sexuals and Gays (J-FLAG)/Jamaican Community of HIV Positive Women/Jamaicans for Justice (JFJ)/Mensana/Stand up for Jamaica/Women's Resource and Outreach Centre (WROC), Jamaica: Civil Society Report on the Implementation of the ICCPR, 20/09/2011, paragraph 92

http://www2.ohchr.org/english/bodies/hrc/docs/ngos/JJSR_Jamaica_HRC103_Annex2.pdf

⁶⁹ US State Department Human Rights Report 2011; Jamaica 24/05/2012 Section 6. Discrimination, Societal Abuses, and Trafficking in Persons <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

⁷⁰ Amnesty International, Jamaica: Amnesty International Submission to the UN Universal Periodic Review November-December 2010, 19 April 2010 <http://www.amnesty.org/en/library/asset/AMR38/001/2010/en/6969d78c-036a-48d9-a4b1-3bd618f99352/amr380012010en.pdf>

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 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.⁷¹

- 3.8.8** Amnesty International reported 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 was responsible for counselling victims and investigating sexual crimes; the implementation of several awareness raising and education programmes under the supervision of the BWA; 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 required to enforce the law and to bring perpetrators to justice.⁷² These concerns were also raised by the UN Working Group on the Universal Periodic Review on Jamaica which stated that it was essential for the government to “Step up the implementation of legislative, policy and administrative measures aimed at combating gender-based violence and sexual harassment.”⁷³ 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”.⁷⁴ 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 violence⁷⁵ (there is currently only one shelter located in Kingston which could only accommodate 12 people at a time and could only keep a family for 10 days).⁷⁶

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. Serious 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

⁷¹ Amnesty International, Jamaica: Amnesty International Submission to the UN Universal Periodic Review November-December 2010, 19 April 2010 <http://www.amnesty.org/en/library/asset/AMR38/001/2010/en/6969d78c-036a-48d9-a4b1-3bd618f99352/amr380012010en.pdf>

⁷² Amnesty International, Jamaica: Amnesty International Submission to the UN Universal Periodic Review November-December 2010, 19 April 2010 <http://www.amnesty.org/en/library/asset/AMR38/001/2010/en/6969d78c-036a-48d9-a4b1-3bd618f99352/amr380012010en.pdf>

⁷³ 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_g1110090.pdf

⁷⁴ 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>

⁷⁵ Amnesty International, Jamaica: Amnesty International Submission to the UN Universal Periodic Review November-December 2010, 19 April 2010 <http://www.amnesty.org/en/library/asset/AMR38/001/2010/en/6969d78c-036a-48d9-a4b1-3bd618f99352/amr380012010en.pdf>

⁷⁶ Jamaica Observer, Women’s Inc’s crisis shelter, 8 December 2008 http://www.jamaicaobserver.com/magazines/allwoman/143450_WOMAN-Inc-s-crisis-shelter

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 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** According to the US State Department Human Rights Report, in 2011 prisons and detention centres were severely filled to capacity and presented serious threats to life and health. The government could not protect the physical safety of prisoners. With a maximum rated capacity of 4,402 inmates, the corrections system contained approximately 4,000 adult inmates, including at least 200 women. Another 366 juveniles remained in detention in juvenile-only facilities. However, there was considerable overcrowding, since rated capacity reflected both high and low security facilities, some capacity was unusable due to staffing shortfalls and most inmates were held in high-security facilities. Although the law prohibits the incarceration of children in adult prisons in most cases, approximately 60 juveniles were held in adult jails. Homosexuals or those perceived to be homosexual were at risk of violence from both wardens and other inmates (see 3.7 for further information). At least 14 prisoners died in detention during 2011.⁷⁷

- 3.9.4** 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 supplied themselves. Inmates who did not own a container could not bathe. Female juveniles were also held at Fort Augusta.⁷⁸

- 3.9.5** The government failed to protect the physical safety of prisoners and detainees

⁷⁷ US State Department Human Rights Report 2011 Jamaica, 24/05/2012, Section 1c Prison and Detention Centre Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

⁷⁸ US State Department Human Rights Report 2011 Jamaica, 24/05/2012, Section 1c Prison and Detention Centre Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

were not clearly separated according to their different stages of criminal procedure. Persons detained without charges, on remand and convicted persons were held together in the same facility and often shared cells. Men and women were incarcerated in separate facilities, although female prisoners generally were incarcerated under better conditions than their male counterparts. Suicide also remained a problem. Over the course of two weeks in September 2011, prison authorities at the same institution in Spanish Town failed to prevent two inmates from hanging themselves with an electrical cord.⁷⁹

- 3.9.6** Conditions at the juvenile facilities were poor. Investigations into the Moneague, Half-Way Tree, Admiral Town and Glengoffe juvenile detention facilities revealed that minors reported contracting fungus from the conditions in the cells and from sleeping on cold concrete. Juvenile inmates also complained of roaches crawling over them during the day and at night. Juveniles at the Admiral Town detention centre were let out of their cells for only five minutes each day to bathe and use the toilet. At both Admiral Town and Half-Way Tree, the minor inmates were supplied inadequate with bottles in which to urinate.⁸⁰
- 3.9.7** Although the law prohibits children being held in detention or lock-up with adults, approximately 60 juveniles remained in two of the adult facilities. Reports indicated that even in cases when police attempted to have officers from the social services agency retrieve minor detainees, the agency failed to do so.⁸¹
- 3.9.8** Throughout the system medical care was inadequate and prisoners in need of dentures and unable to eat the prison food encountered difficulties gaining access to a dentist. Prison food was poor and prison authorities frequently ignored inmates' dietary restrictions.⁸²
- 3.9.9** 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.⁸³
- 3.9.10** There was no reports of political prisoners or detainees.⁸⁴
- 3.9.11** 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 referred to as "inhuman" and the treatment "arbitrary".⁸⁵ Conditions reflected a complete

⁷⁹ US State Department Human Rights Report 2011 Jamaica, 24/05/2012, Section 1c Prison and Detention Centre Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

⁸⁰ US State Department Human Rights Report 2011 Jamaica, 24/05/2012, Section 1c Prison and Detention Centre Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

⁸¹ US State Department Human Rights Report 2011 Jamaica, 24/05/2012, Section 1c Prison and Detention Centre Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

⁸² US State Department Human Rights Report 2011 Jamaica, 24/05/2012, Section 1c Prison and Detention Centre Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

⁸³ US State Department Human Rights Report 2011 Jamaica, 24/05/2012, Section 1c Prison and Detention Centre Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

⁸⁴ US State Department Human Rights Report 2011 Jamaica, 24/05/2012, Section 1c Political Prisoners and Detainees <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525> Section 1

⁸⁵ 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 B, Paragraph 36

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.⁸⁶ The conditions found at the Horizon Remand Centre were better than in the police stations, but were still extremely harsh, despite the fact that remand detainees are supposed to be presumed innocent until found guilty. The U.S. Department of State also noted that “reports of physical abuse of prisoners by guards continued”⁸⁷ and Freedom House stated that “Ill-treatment by prison guards has also been reported and conditions in detention centres and prisons are abysmal”.⁸⁸ In November 2010, Jamaicans for Justice, reported that “there exists a problem of inhumane living conditions and overcrowding in prisons and police holding cells”.⁸⁹

- 3.9.12** The government did not take any tangible actions to address the UN Special Rapporteur’s findings that officers at the Hunt’s Bay Police Station were “very obstructive, unco-operative, aggressive, and openly threatened his team during their visit.” However, reacting to what she deemed “terrible conditions” in the prisons, the chief justice instructed all resident magistrates to conduct regular visits of police lock-ups and to forward their observations to her office in writing. She counselled the magistrates to remind police of detainees’ rights to due process.⁹⁰
- 3.9.13** Although prisoners were able to make complaints to the Public Defender’s Office without censorship, and representatives were mostly able to enter the detention centres and interview prisoners without hindrance, official complaints and investigations were infrequent.⁹¹
- 3.9.14 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.

⁸⁶ UN Human Rights Council: Report of the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak, following his mission to Jamaica in February 2010, Dated 11 October 2010. <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-52-Add3.pdf>

⁸⁷ US State Department Human Rights Report 2011 Jamaica, 24/05/2012, Section 1c Prison and Detention Centre Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

⁸⁸ Freedom House, Freedom House, Freedom in the World 2011 – Jamaica, 05/07/2011 <http://www.unhcr.org/refworld/country....JAM..4e12dd9436.0.html>

⁸⁹ 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

⁹⁰ US State Department Human Rights Report 2011 Jamaica, 24/05/2012, Section 1c Prison and Detention Centre Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

⁹¹ US State Department Human Rights Report 2011 Jamaica, 24/05/2012, Section 1c Prison and Detention Centre Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186525>

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 Instruction 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 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 Instruction 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 (a) they have family to return to; or (b) there are adequate reception and care arrangements. Case owners should refer to the Agency's guidance on Family Tracing following the Court of Appeal's conclusions in the case of [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#). In this case the Court found that Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of Unaccompanied Asylum Seeking Children (UASCs).
- 4.3.2** At present there is insufficient 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** Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Case owners should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).
- 4.4.2** The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.

- 4.4.3** That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.
- 4.4.4** The improvement or stabilisation in an applicant’s medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.
- 4.4.5** Where a case owner considers that the circumstances of the individual applicant and the situation in the country would make 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. Case owners must refer to the Asylum Instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.
- 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.
- 5.3** The British High Commission in Kingston have developed a guide called “Coming Home” which sets out advice on the availability of services including emergency accommodation and other resettlement services provided by NGOs which can be accessed by those being forcibly or voluntarily returned to Jamaica. A copy of the guide can be found on the British High Commission’s website at:- <http://ukinjamaica.fco.gov.uk/resources/en/pdf/2011/cominghome>
- 5.4** Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [Chapter 53.8 of the Enforcement Instructions and Guidance](#).
- 5.5** 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.

- 5.6** 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.choices-avr.org.uk.

Country Specific Litigation Team
Immigration Group
UK Border Agency
December 2012