Asylum and Immigration Tribunal

AB (Protection –criminal gangs-internal relocation) Jamaica CG [2007] UKAIT 00018

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
on 19 December 2006	**On 22 February 2007**

Before

Senior Immigration Judge Storey
Senior Immigration Judge McGeachy
Mrs M E McGregor

Between

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss B Asanovic, Counsel, instructed by Wilson & Co.
For the Respondent: Miss R Brown, Home Office Presenting Officer

The authorities in Jamaica are in general 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.

DETERMINATION AND REASONS

1. The appellant is a citizen of Jamaica aged 26. She arrived in the UK in November 2001 as a visitor. On 23 November 2004 she claimed asylum. Her daughter, who is a dependant in this appeal and is now aged 12, had joined her in the UK in July 2002. In a determination notified on 29 July 2005 Immigration Judge Tiffen allowed her appeal on

asylum and human rights grounds against a decision of 23 May 2005 refusing to grant her asylum and giving directions for her removal.

2. The immigration judge found that the appellant had given a credible account: in the summary of it which follows we use fictitious initials. She accepted that the appellant began a relationship with F, an area leader of a criminal gang in his area, when she was fourteen. She became pregnant soon after. On occasions F would punch her and she would be bruised. After she gave birth to her daughter in 1994, she moved in with F. We do not identify where the appellant lived precisely, but it was within the Kingston Metropolitan Area (hereafter "KMA"). His occasional beatings continued. She was scared of him. He would sometimes disappear and on one occasion he was gone for two-and-half years and she heard he had been in prison. During this time his friends checked up on her. Even so, she began an affair with G and fell pregnant. F found out about this whilst in prison and one of his fellow gang members delivered a letter from him threatening to kill her, the baby and G. The appellant and G decided to separate and let him raise their child with his mother's help. When F came out of prison he tried to rape the appellant and continued to be violent against her; threatening her with a gun on one occasion. She was too afraid to go to the police as she believed F would learn she had informed on him; also she did not think they would do anything. Around 1999/2000 F disappeared and the appellant heard from neighbours that he was suspected of having killed a rival area gang leader from the same gang - which she thought must be the One Order gang. The appellant never saw him again.

3. A couple of weeks after he had left, two men came to her house wanting to know where F was. They slapped and hit her, accused her of lying and threatened to kill her. They also warned her not to go to the police saying that they would know if she did. The appellant was scared. She and her daughter left the house and moved in with her grandmother, who lived relatively close by. About a week after, they tracked her down. They forced her into a car and took her to the coast where they raped and sexually abused her and also hit her. When they left her they said they were not finished with her. A man stopped his car and took her to her grandmother's. She went to hospital that night and had stitches and was treated as a precaution for gonorreah. Her grandmother was frightened for her and sent her and her daughter to a friend who lived in a rural area, about forty five minutes drive away. She stayed there for several months but did not go out and was too scared to even sit on the veranda. She heard that the gang members kept harassing her grandmother. Her grandmother raised the money for her to flee Jamaica in November 2001. Her daughter followed in July 2002. The appellant was traumatised and did not discuss her experiences with anyone in the UK until she claimed asylum.

4. In assessing whether the appellant's experiences would place her at real risk of persecution the immigration judge found, largely on the basis of an expert report of Mr O.Hilaire Sobers (hereafter "Mr Sobers"), that the Jamaican authorities did not provide a sufficiency of protection. Turning to the appellant's particular circumstances Mr Sobers stated:

> "20. Although this appellant did not make any reports to the police she believed that to do so would be of no use and could lead to her being suspected of being an informer is objectively supported by the background material. To report the domestic violence would have meant that the appellant would have had to name the perpetrator who would then inflict further violence because of her informing against him. Similarly to report the gangs would have been of little use as the background material shows that criminal gangs operate with impunity. I find that the Jamaican

> government are unable to offer a sufficiency of protection to women against domestic violence and against being targeted by criminal gangs."

5. The immigration judge went on to find that the appellant had been persecuted for a Convention reason, "namely women who are perceived as informers and who are unprotected by the state." There is, she stated, "an insufficiency of protection in Jamaica for such a social group".

6. At paragraph 23 the immigration judge stated that the appellant did not have a viable internal relocation alternative:

> "23. The respondent's representative has raised the issue of internal flight as an alternative to international protection. The court report refers to migratory crime and that victims of gang directed crime are unable to internally relocate within Jamaica. The report by Mr Sobers in the case of Atkinson also states that "simply put relocation will neither eliminate nor substantially reduce the risk of harm from gang reprisal". The appellant attempted to relocate but whilst she was staying with a friend of her grandmother's, she was unable to go out even on to the veranda and would require social and economic support which is not available to her. I find that the appellant would be unable to relocate in Jamaica and it would be unduly harsh for a lone female with a young child to have to do so."

7. The respondent sought and obtained on order for reconsideration. This resulted in a decision of a panel notified on 30 January 2006 finding that the Immigration Judge had materially erred in law. Senior Immigration Judge King's reasons were as follows:

> "1. The IJ misunderstood the nature and effect of Atkinson. That decision was one about certification only as was made clear by the Tribunal in NR Jamaica [2005] UKIAT 0008, a determination which was served by post on 12 July and received on 13 July. The IJ made no reference to that. NR if read would have given clearer guidance on that issue.
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> 2. The IJ failed to indicate upon what objective evidence the decision was made and/failed to consider properly the objective evidence presented. Miss Ahluelia submitted that the IJ relied on the evidence of Mr Sobers which was cited by the court in Atkinson with approval [paragraphs 24-33-34-40-55 of Atkinson]. It was submitted that paras 6.200, 6.202, 6.206, 6.123 and 5.93 of the CIPU supported Mr Sobers. Miss Brown suggests that 5.59, 5.70, 5.77-80, 8.52-100, 5.105 and 6.16 of the CIPU indicated that there was a sufficiency of protection. CIPU Report April 2005 was more recent and at least ought to have been considered. Particularly in the light of NR, I find failure to consider material evidence or to make a proper assessment.
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> 3. IJ applied Atkinson and finds Convention reason on the basis that the appellant is wanted as an informer or perceived informer [Para 22]. Such is to fundamentally misunderstand the nature of the case. She is wanted by the gang not as an informer but because she may know the whereabouts of her boyfriend for whom they are looking.
>
> We find there to be no basis upon which a Convention reason under the [Refugee] Convention can be established.
>
> 4. It is submitted that the decision on Article 8 shall stand as it was not challenged by the respondent in the grounds. It was allowed because of the finding that the appellant falls under 1951 Convention. It is tainted by a fundamentally flawed finding.
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> 5. The above amount to material errors of law requiring reconsideration."

8. (NR (Gang warfare-Witness-Risk on return) Jamaica [2005] UKIAT 00008, we should note was a case heard in September 2004 by a Tribunal chaired by Deputy President Ockelton). On 21 June 2006 the hearing was adjourned so as to give the appellant's representatives the opportunity to have their country expert, Mr Sobers, comment on the respondent's new submission that the gang which the appellant said she feared (the One Order gang) had been dismantled. It was also directed that whilst the findings of fact made by Immigration Judge Tiffen relating to the appellant's past experiences in Jamaica were to stand, the appellant's representatives had permission to adduce more recent written evidence from the appellant so long as it did not relate to her past experiences. Permission was also given to the appellant's representatives to argue the existence of a Refugee Convention ground, albeit it was emphasised that this would not preclude the panel at the resumed hearing from deciding the particular social group (PSG) issue could no longer arise for legal reasons.

9. On 8 September 2006, by which time an addendum report from Mr Sobers had been submitted, a memorandum was sent to the parties seeking further comments from the appellant's country expert in the light of the recent country guidance case, JS (Victims of gang violence – sufficiency of protection) Jamaica CG [2006] UKAIT 00057. Whilst the country expert's supplemental report had noted the existence of this case, it had not made specific comment on its main points. The memorandum added:

> "It would also assist the present hearing if O. Hilaire Sobers could clarify whether he has had any connection with organisations in which Miss Y. Sobers (whose report was examined in JS) is involved".

10. [The Tribunal in JS, we interject at this point, had questioned Ms Y Sobers' objectivity.] As we shall see, Mr Sobers did respond to this memorandum in the form of commentary on JS, but in it he made no response as to his connection with organisations in which his mother is involved. At the eventual hearing of the case on 9 December 2006 Miss Asanovic sought permission to call the appellant as a witness with a view to her being able to update her circumstances by reference to her supplementary witness statement dated 21 August 2006. Miss Brown pointed out that this statement did not strictly adhere to the terms of the Tribunal direction of 21 June 2006 which had stipulated that her further evidence should not be about her past experiences. In particular she pointed out that the reference in that statement to one motive of the gang members who raped her (in 1999) being "to mark her in order to shame her" was an illicit attempt to reopen the findings made by the Immigration Judge. Miss Asanovic said that it was not the intention of the appellant in this statement to give fresh evidence about past events, rather her statement simply contained evidence which had been elicited in response to questions prompted by references in the background evidence to the use by Jamaican criminal gangs of rape as a "weapon of war". Miss Asanovich said that all she proposed to do was get the appellant to adopt her recent statement and then tender her for cross-examination. We ruled that we would permit the appellant to give evidence relating to her recent statement and be cross-examined on it, leaving until our determination to decide whether we should consider all aspects of the appellant's recent evidence: we return to this matter below.

11. In her recent statement whose contents she said were true, the appellant stated, inter alia, that:

> "I have been gang raped by members of a gang because of what F did. This means that I was forced to perform sexual acts which no decent woman is supposed to do of her own free will. The whole reasons for rape were to mark me and shame me as well

> as F. Therefore, everybody is told about this. I can never be nice again after I have been battered ... There is a special name for a gang raped woman ... "batchi-daly" or "battery-daly" ... Once a gang rape happens and it is known, you are prey to all men".

12. Her statement went on to give two examples of women she knew who had been raped by gangs, who found they were raped again and again and treated as a "skettel" or "easy woman". One of the women had a young daughter who had also been sexually abused. The appellant said that if she were returned to Jamaica she would kill herself. She feared not just for herself, but for her daughter. She had started treatment to talk through her past experiences, but stopped it because she found talking about it very hard. She was still not able to work or live a normal life. If she returned to the house of her grandmother's friend, the people there would see her as being involved with a gang and she could not send her daughter to school. If F was around he would want to have his revenge for her having taken his daughter or he might take her daughter away. She still speaks to her grandmother regularly. Her grandmother has said people still talk about her and ask questions. Often others there say she was battered and think badly of her. Some had asked if she had gone away because she had informed on a gang.

13. She had been told by a relatives and neighbours that the rival gang member F had killed was an area leader of the One Order gang and that it was members of this gang that had raped her. She knew F supported JLP (Jamaica Labour Party) and she thought he was a member of the One Order gang too. She believed the people from the gang whose leader F had killed would not have forgotten her. She did not accept that the One Order gang no longer existed. She mentioned an incident whilst visiting Brixton in London where her sister had told her someone they passed in the street was from One Order in Spanish Town. At most she believed that some of the gangsters may have changed their gang names.

14. In examination-in-chief the appellant said that not long ago her grandmother had told her over the telephone that F had recently been shot, albeit he was not dead. In cross-examination she accepted that she had not previously mentioned the gang who raped her "marking and shaming" her or her fear of being attacked by others, but said that, if she had been asked more specific questions, that is what she would have said. She had not told the police about the rape because she was scared. Asked why, if she went back anyone would know she had been gang raped in 1999, she said people had kept talking about it, so her shame in this way has been carried around. Asked why, over five or six years later, she would have problems, she said the gang members would still want to harm her again. She had not had trouble when she went to stay at her grandmother's friend's house. Her grandmother did not want her in her own house. Apart from her grandmother she had no family or relatives to turn to. Her grandmother had seen her brother but she (the appellant) did not know where he lived and he had gone away and not come back.

15. In re-examination the appellant said she had not had contact with her brother since last in her grandmother's house; even then he was always going away.

Relevant legal framework

16. In deciding this case we have to apply the new legal framework established by the Refugee or Person in Need of International Protection (Qualification) Regulations SI 2006/2525 (the "Protection Regulations") and the Statement of Changes in Immigration Rules, Cm6918 (the "amended Immigration Rules"). Together these implement EU Council Directive 2004/83/EC on minimum standards for the qualification and status of

third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L304/12 of 30.9.2004 (hereafter "the Directive"). Regulation 5 defines "Acts as Persecution" as follows:

> "(1) In deciding whether a person is a refugee an act of persecution must be:
> (a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms; or
> (b) an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a)"

17. Regulation 5(2) gives a number of example of the forms an act of persecution may take, including "(a) an act of physical or mental violence, including an act of sexual violence".

18. The new Regulations and Rules also identify the right of a person to be considered as to his or her eligibility for humanitarian protection. Paragraph 339 C (in its first part) provides:

> " A person will be granted humanitarian protection in the United Kingdom if the Secretary of State is satisfied that:
> (i) he is in the United Kingdom or has arrived at a port of entry in the United Kingdom;
> (ii) he does not qualify as a refugee as defined in regulation 2 of The [Protection] Regulations 2006;
> (iii) substantial grounds have been shown for believing that the person concerned, if he returned to the country of return, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself of the protection of that country; and
> (iv) he is not excluded from a grant of humanitarian protection".

19. The same paragraph in its second part gives a definition of serious harm:

> "Serious harm consists of:
> (i) the death penalty or execution;
> (ii) unlawful killing;
> (iii) torture or inhuman or degrading treatment or punishment of a person in the country of return; or
> (iv) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict".

20. The Protection Regulations also set out, inter alia, definitions of actors of persecution or serious harm (regulation 4) and actors of protection (regulation 4). Regulation 4 in its material parts states:

> " 1) In deciding whether a person is a refugee or a person eligible for humanitarian protection, protection from persecution or serious harm can be provided by:
> (a) the State; or
> (b) any party or organisation, including any international organisation, controlling the State or a substantial part of the territory of the State.
> (2)Protection shall be regarded as generally provided when the actors mentioned in paragraph 1(a) and (b) take reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the person mentioned in paragraph (1) has access to such protection.
> **..."**

21. This is word-for-word the text of Article 7 of the Directive save for introductory words in Regulation 4(1) "shall be regarded" (instead of "is") and in Regulation 4(2) the omission of the phrase "inter alia" immediately before "by operating").

22. The amended Immigration Rules (Cm6918) contain among other provisions, paragraph 339K, which deals with the approach to past persecution, in the following terms:

> "339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated".

23. Also pertinent to this appeal is paragraph 339O headed "Internal Relocation". This states:

> (i) The Secretary of State will not make:
> (a) a grant of asylum if in part of the country of origin a person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay in that part of the country; or
> (b) a grant of humanitarian protection if in part of the country of return a person would not face a real risk of suffering serious harm, and the person can reasonably be expected to stay in that part of the country.
> (ii) In examining whether a part of the country of origin or country of return meets the requirements in (i) the Secretary of State, when making his decision on whether to grant asylum or humanitarian protection, will have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the person.
> (iii) (i) applies notwithstanding technical obstacles to return to the country of origin or country of return."

24. We remind ourselves at this point that by virtue of the revised AIT Practice Directions, 8 November 2006, we are obliged (as from 9 October 2006) not only to consider the appellant's asylum and human rights grounds of appeal. We also have to treat her grounds of appeal as including the ground that the decision of the respondent was contrary to the Immigration Rules relating to eligibility for humanitarian protection.

25. Where below we refer to "risk" or "real risk", this is to be understood as an abbreviated way of identifying respectively: (1) whether on return there is a well-founded fear of being persecuted under the Refugee Convention; (2) whether on return there are substantial grounds for believing that a person would face a real risk of suffering serious harm within the meaning of paragraph 339C of the amended Immigration Rules; and (3) whether on return there are substantial grounds for believing that a person would face a real risk of being exposed to a real risk of treatment contrary to Article 3 ECHR.

Leading UK cases

26. In our view the definition given in regulation 4 of the Protection Regulations closely mirrors that contained in leading cases, in particular Horvath [2001] 1 AC 459 and Bagdanavicius [2005] UKHL 38. The most recent summary of relevant principles is contained in the Court of Appeal judgment in Bagdanavicius [2003] EWCA Civ 1605. Although superseded by the House of Lords judgment, the summary given by Auld LJ at paragraph 55 of the Court of Appeal judgment remains a faithful reflection of case law on the protection issue. Insofar as is relevant it states [missing citations added]:

> *"Asylum claims ...*
> *4) Sufficiency of state protection, whether from state agents or non-state actors, means a willingness and ability on the part of the receiving state to provide through its legal system a reasonable level of protection from ill-treatment of which the claimant for asylum has a well-founded fear; Osman[v United Kingdom 1999] 1 FLR 193], Horvath, Dhima [[2002] Imm AR 394].*

5) The effectiveness of the system provided is to be judged normally by its systemic ability to deter and/or to prevent the form of persecution of which there is a risk, not just punishment of it after the event; Horvath, Banomova [[2001] EWCA Civ 807], McPherson [[2001] EWCA Civ 1955] and Kinuthia [[2001] EWCA Civ 2100].
6) Notwithstanding systemic sufficiency of state protection in the receiving state, a claimant may still have a well-founded fear of persecution if he can show that the authorities know or ought to know circumstances particular to his case giving rise to his fear, but are unlikely to provide the additional protection his particular circumstances reasonably require; Osman.

Article 3 claims ...
7) The same principles apply to claims in removal cases of risk of exposure to Article 3 ill-treatment in the receiving state, and are, in general, unaffected by the approach of the Strasbourg Court in Soering[(1989) 11 EHRR 439]; which, on its facts, was, not only a state-agency case at the highest institutional level, but also an unusual and exceptional case on its facts; Dhima, Krepel and Ullah.
8) The basis of an article 3 entitlement in a removal case is that the claimant, if sent to the country in question, would be at risk there of Article 3 ill-treatment.
9) In most, if not all, Article 3 cases in this context the concept of risk has the same or closely similar meaning to that in the Refugee Convention of a "well-founded fear of persecution, save that it is confined to a risk of Article 3 forms of ill-treatment and is not restricted to conduct with any particular motivation or by reference to the conduct of the claimant: Dhima, Krepel; Chahal[(1994) 18 EHRR CD 193].
10) The threshold of risk required to engage Article 3 depends on the circumstances of each case, including the magnitude of the risk, the nature and severity of the ill-treatment risked, and whether the risk emanates from a state agency or non-state actor; Horvath.
11) In most, but not necessarily all, cases of ill-treatment which, but for state protection, would engage Article 3, a risk of such ill-treatment will be more readily established in state agency cases than in non-state actor cases – there is a spectrum of circumstances giving rise to such risks spanning the two categories, ranging from breach of a duty by the state of a negative duty not to inflict Article 3 ill-treatment to a breach of a duty to take positive protective action against such ill-treatment by non-state actors; Svazas[[2002] EWCA Civ 74].
12) An assessment of the threshold of risk applicable in the circumstances to engage Article 3 necessarily involves an assessment of the sufficiency of state protection to meet the threat of which there is such a risk – one cannot be considered without the other whether or not the exercise is regarded as 'holistic' or to be conducted in two stages: Krepel[2002] EWCA Civ 1265], Svazas.
13) Sufficiency of state protection is not necessarily a guarantee of protection from Article 3 ill-treatment any more than it is a guarantee of protection from an otherwise well-founded fear of persecution in asylum cases – nor, if and to the extent that there is any difference, is it eradication or removal of risk of exposure to Article 3 ill-treatment; Dhima, McPherson, Krepel.
14) Where the risk falls to be judged by the sufficiency of state protection, that sufficiency is judged, not according to whether it would eradicate the real risk of the relevant harm, but according to whether it is a reasonable provision in the circumstances; Osman.
15) Notwithstanding such systemic sufficiency of state protection in the receiving state, a claimant may still be able to establish an Article 3 claim if he can show

that the authorities there know or ought to know particular circumstances likely to expose him to risk of Article 3 ill-treatment; Osman.
16) The approach is the same whether the receiving country is or is not a party to the ECHR, but in determining whether it would be contrary to Article 3 to remove a person to that country, our courts should decide the factual issue as to risk as if ECHR standards apply there – and the same applies to the certification process under Section 115(1) and/or (2) of the 2002 Act."

27. In considering the proper approach to the issue of internal relocation we have also to apply the principles set out in the recent House of Lords judgment in Januzi [2006] UKHL 5 which adopts the criteria now contained in paragraph 339O but also contains more detailed guidance.

Leading UK cases on the issue of sufficiency of protection in Jamaica

28. Given the central importance to this case of examining the issue of sufficiency of protection in Jamaica, it will assist if we identify previous cases which have covered this issue, particularly those relying in part on the expert evidence of Mr Sobers. In MacPherson [2001] EWCA Civ 1955 Sedley LJ rejected an argument that the civil remedies of the kind evidently provided by Jamaica's Domestic Violence Act 1995 were not enough to meet the state's positive obligation under Article 3 ECHR. He stated:

"21. In my judgment neither Article 3 nor the jurisprudence of the Court of Human Rights on the positive obligation of states to protect individuals from other individuals goes as far as Ms. Farbey contends. What matters is that protection should be practical and effective, not that it should take a particular form. Indeed, to insist on the latter might very well be to frustrate the former. What perhaps matters more is the standard of protection which the state is expected to afford. The higher the standard, the less the individual will have to establish in order to show non-compliance with it. Our attention has been drawn in this regard to the formulation in *HLR v. France* (1997) 26 EHRR 29"

29. In a concurring judgment Arden LJ stated:

"32. There are two points which I wish to add about what an appellant has to show in these circumstances to discharge the onus of proof to the requisite standard. First, in the light of the Domestic Violence Act 1995, it is not, in my judgment, enough for the appellant to show that the sanctions imposed for offences against the person under the criminal law of Jamaica were ineffective. In the context of domestic violence, a state can provide effective measures of a different nature...

...

35. I see no reason in principle why suitably-crafted provisions of the civil law should not have the requisite degree of deterrence as much as provisions of the criminal law. It all depends on the circumstances and the nature of the provision."

30. Her judgment went on to stress that Article 3 requires a state to provide machinery to deter a violation of that article which attains a satisfactory degree of effectiveness.

31. To be "effective" for the purposes of Article 3 measures must, she wrote at paragraph 38, be:

"... those which attain an adequate degree of efficacy in practice as well as exist in theory. If the appellant were able to show to the requisite standard of proof that the remedies provided under the law of Jamaica against domestic violence are unlikely to be an effective deterrent, in my judgment she would have shown that her removal from the United Kingdom to Jamaica would violate her rights under Article 3 of the European Convention on Human Rights."

32. However, because argument was not addressed to the question of whether the measures taken by the Jamaican authorities were "effective" in practice, the Court of Appeal remitted the appeal.

33. In A [2003] EWCA Civ 175 the Court of Appeal considered the case of a Jamaican woman who fled Jamaica after having been branded an informer by a criminal gang in the Tivoli Gardens area of Kingston. Unlike the IAT (who had dismissed the appellant's appeal) the Court had before it further expert reports including ones from Dr Sives, Ms Yvonne Sobers and Mr Sobers. They noted that according to Mr Sobers these criminal gangs and their operations are not confined to the so-called garrison communities, and that he instanced cases where gunmen have been "exported", as he put it, to other areas to terrorise various groups of people, including suspected informers. He emphasised, they noted, that the dons have developed networks throughout the island of Jamaica.

34. Keene LJ noted:

> "29. All these reports, therefore, are consistent with one another. These opinions are, at least in the case of Mr Sobers' and Ms Sobers' reports, supported by examples and illustrations. There is no expert evidence to the contrary."

35. In deciding to allow the appellant's appeal, Keene LJ explained:

> "30. Of course, I bear in mind the fact stressed by Mr Clarke that the appellant did survive in Jamaica for nearly four years after informing on the gang member to the police and that it is now some eight years since she gave that information to the police. Nonetheless, the fresh evidence is compelling and, in my judgment, sufficiently establishes a real risk that sooner or later, wherever the appellant located herself in Jamaica, the Tivoli Gardens gang would be likely to find her and seek revenge. The evidence that as recently as April 2001 the don of that gang refused to forgive her and to allow her to return to that community is consistent with the expert evidence and is credible. Of course, she might survive somewhere on the island. It is by no means certain that she would be killed. But it does not have to be for these purposes. It is enough that there is a real risk to her life if she were to be sent back.
>
> 31. Moreover, even if the appellant did manage to find a locality where for a time she could survive, the evidence also demonstrates that she would be very vulnerable there without friends or relatives and, given the high levels of unemployment in Jamaica, probably without a job. Ms Sobers in her report points out that there is no social welfare safety net in Jamaica and that the family and local community normally provides a measure of security for such women. Separated from such family and local support, the appellant would be extremely vulnerable.
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> 32. Having read these reports it seems to me that they show that there would be a considerable risk of a repetition of the [appellant's experiences of ill-treatment]."

36. The year 2003 also saw three other cases involving Jamaica in the higher courts. As summarised in the following year by Scott Baker LJ in Atkinson [2004] EWCA Civ:

> "28. In *R (Brown) v Secretary of State for the Home Department* [2003] EWHC 2045 Admin Crane J held that the Secretary of State was entitled to certify his conclusion that relocation offered sufficiency of protection outside Kingston on the facts of that case. He did, however, say that leaving aside the question of relocation he would have held that the Secretary of State was not entitled on the evidence presented to conclude that there was sufficiency of protection for human rights purposes in relation to the protection of informers and suspected informers. This case does, however, seem to me to have been very fact specific on both points. In the present case there is the unchallenged evidence of Mr Sobers.

We were referred briefly to *R (Gibson) v Secretary of State for the Home Department* [2003] EWHC 1919 Admin where leave to apply for judicial review of the Secretary of State's decision to include Jamaica on the "white list" (that is those countries included in section 94(4) of the 2002 Act to which removal would not in general involve a serious risk of persecution or breach of human rights) was refused. The court in that case does not, however, appear to have been invited to consider any expert evidence.

30. The final case to which I make brief mention is *R (Britton) v Secretary of State for the Home Department* [2003] EWCA Civ 227 in which the Court of Appeal remitted the case to the IAT to consider the sufficiency of protection issue. It had neither dealt with the appellant's evidence nor given reasons for its decision. Tuckey LJ said at para 20:

> "The fact that the law enforcement and security forces in Jamaica are over-zealous does not mean that they exert effective control. Nor does the fact they use armed response when apprehending criminal suspects. The CIPU report which we have seen does refer to gang violence in Jamaica, particularly in Kingston and the police's ability to control it. It may be that on consideration of that material it can properly be concluded that there is sufficiency of protection. But neither the special adjudicator nor the IAT refer to that part of the report in their decisions, or appear, to have given it any consideration in the light of the appellant's evidence to which I have referred. "

37. That brings us to the case of Atkinson [2004] EWCA Civ 846 itself. Scott Baker LJ stated:

> "22. In the present case, therefore, the question is whether the state of Jamaica is both willing and able to provide reasonable protection to the appellant. The evidence does not raise any real doubt about *willingness* to provide such protection: the real focus is on its *ability* to do so. The difficult question is where to draw the line that defines what an appropriate standard is. It is not enough that some individuals will be failed by the state's criminal justice system, not enough that the state has not been effective in removing risk. There has in my judgment to be a systemic failure that relates at the very least to a category of persons of whom the individual under consideration is one. In this case the focus is on informers or perceived informers or those who in some way are the target of the gangs or the dons who head them. In my view it is no answer that a state is doing its incompetent best if it nevertheless falls below the appropriate standard. One has to ask whether the state is failing to perform its basic function of protecting its citizens. Does the writ of law run or not?"

38. In analysing the A case Scott Baker LJ observed:

> "24. In the Court of Appeal there was additional evidence, including from Mr Hilaire Sobers, the same distinguished expert whose evidence is before the court in the present case. In short his evidence was that the power and influence of the dons who head the gangs extends over the whole island and the appellant would be at substantial risk of harm if returned to any part of Jamaica. Hit men could be hired for as little as £100 sterling and it would be difficult for Ms A to conceal her Tivoli Gardens origins.
>
> 25. Keene LJ, with whom Peter Gibson and May LJJ agreed, said he was persuaded that the removal directions given by the Secretary of State would involve a breach of Ms A's human rights. Articles 2 and 3, he pointed out, are absolute rights. A contracting state, such as the United Kingdom, will be in breach of the ECHR if it expels or removes a person to a state where there is a real risk to that person from people who are not public officials. Removal of Ms A would be in breach of her human rights because there was a real risk both to her life and of Article 3 treatment from the Tivoli Gardens gang and from others within Jamaica. Mr Sobers' evidence was that these criminal gangs and their operations are not confined to the so- called garrison communities. Gunmen have been "exported" to other areas to terrorise various groups of people including suspected informers. The dons have developed networks throughout the island of Jamaica."

39. Against this background Scott Baker LJ considered that:

"33. The issue is not in my view however whether the Jamaican authorities have the *willingness* to deal with the problem but whether they have shown the *ability* to do so. The decision letter it should be noted was written just four or five months after the November 2002 initiatives. The question is whether these initiatives have had the success that the Secretary of State suggests. The evidence suggests that, at least on one view, they have not.

34. We have had the advantage of two additional reports from Mr Sobers that postdate the judge's decision. Mr Sobers in his report of 20 October 2003 refers not only to clear deficiencies in the initiatives but also to the chronic institutional weaknesses of the Jamaican police force and the contrasting strengths of the typical Jamaican criminal gangs. The implicit assumption in the Home Office's analysis that the balance of power favours the Jamaican authorities, he says, is wrong. Criminal networks in Jamaica continue to act with almost complete impunity in inflicting reprisals upon persons like the appellant who have offended them. He says he strongly rejects the assertions of the Home Office that the latest initiatives have led to any or any substantial improvement in the capacity of the police or the military to protect citizens like the appellant from threats from reputed gang members. The new initiatives are largely quantitative in nature and do not address the qualitative dimensions of Jamaica's crime phenomenon particularly the symbiosis between organised crime and politics. Whilst it is true that the November 2002 crime plan theoretically aims at dismantling criminal gangs, he is not aware of any fundamental changes in (a) the capacity of the police to accomplish this or (b) the linkage between crime and politics/civil society. The problems associated with organised crime are deeply entrenched in Jamaican polity and are unlikely in his view to be resolved in the short term.

35. Mr Sobers has produced a further report dated 25 May 2004. In it he picks up on various points made in the respondent's skeleton argument. He says that the thrust of his opinion is not so much the capacity of the Jamaican authorities to eliminate or insulate the threat to the appellant, but the impotence of the Jamaican state to provide protection. He emphasises his conclusion that there does not currently exist in Jamaica any reasonable system of protection. Indeed, he says that the capacity of the state in this regard may well have diminished even further since the preparation of his principal opinion, given Jamaica's worsening rate of violent crime and recent developments with respect to the Jamaican police force. He says that the violent crime has increased rather than diminished in 2004. At a press conference on 8 April 2004 the Commissioner of Police stated that there were 277 murders in the first three months of 2004, 69 more than during the first three months of 2003. Another 110 people were killed in April. The deputy police commissioner is reported as saying that the increase in the crime rate has not been met by a commensurate increase in police resources to deal with it. Mr Sobers also refers to various news reports emphasising the continuing nexus between politics and crime."

40. In deciding that the certification threshold had not been crossed, his lordship added:

"37. In my judgment there is force in Mr Drabble's criticism of the Secretary of States certification and of the judge's decision to uphold it. It is clear that there has been a long-standing and endemic problem in Jamaica and the state authorities ability to overcome it. There is no doubt about willingness to tackle the problem. It is another matter, however whether effective steps have been taken to achieve the bare minimum required to provide reasonable protection for informers and perceived informers who find themselves in situations such as the appellant.

...

40. I am far from saying that the appellant will necessarily succeed on an appeal to an adjudicator, but it seems to me that the present evidence raises, at the very least, a serious question on whether the state of Jamaica provides a sufficiency of protection to informers or perceived informers in the category of the appellant. On one view at least Jamaica has not shown a reasonable ability to resolve the problem and provide the basic protection required."

41. On the issue of internal relocation, Scott Baker LJ noted that in a recent report Mr Sobers had said: "Simply put, relocation will neither eliminate nor substantially reduce the risk of harm to (the appellant) from gang reprisals."

42. Further on he noted:

> “49. In his earlier report of 29 October 2003 Mr Sobers had made it clear that his reason for this conclusion was primarily the small size of Jamaica and the trans-geographic power and reach of criminal gangs in the island. The fact that Jamaica is only 4,400 sq miles makes it difficult, if not impossible, for someone to conceal their identity at least for any length of time. Strangers, says Mr Sobers, attract more attention in small communities. He also points out that successful relocation requires social and economic support which, for most Jamaicans, is limited or absent. Jamaica has no state-sponsored welfare system. It is difficult or impossible to relocate without the independent means to do so or access to private social or economic support. Jamaica remains a highly violent society driven by strong enduring impulses for retribution. Those who offer, or appear to offer, support to targets of reprisal almost invariable become targets themselves. Few, if any, are willing to put their lives on the line for a target like the appellant. The judge did not of course have the more recent reports of Mr Sobers. He did, however, have that of 6 August 2003 prepared for the case of *Brown* which spoke in similar terms, albeit terms that were less specific to the appellant's case, on the issue of relocation.
>
> 50. The judge also had before him a report from Amnesty International of 8 September 2001 but made no reference to the following passage at p 3:
>
> > "Those who inform the police either of alleged criminal activities within the communities or of their own experiences of crime would be likely to be viewed as informers and could expect rough local 'justice' for going against the local social and political order. Given the extent to which influence of local leaders extends beyond the confines of individual garrisons, and the fact that outsiders are immediately identifiable in close communities such as those that exist in Jamaica, they would be unlikely to be able to find safe haven in another area of the same political persuasion. If they moved into the opposition's area they would similarly be at risk of violence. They would also bring a risk of violence to those who sheltered them and would obtain little effective assistance from the police."
>
> Or that at p 11:
>
> > "Being an informer, being suspected of being an informer, or being a relative or associate of an informer would also place a person at extreme risk of violence outside their own garrison community."
>
> Or that at p 12:
>
> > "The ability of a person to successfully relocate within Jamaica could be expected to be dependent on a range of factors, including their status as an informer, origins from a PNP or JLP community, their socio-economic status, sexuality, familial connections with local community and other factors.
> >
> > Amnesty international is concerned that a person of the profile given in Mr Atkinson's asylum account would not be able to successfully relocate within Jamaica and would face the risk of human rights violations if enforcibly returned."
>
> 51. These passages all seem to me to be consistent with the three reports from Mr Sobers. In my judgment certification was not justified on the relocation issue. It has to be borne in mind that for the relocation issue to become a live one there is a presupposition that there is no sufficiency of protection for Article 3 purposes in the appellant's home community. I simply cannot accept that in such circumstances his arguments that internal relocation is not a viable alternative are clearly unfounded.”

43. Scott Baker LJ concluded:

> “The subsidiary question of internal relocation likewise raises issues that should not, on the material before us, have been rejected as clearly unfounded. Accordingly in my judgment the

> appeal should be allowed, the application for judicial review should succeed and the Secretary of State's certification should be quashed."

44. There are also two current Tribunal country guidance cases. In DW (Homosexual Men – Persecution-Sufficiency of Protection) Jamaica CG [2005] UKAIT 00168 the Tribunal found that in a range of circumstances there would be an insufficiency of protection in Jamaica for homosexuals: see paragraphs 78-80. In reaching that conclusion they attached significant weight to a report by Mr Sobers of 16 September 2005.

45. Since the Immigration Judge heard the appellant's case (in July 2005) the Tribunal has issued a further CG case, JS, notified on 21 July 2006. This decision took into account a wide range of background country materials, including the Home Office COI report of October 2005. The Tribunal also considered an expert report dated 30 September 2005 from Miss Y. Sobers and her addendum report dated 15 September 2006. At paragraph 61-66 it concluded that her report and addendum "could not be described as consistently objective and unbiased" and that "we could place little reliance upon the opinions expressed by her". The Tribunal summarised its general findings as follows:

> "There is clear evidence that in general the Government of Jamaica is not only willing, but also able to provide through its legal system a reasonable level of protection from ill-treatment to its citizens who fear criminal acts in Jamaica and to those who fear retribution for testifying against criminals."

46. Points of particular relevance to us which we derive from the above survey in particular are the following. First of all that whilst the higher courts and the Tribunal have found Mr Sobers an impressive and "distinguished" expert, there has been no real challenge raised to his evidence in the cases concerned. In this case, however, the respondent has challenged his evidence and it is incumbent on us to evaluate how helpful this evidence is, when placed side by side with all the other evidence before us. Secondly, except in the case of A, the Court of Appeal cases have been concerned with issues of arguability, rather than the merits. Thirdly, even in A they eschewed reaching any firm conclusions on the general issues of sufficiency of protection in Jamaica, focussing rather on the issue of whether protection would be available for the appellant. Fourthly MacPherson, A and Atkinson have helpfully delineated a number of relevant legal principles to be applied when assessing the issue of sufficiency of protection in the Jamaican context: we shall return to these below. Fourthly, so far as the Tribunal in its two latest country guidance case is concerned, although prepared to accept that certain categories such as homosexuals in a range of circumstances may be at risk, it has not accepted the main tenets of Mr Sobers' reports as regards insufficiency of protection in Jamaica generally.

The background evidence

47. It will assist if we summarise the main items of background evidence we had before us: for a full list see the Appendix.

Home Office COI Report, November 2006

48. In addition to the CIPU reports the immigration judge considered, we had produced to us a further Home Office report dated 30 November 2006 (hereafter COI Report). We set out its contents in some detail as it usefully incorporates references to other recent reports, including those from the US State Department, Amnesty International and Jamaicans for Justice. It describes the country's total population being estimated in July 2006 as 2,758, 124. Although the country is aid to have serious economic and social problems its political system is said to be "stable". The most serious economic problems are said to be high

unemployment averaging 15.5%, rampant under employment, growing debt and high interest rates (6.01). The current ruling party is the PNP (People's National Party). March 2006 saw the inauguration of a new Prime Minister, Mrs Simpson Miller, who took over from the incumbent PM, P.J. Patterson, who had been in power for the past fourteen years. However, the other large political party, the Jamaica Labour Party (JLP), secured control of most municipal councils as a result of the June 2003 local elections (4.02, 3.12-3.14).

49. The COI report notes a number of sources which refer to crime rates and homicide figures. It mentions a 3 January 2006 report by The Jamaica Observer stating:

> "With a record high of nearly 1,700 homicides last year [2005] and Jamaica's emergence at the top of the work ranking for capita murders, homicide figures, being closely followed here, are under increasing scrutiny".

50. In the section covering Crime the report states that since 2005, when the number of homicides increased to 1,669, statistics reported by Jamaica Gleaner showed a 25% decline in murders since the start of 2006. The rates for serious crimes such as robberies, breaking and larceny also fell during the most recent period (down from 4.392 during January-July 2005 to 3,743 in the same period in 2006). At 8.02 reference is made to a Jamaica Gleaner piece dated 25 August 2006 in which National Security Minister, Dr Peter Phillips credited the drop in crime to intelligence-driven work by the Jamaica Constabulary Force (JCF), particularly Operation Kingfish, which he noted as having a significant impact since its establishment in late 2004.

Gang Violence

51. On gang violence the report cites sources describing many inner city areas as being controlled by well-armed gangs trafficking in narcotics and guns. Community youth gangs are said to account for 20-25% of homicides. Certain parishes are described as battle zones between warring factions consisting of gangs with connections to the two main political parties. The One Order gang is described as being connected to the JLP and the Klansman gang as being connected with the PNP. However, the report notes that Operation Kingfish had had a significant impact on reducing the control of major gangs.

56. The COI Report records the US State Department Report for 2005 as noting that:

> "... in recent elections voters living in "garrison communities" in inner city areas dominated by one of the two major, political parties often faced substantial influence and pressure from politically connected gangs and young men hired by political parties, which impeded the free exercise of their right to vote" (15.01).

57. However the report also mentions the Bertelsmann Transformation Index (BTI), a global ranking that analyses and evaluates development and transformation in 199 countries. It identified garrison communities as a "by-product of political tribalism" which had declined significantly in the 1990s. During the time covered by the report, twelve out of sixty of Jamaica's constituencies were classified as garrison communities to varying degrees (15.04 – 15.05).

The One Order Gang

58. As regards the One Order gang, the report notes that it had been conducting a turf war with the Klansman gang for control of the Spanish Town area (which is within the KMA) after the killing of One Order gang leader Oliver "Bubba" Smith. In 2004 there had also been internal feuding over who should succeed him. On 5 November 2005 the Jamaica

Information Service quoted a broadcast by National Security Minister Dr Philips saying that Operation Kingfish had arrested some 235 persons in relation to murders, firearms, drugs and ammunition, had apprehended 32 wanted persons and had dismantled or seriously disrupted major criminal networks, including the "Gideon Warriors", the "One Order" and" Klansman" gangs in Spanish town. A 29 January 2006 item from the Jamaican Gleaner had noted that the head of Operation Kingfish, ACP Hinds, believed that the One Order organisation was "gradually disintegrating" following the arrest of several members in the mid-2005s, and the consequent migration of others outside of the parish (Spanish Town), with some even going abroad. At para 8.17 the Report notes, however, that:

> ".. an article dated 6 September 2006 stated that following the deaths of their leaders, both the One Order and Klansmen gangs were in a "phase of restructuring". The report also noted that gangs had spread out into suburban neighbourhoods, instilling fear into some smaller, quieter communities".

59. Paragraph 8.18 mentions a further shooting in early February 2006 of the alleged head of the One Order gang, Andrew 'Bunnyman' Hope.

Impunity

60. Note is also taken in the November 2006 COI report of serious problems identified by the US State Department Report for 2005, namely: unlawful killings committed by members of the security forces; mob violence; vigilante killings of those suspected of breaking the law; abuse of detainees and prisoners by police and prison guards; poor prison and jail conditions; continued impunity for police who commit crimes; an overburdened judicial system and frequently lengthy delays in trials; violence and discrimination against women; trafficking in persons; and violence against suspected or known homosexuals. Also cited is Amnesty International's 2006 report covering 2005 and highlighting continued reports of police brutality and saying that 168 people were killed by police (7.01. – 7.02). At paragraph 9.01, however, it is noted:

> "On the 1 June 2006 the National Security minister, Dr Peter Philips disclosed the recent achievements made by the Internal Affairs/Anti Corruption Division of the Professional Standards Branch (PSB) of the Jamaica Constabulary force (JCF). 43 police officers have been arrested on charges of misconduct with one conviction, and 40 cases against officers are currently before the courts. Since its inception PSB's anti-Corruption Division has been pursuing an aggressive anti-corruption drive aimed at ensuring incidents of police misconduct were dealt with promptly and with transparency. (Jamaica Information Service 1 June 2006)"

61. By contrast, the US State Department Report for 2005 had described the JCF as generally ineffective in the face of a rapidly increasing rate of killings. The perception of corruption and impunity within the forces was said to be a serious problem, with human rights groups identifying systematically poor investigative procedures and weak oversight mechanisms.

State protection

62. The COI Report states that police resources are seen as deficient, although government, under pressure from the private sector, has sought overseas help in the fight against crime and violence, including some high profile secondments from Scotland Yard.

63. Commentary is also given on the Witness Protection Programme begun in 1995 but given a statutory basis by the Justice Protection Act, 2001. On 1 July 2005 the Jamaican Information Service described is as solid and effective. ACP Williams also stated: "We

have not had a witness who is on the programme and who remains on the programme, injured, killed or hurt in any way". The Jamaican FCO described anyone who wants to testify in court and fears for his/her life as eligible for the programme. Almost 400 people are said to have participated in the programme since 1997. Other sources are less positive. A Jamaican Observer report says that the programme has only had limited success.

64. As regards women, the Report cites Amnesty International's 22 June 2006 report, entitled Sexual Violence against Women and Girls in Jamaica, as stating that even being seen at a police station may give rise to fears that someone is an "informer" and that most sexual violence in communities in Jamaica goes unreported because women are fearful of the retaliation of gang members. Paragraph 9.20 notes the following quote from this report: "Approximately 32% of all homicides in Jamaica are reprisal-based, and women are increasingly targeted as informers."

65. The same AI report is noted as viewing violence against women in Jamaica persisting:

> "because the state is failing to tackle discrimination against women, allowing social and cultural attitudes which encourage discrimination and violence. Shortcomings in national legislation do not deal adequately with marital rape, incest or sexual harassment, thereby encouraging impunity and leaving women without the protection of the law.
> Discrimination is entrenched and often exacerbated in the police and criminal justice system. Women and adolescent girls are rarely believed by the police, so have little confidence in reporting crimes against them. Evidence is often not sought effectively or professionally and witnesses are rarely protected ...
>
> The rate of sexual violence women in Jamaica is very high, and is accompanied by spiralling levels of community violence and homicide throughout the island ...".

66. However, it is noted in the COI Report that in December 2004 Parliament passed the Domestic Violence (Amendment) Act 2004, inter alia widening the category of persons who may apply for a protection order and that there is draft legislation to provide for a law against sexual harassment. The Senate is said to be seeking to reform laws on rape, incest and other sexual offences. In December 2005 Parliament ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (23.13). Whilst violence against women was widespread and the police were still generally reluctant to intervene, the government's Bureau of Women's Affairs operated crises hot lines and shelters and managed a public education campaign to raise the profile of domestic violence (23.21). The COI report also notes the launch of Women's Incorporated in October 2005, a project to assist and support abused women, including a crisis shelter and a twenty-four hour hotline. Women's Incorporated is noted as being an NGO which runs the only established shelter in the island for battered women (23.26). The COI report states that whilst there is no societal pattern of abuse of children, reports of sexual abuse were common , including by inner city gang leaders (24.22 – 24.24).

OGN December 2006

67. The respondent's bundle also included the Home Office Operational Guidance Note (OGN) on Jamaica for December 2006. In its section on "Main categories of claims" it has a subsection headed Criminal Gang Violence. It concludes at paragraph 3.6.10:

> "For claimants who fear or who have experienced ill-treatment as a result of criminal gang violence in Jamaica there is, in the light of the ongoing initiatives by the Jamaican Government, a general sufficiency of protection".

68. The initiatives referred to included Operation Kingfish, the Commissioner of Police's February 2006 8-point action plan, which included a "crime hot spot secretariat " within the JCF, the establishment of a Major Investigation Taskforce (MIT) in Kingston and St Andrews, the ongoing work of the Witness Protection Programme and an aggressive anti-corruption Division of the JCF's Professional Standards Branch.

69. The OGN also considers at 3.7.9 that it is:

> "practicable for claimants who may have a well-founded fear of persecution in one area to relocate to other parts of Jamaica where gang violence is less prevalent and where they would not have a well-founded fear and, except where the circumstance of an individual claimant indicate otherwise, it would not be unduly harsh to expect them to do so."

70. The OGN also contains a subsection at 3.8 on "Victims of domestic violence". Whilst acknowledging that violence against women is widespread, the OGN concludes that:

> "... there is a general sufficiency protection available to victims of domestic violence through enforcement of legislative provisions and availability of governmental and non-governmental advice, and legal aid and counselling. There is no evidence to suggest that involvement of the abuser with a criminal gang would prevent the claimant from gaining protection although consideration needs to be given to the individual circumstances of an applicant's claim."

71. The OGN also considers that it would be:

> "... practicable for claimants [at risk of domestic violence] to relocate to other parts of Jamaica to escape domestic violence and except where the circumstances of an individual claimant indicate otherwise, it would not be unduly harsh to expect then to do so."

US State Department Reports

72. Although the latest Home Office COI conveniently subsumes references to other major reports in its summary, we should mention here several passages from the US State Department Report for 2005. One is noted by Asanovich in her helpful skeleton as follows:

> "In a culture where it is widely believed that informers will die, some criminal trials were dismissed because witnesses failed to come forward because of threats and intimidation. Some of those who came forward qualified for the witness protection programme but many refused protection or violated the conditions of the programme" (USDoS March 2005).

73. Later on it is stated that "The lack of an effective witness protection program led to the dismissal of a number of cases involving killings". The same report also stated that in October the UN Commissioner on Human Rights released the report of the UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, which stated that the country had an unacceptably high number of questionable police shootings and should hold more policemen accountable for their actions. Mention is made of the JCF continuing an initiative of "community policing" to address the problem of long-standing antipathy between the security forces and many poor inner-city neighbourhoods. The Police Federation is noted as having conducted training programmes for policemen on citizens' rights. In the section on women the Report stated that rape was illegal and carried a penalty of up to 25 years imprisonment with hard labour. Although during the year (2004) reported incidents of rape decreased by 8%, NGOs stressed that the vast majority of rapes were not reported. During the year in Kingston/St Andrews there were 208 arrests for sex crimes, of which 50 cases went to court and 25 ultimately were convicted and sentenced.

Press items

74. The appellant's bundles included a significant number of press items. One dated 16 June 2005 from HJT Research News Reporting Service gives details of the high number of murders for the first half of 2005. It also deals with Operation Kingfish noting:

> "Both the Jamaica Observer and the Jamaica Gleaner report that national security minister Phillips said Operation Kingfish has so far cost the country approximately $50 million. 'In addition we have been getting assistance from our international partners in the form of personnel, equipment, training and intelligence which we estimate to be approximately $150 million'..."

75. The respondent submitted an 11 November 2006 report from the Jamaica Gleaner stating that statistics for 2006 continued to show that murders and other relevant crimes had declined. It stated:

> "ACP Hinds also achieved much success this year ahead of Operation Kingfish. Many who were weary of another crime-fighting task force subjected Operation Kingfish to intense criticism upon its formulation. Close to the end of the year, however, the success of Operation Kingfish has silenced most critics ..."

76. The respondent also adduced a 1 December 2006 item from the Jamaica Gleaner which records the Commissioner for Police describing measures being taken to tackle some crime problems in St James and other inner-city areas - establishing of task forces, a review of the deployment and effectiveness of police community partnerships and community policing and vigorous pursuit of police personnel involved in corrupt activities. Alongside these long term measures he mentions the use of bounties afforded for the capture of "most wanted" individuals, which had led to one important success in St James.

The expert evidence

77. The immigration judge, in finding that the Jamaican authorities could not afford sufficient protection against gang violence, drew heavily on a report by Mr Sobers, dated 25 May 2004:

> "... indicat[ing] clear deficiencies in the initiatives by the Jamaican government and also chronic institutional weaknesses of the Jamaican police force and the contrast in strength of the typical Jamaican criminal gangs. Criminal networks in Jamaica continue to act with almost compete impunity in inflicting reprisals upon persons who have offended them. A report by Mr Sobers of 25 May 2004 refers to the impotence of the Jamaican state to provide protection and that there does not currently exist in Jamaica any reasonable system of protection (paragraph 11(7))."

78. As this is a second stage reconsideration, however, we are required to consider the current situation and take account also of the most recent evidence. In order to assist the Tribunal in this task the appellant's representative have commissioned further reports from Mr Sobers.

79. In these reports Mr Sobers' reports describe him as a barrister with considerable knowledge of Jamaica and its criminal justice system. From 1998-9 he was Executive Director of the Independent Jamaican Counsel for Human Rights. In 1994 he established an NGO called Brother's Keepers to promote opposition to crime and violence in Jamaica. He has over fifteen years experience in appearing as counsel in both the civil and criminal courts of Jamaica up the level of the Court of Appeal. He represented the Public Defender's panel of attorneys in the Commission of Inquiry into the West Kingston violence in 2001.

80. He has given legal advice on numerous legal/human rights issues, including through the media. He has provided voluntary legal advice/assistance to Families Against State Terrorism, Amnesty International and Jamaicans for Justice. He is a certified mediator for over six years. He has acted as a human rights consultant to diplomatic missions. He was specifically consulted by the British High Commission in Kingston in early 2001 regarding the effectiveness of the domestic violence legislation in preventing/deterring spousal abuse. He is an ad hoc adviser to Amnesty International's Caribbean desk and to Human Rights Watch in respect of its 1999 report, "Nobody's Children: Jamaican children in police detention and government institutions." He has given expert evidence in a Californian court on spousal/domestic abuse in Jamaica. Between 1999 and May 2002, he was a weekly columnist with the Jamaica Observer Ltd (Sunday Observer), writing principally on human rights issues. Between March 2001 and December 2002 he was a Chevening Scholar from Jamaica and was awarded an LLM. degree in Law in development with distinction by the University of Warwick in England, his elections being Human Rights and Criminal Justice. He is currently co-writing a book with his mother, Ms Y Sobers on selected cases of killings by police of civilians.

81. Mr Sobers' first report dealing with this appellant's case is dated 14 March 2006. Much of it reiterates points already made in the reports he submitted to the Court of Appeal in A [2003] EWCA Civ 175, in Atkinson and to the Tribunal in DW (Homosexual men – persecution – sufficiency of protection) Jamaica [2005] UKAIT 00168, as well as in his 25 May 2004 report.

82. His report says that in Jamaica there is no sufficiency of protection afforded by the authorities against criminal gang violence. The authorities are unable to protect its population and he even doubts that there is a willingness on their part to protect. He describes Jamaica as having the worst crime rate in the Caribbean and one of the worst murder rates in the world. The majority of violent crimes (roughly 80%) are committed in the Kingston Metropolitan Area (KMA). If proper records were kept of missing persons, the true murder rate may well be, he says, higher.

83. Mr Sobers writes that Jamaica's high rate of violent crime reflects substantially on the ineffectiveness of the JCF to protect the population. Institutionally the model of policing in Jamaica is extremely militaristic and reactive in its approach to crime control, emphasising armed intervention as opposed to less confrontationist approaches like community policing. A further institutional complication is that there is a significant shortage of police officers and the police generally suffer from a lack of resources. In addition the police have a reputation for the use of excessive force; most police officers are simply not trained; the police force has a serious problem of corrupt officers, to be found at almost all levels. There is also said to be a level of police collusion with some gangs and gang leaders.

84. Quantitatively, argues Mr Sobers, none of the various crime plans introduced by the government has made any substantial difference to the rate of violent crime in Jamaica. There was an "intelligence deficit". This had led to the recruitment of a senior Scotland Yard detective in March 2005.

85. Many government pronouncements about combating crime could not be accepted uncritically. Only lip service is paid to community policing. The perception of ineffectiveness has manifested itself in the increasing number of ordinary citizens taking the law into their own hands through mob killings. He writes:

> "12.6 Against this quantitative and qualitative background, the Jamaican government has had little success in reducing crime levels despite numerous announcements of plans and initiatives to deal with the problem. In summary the government has invested far more in militaristic solutions than intelligence driven solutions, with predicable results. Further, the government routinely announces new initiatives against crime, none of which have proved effective.
>
> The overall ineffectiveness of the police is perhaps reflected by the significant expression of the private security industry in Jamaica over the past decade according to the Economic and Social Survey in Jamaica (ESSJ) 2004, the number of private security officers is close to double the number of available police officers. Private security is extremely expensive. It does not represents a feasible option for [the appellant], a person of limited means.
>
> In my experience abuse of power and unprofessionalism in the police reflects a cultural norm, which is supported by a deeply entrenched pattern of impunity."

86. In Mr Sobers' view there is an "asymmetrical balance of power" between the police on the one hand and organised crime on the other, with the latter having the upper hand. The problems associated with organised crime are deeply entrenched in the Jamaican polity and are unlikely to be resolved in the short term.

87. Criminal gangs/narco-criminals in Jamaica, he states, continue to act with almost complete impunity in inflicting (or threatening to inflict) ""reprisals" on persons who "offend" them.

88. As regards risk to women from violence, including domestic violence, Mr Sobers cites the US State Department Report 2004 summary:

> "Social and cultural traditions perpetuate violence against women including spousal abuse. Violence against women was widespread, but many women were reluctant to acknowledge or report abusive behaviour, leading to wide variations in estimates of its extent."

89. In high crime areas gangs are believed to be deliberately targeting women. Gang-rape is termed "battery". According to a UNDP National Report, March 1999 by the Inter-Agency Campaign on violence Against Women and Girls, gang-rape is meted out as a punishment to a woman – usually a young girl from the community who is deemed to have stepped out of line. Women's Media Watch has said Jamaica was now seeing incidents of "reprisal rapes". Rapes are seriously underreported by their victims. Whilst there are domestic law provisions designed to protect against domestic violence (in particular the Domestic Violence Act 1995) and violence generally (The Offences Against the Person Act), these provide only limited support to victims. Women in high crimes area who live in a context of high rates of interpersonal and community wide violence are most vulnerable, and, at the same time, least likely to receive relief. The institutional framework is also vitiated by traditional dismissive attitudes of the police to domestic and sexual violence. There have been reported incidents of police raping girls or women. The island's resources for helping women who are victims of domestic violence are very limited, notwithstanding Jamaica now being a party to the Convention on the Prevention of Punishment and Eradication of Violence Against Women.

90. In relation to internal relocation, Mr Sobers states:

> "93. The effects of 'garrisonisation' are not confined to garrison communities. According to Dr Mark Figueroa, "[t]his political culture extends well beyond the boundaries of the communities which have been under the tight control of politicians, their thugs and/or local enforcers".

91. He does not consider relocation within Jamaica to escape domestic abuse and/or violence a feasible option for most Jamaican women, since relocation "require[s] social and economic support, which for most Jamaicans, is limited or absent". He believes that the small size of Jamaica (44,000 sq. miles) makes is "difficult if not impossible to conceal one's whereabouts indefinitely, if at all". Jamaica's well-developed network of roads and telecommunications means that information flow between urban communities and the remotest parts of Jamaica can be accomplished with a minimum of effort. Criminal gangs, he adds, are generally well-organised and resourced, with highly developed networks of intelligence/information. "Given all of these factors, it is extremely difficult for a victim of abuse to remain undetected by any persistent abuser". He considers that in a small country like Jamaica, relocating to so-called "less dangerous" areas can actually increase the visibility of a target, and therefore the risk:

> "Ultimately, it should be understood that violent crime in Jamaica, while centred in urban areas like the KMA, is trans-geographic in reach and effect".

92. As regards the appellant's particular circumstances, Mr Sobers describes the One Order gang as "one of the most dangerous criminal organisations operating in Jamaica":

> "Like many criminal gangs in Jamaica, it has known political connections in this instant with the Opposition (JLP). The One Order gang operates out of Spanish Town (part of the KMA located in St. Catherine), but it has also spread its criminal network into May Pen (in the neighbouring parish of Clarendon [he cites a May 22, 2004 article from Jamaica Gleaner]. The criminal networks in these types of communities, while cradled in political tribalism, have resolved into fairly autonomous groups deeply involved in violence, as well as trade in illegal firearms and illicit drugs. The gang operates in the context of "garrison politics".

93. He considers that the appellant's fear that her life would be in danger has some objective basis having regard to the rate of reprisal/gang-related killings (which account for up to 50% of homicides in Jamaica). The threats to her are further amplified because she is female and therefore more vulnerable to violence in the context of prevailing attitudes in the police and in the community.

94. In the light of his view that internal relocation is not a reasonable option for most victims who are targeted by gangs, Mr Sobers states that:

> "I see no basis for supposing [the appellant's] relocation to other areas in Jamaica would ultimately eliminate a well-founded fear of persecution by either a persistent abuser [her fear of F] or a criminal gang [F's associates and members of the rival gang who assaulted her]."

95. We turn to Mr Sobers' Supplemental Report dated October 31, 2006, which is primarily intended as his comment on the recent Tribunal Country Guidance case, JS.

96. Mr Sobers' report first take issue with JS's findings that the Jamaican state provides a reasonable level of protection to its citizens and is achieving a "significant level of success" in prosecuting perpetrators of crimes (paragraph 72) and that there is a "sea change" in attitudes (paragraph 73). He states:

> "There are numerous examples of citizens contacting the police and being left vulnerable either because of the tardiness or complete lack of response they encounter".

97. He then gives four examples, drawn from reports in the Jamaica Gleaner or Jamaica Observer dealing with non-response to a rape victim (April 7, 2005), unreliability of the "119" emergency phone service (February 6, 2006), lack of police response to provide security for a St. Catherine's Parish council meeting (January 5, 2006) and an undated account by "Economic commentator", Mr Earl Borthey about inadequacies of policing in his "small rural hamlet". He cites a letter to the editor of the Jamaican Gleaner for 28 October, 2006 "which, in my opinion, accurately reflects both the Jamaican public's experience of the JCF and view of the crime situation". Next he highlights police priority being given to investigating case where there is a specific suspect and police strategy in high crime areas being to focus more on containment than investigation. He goes on to doubt the utility of the crime statistics issued by the police for 2006:

> "The focus of comparing specific months and on comparing the 2006 date only with the corresponding period in 2005, does not allow for any useful analysis of the crime rate".

98. Whilst accepting that the number of murders for Jan-Oct 2006 is less than obtained in 2005, he considers that 2005 was clearly an extraordinary year in relation to murders committed and that the general pattern of murder in Jamaica "remains exceedingly high". He also criticised the figures for not including missing and unaccounted persons. He sees no sign of an improvement in the police's murder clear up rate and doubts the reliability of the criteria used for "clear-up".

99. As regards the Witness Protection programme, Mr Sobers describes it as "prosecution-driven" and although in the period 1995-2005 it had protected just over 1000 witnesses, in the same period well over 11,500 murders were committed. He states that the programme still lacks funding and suffers from distrust as a result of allegations of interference by a high ranking police officer. He says its limited utilisation in the past suggests its limited availability. Mr Sobers contrasts government claims about the effectiveness of the Witness Protection programme with an undated and unsourced report of a family of a man murdered before giving evidence in court who in April 2005 said he had chosen not to use the scheme because it would have meant going to a remote place. By reference to a Jamaican Observer editorial from August and September 2006, he highlighted JCF complaints that they have insufficient resources to do their job and the imbalance between reported climes and actual crimes. He describes the police successes, such as the Major Investigations Task force for Kingston and St. Andrew and the Grant's Pen community policing initiative, as in danger of being undermined because of the shortage of resources. Although recognising that the Jamaican government has called in Scotland Yard and the Royal Canadian Mounties Police (RCMP) in response to public outcry at select instances of possible extrajudicial killings by the JCF, neither, he says, have been asked to investigate corruption in the JCF. Other agencies active in investigating police corruption and impunity are also said to be woefully under-financed.

100. At paragraph 29 of his report Mr Sobers summarises matters as follows:

> "I repeat the general statement that underpins my opinion initiatives/announcements by the Jamaican government in relation to the control of crime and improvements in the JCF. Announcements/initiatives by the Jamaican government do not reflect 'a sea change in attitudes'. More often than not, in the experience of the Jamaican public, implementation falls short".

101. The next report of Mr Sobers we have to consider is his supplemental report of 17 August 2006 which is largely devoted to commentary on the Home Office April 2006 COI Report.

102. This report states that the JCF has adopted a number of controversial positions on the publication of its crime statistics during 2004/2005; he refers to concealment and obfuscation of data and also inconsistent dates. He considers that whilst murder rates for 2006 are drawn on 2005 figures, there was no real improvement as compared with 2004. The overall trend, he says, is a steady increase.

103. Mr Sobers questions government claims to have dismantled or disrupted criminal gangs. Whilst accepting that a number of gang leaders have been killed or arrested or convicted, Mr Sobers considers the evidence that the gangs themselves have been dismantled less certain. In communities like Spanish Town, rivalry between members of the One Order and Klansmen has increased since the death of former One Order gang leader in February 2006. The earlier death of the Klansmen leader in October 2006 had made little difference to the operation of the gangs, according to residents of Spanish Town interviewed on 1 December 2005. He then chronicles reports in the local press during 2006 of incidents in Spanish Town on 30 March, April 4, 9 April, 26 April, 5 May and 3 June. The situation, he writes, is mirrored in Trench Town and South St. Andrew and "increasingly similar problems have been reported in the towns in rural parishes (particularly Montego Bay)". He writes:

> "In my opinion, the elimination of specific gang leaders, while a positive development, does not necessarily indicate the dismantling of the gangs *temporarily* under their control. The information coming from the police themselves suggests that gangs like the One Order are still very much in operation. The social and political contexts that led to the formation of these gangs has not changed, and arguably had worsened in many communities.
> ...
> These communities are significantly conditioned by garrison politics [he cites the Kerr Report on Political Tribalism, 1997 and the Report of National Committee on Crime and Violence, October 2001] and an interconnected (and powerful) drug culture. Jamaica's elevated crime levels generally owe a lot to the foregoing factors, together with others, such as protracted economic hardships which have denied many citizens the opportunity to earn a livelihood or to have a meaningful existence. In a relatively poor country, illicit income from the drug trade and extortion (of business/the construction industry) contribute substantially to the 'economics' of garrison communities. In the Jamaica context the cocktail of violent crime, garrisonism and these illicit activities is inordinately powerful."

104. Mr Sobers also comments on the April COI report's references to new initiatives for crime control. These have not led, he writes, to substantial reduction in crime levels and some announcements and proposals go unimplemented i.e. to increase the number of police from 8,500 – 10,000, to make more resources available to the police and to bodies with responsibility for investigating complaints against the police. He concludes that:

> "[t]he chronic institutional weakness of the Jamaican police force and the contrasting strength of organised criminality in Jamaica points to a balance of power that does not favour the Jamaican authorities."

105. He adds:

> "Criminal gangs narco/criminals in Jamaica continue to act with almost complete impunity in inflicting (or threatening to inflict) 'reprisals' on young persons who 'offend' them. The infliction of reprisals may be permitted merely by a perception that the victims are a threat to their activities.
>
> The problems associated with organised crime are deeply entrenched in the Jamaican polity, and are unlikely to be resolved in the short term."

106. Mr Sobers then turns to the issue of risk to the appellant. He states that he does not consider the appellant would be at risk because she had in the past been a rape victim. However, he thinks it "very possible that her association with a One Order gang member may mean that she is seen as responsible for her gang rape". Noting that the appellant was raped by men looking for F in connection with his shooting of one of their associates, he considers that she and her daughter are still at risk "[t]o the extent that [F] is still remembered and targeted by the gang members". As well as risk from such gang members he considers she is also likely to face risk from F, given his history of sexual and domestic violence to her. He also states:

> "most importantly [she] will be labelled a "deportee" - one of the thousands of Jamaicans returned from the UK, USA and Canada. In spite of the fact that many are deported for immigration violations, the perception among nearly all Jamaicans is that they were involved in crime. Deportees face problems of discrimination and ostracism; most are unable to seek employment because of their status".

107. He cites in support of this statement the Jamaica Observer, 16 July 2006.

108. He does not consider the appellant would be eligible for the Witness Protection programme, as on his interpretation it only covers crimes that have occurred after 2001. Even if that were not the case the fact that the rape incident occurred over 5 years ago, would mean, he states, that prosecution would be unlikely.

109. In a letter dated 14 December 2006, Mr Sobers responds to a question about whether gang violence is confined to garrison communities. He writes:

> "Gang violence is not confined to garrison communities. At present, the crime situation in several areas of Montego Bay (St James), as well as Mountain View, Red Hills Road (both in the KMA) is deteriorating. The places in question are in the inner-city but they are not garrison communities as described in my previous report. As with organised crime everywhere, the casualties of gang violence are typically going to be those who are either directly or indirectly involved with the gang. In that respect, gang violence is naturally going to be limited to areas where gangs do operate. However, gangs operate in nearly all urban centres in Jamaica; and a place like Montego Bay has between sixteen and eighteen operational gangs (according to the Minister of National Security – December 1, 2006). In effect, gang violence could be said to be "limited" to inner-city urban areas in Jamaica. That suggests that violence is a feature of every parish and of every centre of employment in the society."

Women's Media Watch opinion, 13 September 2006

110. Also submitted by the appellant's representatives was a "Statement" on the appellant's case written by Judith Wedderburn of Women's Media Watch (WMW). As well as describing the work of WMW, her statement says that traditional gender ideologies of male dominance and aggression are entrenched in institutions and practices throughout Jamaica. Jamaica being a small society, people are likely to know about the appellant's case and the persons involved ("especially if the alleged offender and victim are in the same community, as is often the case". Women who have been raped often face being ostracised from the community. She is then "marked" or "labelled" and not able to integrate. Apart from one shelter run by a women's non-government organisation (Women's Crisis Centex) which is severely limited by lack of resources, there are no shelters or safe places to provide support and protection for rape victims. There is a strong culture of revenge. Eliminating gang leaders has not led to the dismantling of gangs. The appellant stands a real chance of being seen as a "battery doll" [target for gang rape] if she returns to Jamaica and may very well be targeted for further attacks. If the appellant returns she is not likely to qualify for witness protection. Ms Wedderburn quotes from a

report entitled “Blood, Bullets and Bodies” by Imani Tafari-Ama stating that research data shows a direct correlation between the ongoing turf conflicts between men and the material and gender subordination of women compounded by their vulnerability to domestic and social violence and sexual abuse. The gang rape of women is now another sinister aspect of the current spate of urban conflicts.

The medical evidence

111. The immigration judge made no reference to or any findings on the appellant's medical history. However, it would appear she did have before her at least one report, from Dr Michael Seear. The latter is not a qualified psychiatrist but is a medical practitioner with a particular interest in psychotherapy. His first report says he examined the appellant on 12 July 2005. Some of his report (which details his assessment of her past experiences and physical and mental condition in the context of assessing her credibility), is no longer relevant here, as the appellant’s credibility as to past events has now been accepted. He diagnoses her as suffering from Post Traumatic Stress Disorder (PTSD) and Major Depressive Episode. He finds her significantly traumatised. He considers that if she is returned to Jamaica she will be at risk of rapid deterioration. On page 5 (A9) he notes:

> “she said that she wishes she were dead but does not think of suicide ‘because I love my daughter too much’.”

112. Dr Seear’s next report is dated 11 April 2006. This was not before the immigration judge. He found no evidence of any improvement in her mental and emotional state since his first meeting with her. He repeats his opinion that if returned to Jamaica she would be likely to deteriorate because of her fear of being there.

113. There is also before us a “Follow-up” report by Dr Michael Seear dated 5 August 2006. He considers she suffers from vulnerability, depression and distress. She has a sense of loathing and disgust in response to the rude and demeaning way Jamaican men speak to her. It is his view that her return to Jamaica could lead in the direction of self-harm:

> “She does not really take to psychiatry and a therapeutic approach that would help is ideally one of being in an appropriate environment and an environment which would assist her in going through a process of spontaneous recovery. This occurs when a PTSD patient feels that she is in a safe place and for her not be in the UK would be much more favourable in terms of the prognosis of her PTSD than if she were sent to Jamaica, where a fairly rapid deterioration would be, with respect, quite likely.”

114. In an Addendum of 15 August 2006 Dr Seear reiterates that she is traumatised and depressed and that “[h]er case is a psychiatric case, in view of her suicidal risk and severity of her distress.” He believes she should be under psychiatric supervision and urges that she discuss that with her GP. He notes that the file of reports on her psychiatric state is sizeable “indicative of a patient with a considerable burden of psychiatric problems”.

Submissions

115. On the general issue of whether the Jamaican authorities were able to afford a sufficiency of protection in particular from gang violence, Miss Brown urged us to take a similar view to that reached in JS. Whilst in the past government initiatives had had little or no effect, the evidence indicated that there were significant improvements in respect of the major crime rate, tackling crime and combating police corruption. As regards the expert evidence of Mr Sobers, she asked us to bear in mind that he had not been subject to cross-examination on any of his reports by the UK courts and tribunals. On behalf of the respondent she now wished to challenge the efficacy of his reports in a number of respects.

116. His use of statistics, she said, raised certain doubts about his methodology. He gave no basis for his view that the Witness Protection programme, although it began in 1995, would not be available in respect of crimes committed before 2001. Mr Sobers had been specifically asked to clarify the nature of his political and professional relationship with his mother, Miss Y Sobers, whose reports had been criticised in JS. He had failed to do so. His reports showed a consistently negative approach to the Jamaican police, as illustrated by his refusal to acknowledge any real improvement in the statistics dealing with major crimes which showed a reduction over the 2004-2006 period. Despite Mr Sobers describing a serious lack of public confidence in the police, the evidence showed that there had been some positive responses, e.g. as a result of Operation Kingfish. Despite Mr Sobers' negative view of the Witness Protection programme, the evidence was that over a ten year period no one had been "lost" to it.

117. As regards whether the Jamaican authorities were able to afford sufficient protection against domestic and sexual violence directed against women, she urged us to find that the OGN conclusions were correct on this issue and Mr Sobers' "one- sided" treatment did not establish a general insufficiency of protection for such women.

118. In relation to the issue of whether there was a Refugee Convention ground of particular social group (PSG) in this case, Miss Brown urged us not to go behind Senior Immigration Judge King's preclusion of it. Rule 45(4)(f) clearly gave the Tribunal power to remit issues and the point raised by Miss Asanovich was not an obvious one. JS had considered and rejected the proposition that women in Jamaica were a PSG. Mr Sobers' 21 August 2006 report had said that no particular stigma attached to rape victims. She did not dispute that a family could be a PSG but it was unlikely the appellant would be perceived as a member of F's family.

119. As regards the particular circumstances of the appellant's case and her fear of persecution, Miss Brown urged us to find that there were no valid reasons for considering there would be a reoccurrence of attacks on her by gang members. There had never been any suggestion, prior to the hearing before us, that the appellant would be perceived as responsible for the gang rape she suffered. It was strange that her evidence about "marking and shaming" had never been put forward before today. The appellant appears to have been able to spend some considerable time, possibly as long as two years, in Jamaica without further incident. The appellant's new evidence about F's very recent resurfacing was too convenient, given she had heard nothing from him since 1999/2000. In any event there had been no contact from him, nor had he sought contact. There would be no constitutional reason for the gang members who attacked her in 1999/2000 to target her further. It was not reasonably likely anyone would know what had happened to her (except her grandmother). Even if the appellant were considered to be at risk in her home area, she would have a viable internal relocation alternative. She had had no problems in the area where she had stayed in the house of a friend of her grandmother's. She had a grandmother and brother in a position to help her arrange alternative locations. As to the medical evidence, it was clear, applying the principles set out in J [2005] EWCA Civ 629 that the medical evidence even taken at its highest did not show a real risk of treatment contrary to Article 3. There were mental health facilities in Jamaica. As regards Article 8, she had not shown exceptional circumstances.

120. Our summary of Miss Asanovich's submission can be a little shorter, as considerable parts of it simply reiterated points made in Mr Sobers' reports, which we have already summarised in considerable detail. Miss Asanovich submitted that in respect of the

general issue of sufficiency of protection, in particular against gang violence, it was not disputed that the Jamaican authorities showed willingness; the only issue was whether this translated into ability. As regard Mr Sobers' political and professional relationship with Miss Y Sobers, he has always disclosed that she is his mother. They are collaborating on a book about killing of civilians by police officers together. It was no secret his mother had a cousin shot by the police in 2001. The appellant did not rely on Miss Sobers' evidence, only Mr Sobers'. His credentials should be considered as beyond reproach. He had been a human rights activist since 1998 and was involved with a number of Jamaican NGOs and had contributed to Jamaicans for Justice work, which the COI report gave as one of its sources. He had been used as a consultant by the British High Commission and as an ad hoc adviser by Amnesty International. He provided legal assistance to a diverse range of agencies. He was not biased. His evidence had been accepted by the Court of Appeal in Atkinson and by the Tribunal in DW, being described in the latter at paragraph 43-46 as a "distinguished and reputable expert". His reports for this case showed a sound methodology and a balanced approach. His reports, taken together with the most recent Home Office COI Report for November 2006, showed that the conclusions reached in JS were unsustainable. He was perfectly correct to maintain that the murder rate was still extremely high and that the authorities had yet to deliver on their promises to address the failure in their protective functions. There was scant evidence of any real action being taken against police corruption. it was clear that the inner-city areas continued to be dominated by a "garrison culture". The larger gangs are still connected to the major political parties. It was important to note that the evidence showed that narco-criminal gangs operated with almost complete impunity. 32% of all homicides were now gang-based.

121. There was not enough money and resources for the police to carry out thorough government initiatives. The agencies set up to handle complaints were under-funded. Mr Sobers' criticisms of the Witness Protection Programme were well supported.

122. In relation to the position of women who were victims of violence, it was important to have regard to the recent evidence submitted from Women's Media Watch (WMW).

123. As to the issue of whether there was Refugee Convention reason, it was Robinson obvious in the light of the House of Lords clarification of the law in K and Fornah [2006] UKHL 46 both for the Tribunal to reconsider the issue and for it find that the appellant had two separate bases for being treated as a member of a PSG: one, by virtue of being a women (or a subgroup comprised of women raped in reprisal actions by criminal gangs), and two, by virtue of being a member of a family whose principal member, F, faced violent reprisal by rival gang members.

124. As regards the appellant's suicide risk, she had twice (once in court, once to her barrister), expressed a suicide intention seeing it as a way of her daughter not suffering a similar fate. Dr Seear's views were based on having seen the appellant on four occasions.

125. As regards internal relocation, there was evidence that criminal gangs were mobile and the population and size of Jamaica was relatively small.

126. In the appellant's case the period she spent in the rural area where her grandmother's friend lived should be seen as only "several months", not two years. When at the home of her grandmother's friend she had not left the house. The appellant's fears were of the One Order gang and of the police. Whilst it was not intended to encroach on the immigration

judge's findings of fact, the appellant's recent mention of being "marked and shamed" by her rapists was a proper response to questions prompted by Mr Sobers' most recent reports, which the Tribunal had asked for. When she said she was marked, that was in relation to her own experiences and her subjective view was objectively sustainable in the light of the Amnesty International and the WMW reports and in particular the latter's reference to "battery dolls".

Our Assessment

127. Inevitably in the context of the evidence in this case we have largely to focus on the reports of Mr Sobers. That is not to say that we have ignored the summaries we have before us of other expert reports (as produced in the Court of Appeal case of A, for example), some of which have expressed similar views to his, but we take the great reliance placed by representatives on reports from him (both in previous cases and in this case) to reflect the belief that his embody the strongest expert evidence in support of their arguments. The efforts on the part of the appellant's representatives to obtain up-to-date expert evidence has focussed largely on Mr Sobers. It is appropriate, therefore, that we begin with our evaluation of his evidence. Mr Sobers' expertise on matters to do with Jamaican society and politics and in particular its criminal justice system is considerable. He has been described as a distinguished expert in important cases before the Court of Appeal and the Tribunal.

128. There are many excellent qualities manifested by his various reports. It most respects he seeks to base his observations on a wide spread of sources, ranging from major country reports (US State Department reports) to reports produced by Jamaican government and non-governmental bodies as well as reports in the Jamaican press. To some extent this does result in some overlap since when we read reports from Amnesty International and Jamaicans for Justice, for example, we have to bear in mind that they themselves derive their views in part from his ad hoc advice and contributions. He properly exercises caution when evaluating the press releases from the government-run Jamaican Information Service and statements from ministers and senior policemen. He draws on his own wide experience as a human rights campaigner in Jamaica. We are disappointed that Mr Sobers' eschewed comments requested by us designed to clarify his professional relationship with his mother Ms Yvonne Sobers (whose reports were criticised in JS and specific concern was expressed about her leadership of an NGO called "Families Against State Terrorism"). It would appear he has been closely involved with her in research-related projects, in particular in co-writing a book dealing with police killings in Jamaica; we note he has also assisted Families Against State Terrorism by giving voluntary legal advice. However, we do not consider that we should take an adverse view of his apparent close involvement with her. Nor do we see any basis for assuming anti-police bias on his part on the basis (suggested by Ms Brown) that his mother had a cousin killed by the police or that he and his mother are co-writing a book about police killings of civilians. So far as we are concerned, he is to be taken as an expert doing his best to perform his duty to the court.

129. It remains however that we have to examine his reports in the context of the evidence which is before us. Furthermore, in contrast to the higher courts in the aforementioned cases(and the Tribunal in DW), where his evidence was unchallenged, we have to address the challenges now raised.

130. It is also important to emphasise, at the outset, that our task is different from that of Mr Sobers. We have to assess the evidence so as to decide whether the appellant has shown that her removal would place the United Kingdom in violation of its obligations

under the Refugee Convention, the EU Qualification Directive or the Human Rights Convention. We emphasise this point because it seems to us that in large part Mr Sobers' assessment of the key issues depend on different, less stringent, criteria. To give one illustration, Mr Sobers is adamant that internal relocation, in order to avoid risk of targeting criminal gangs, would be unreasonable because, inter alia, Jamaica does not have a social welfare system. That may well be the case, but as clarified by the House of Lords in Januzi, unreasonableness or undue hardship under the Refugee Convention as well as under Article 3 of the ECHR can only be shown if there is, in the particular circumstances of the individual's case, a real risk of a violation of a basic non-derogable human right: see Januzi [2006] UKHL. Mr Sobers is not to be criticised for the fact that does not always adopt and apply the same criteria: he is not and does not purport to be an expert in asylum or asylum-related human rights law. But it is an important point of distinction we have to keep in mind.

131. Separately, however, there are certain respects in which we find Mr Sobers' reports deficient. It is unfortunate that he was not able to attend the hearing as requested and in that way for us to see how his evidence stood up to cross-examination - although we appreciate there may well have been very good reasons to do with travel, commitments and finances. We must make do with his written reports. Whilst he cautions against uncritical acceptance of government and police sources (e.g. The Jamaican Information Service) he does not always exercise the same caution when it comes to reliance on press reports and anecdotal evidence or on reports by campaigning organisations such as Jamaicans for Justice which are written in an iconoclastic style. It also worries us that for many of his arguments reliance is placed wholly or mainly on anecdotal evidence in the form of press reports. We note that Mr Sobers' past employments include working as a columnist on the Jamaica Observer Ltd's Sunday Observer for two years. We have no examples of the style of his work in that capacity, but if it is journalistic that would be entirely appropriate. But when it comes to writing expert reports, we would have expected greater effort on his part to rely less heavily on references to press reports detailing individual incidents and greater appreciation of the fact that the Jamaica press may not always be balanced and impartial. His use of press reports is also at times unbalanced. When it suits his viewpoint he is happy to cite press cuttings with unqualified approval (e.g. reports stating that the police are failing in their fight against crime), yet when they contain items which do not support his viewpoint (e.g. the Jamaica Gleaner acknowledgement of the successes of Operation Kingfish which appeared before Mr Sobers' last letter) he appears to accord them no weight. Too often it is impossible to tell whether the incidents he mentions are intended as a small sample (in which case one would expect at least reference to where the reader can find fuller data) or near-complete coverage of incidents: for example when giving his response to JS in his October 31, 2006 Supplemental Report, he states that there are "numerous examples of citizens contacting the police and "being left vulnerable either because of the tardiness or complete lack of response they encounter". Yet the examples he then gives are limited to four.

132. Whilst Mr Sobers' reports mostly seek to present all relevant evidence on the issue with which we are concerned, we do consider there are several aspects which reduce somewhat the weight we are able to give them. Miss Brown contended that he consistently approached the evidence about crime and violence in Jamaica from a fixed negative stand point. We do not agree with that criticism in full: in particular we think that for in many respects (albeit not all) his reports take pains to identify all available evidence, even items which on their face do not support his viewpoint. However, we think his opinions on certain issues do betray a fixed viewpoint. For example, his reports written during the

2004-March 2006 period attribute the failure of the Jamaican police to effectively combat rising crime, to, inter alia, a reactive militaristic approach (which he contrast with an "intelligence-led" approach and a lack of training). His March 2006 report states that the government "has invested far more in militaristic solutions than intelligence driven solutions". Yet, as his last two reports record, and as the latest COI report for November 2006 indicates, the police have taken significant steps to introduce a more intelligence-led approach, to deploy more community policing and to introduce police training. Operation Kingfish, still ongoing, is a major example of this intelligence-led approach and has plainly resulted in a number of significant arrests and detentions. The HRT Research item of 16 June 2005 submitted by the appellant's representatives records both the Jamaica Observer and the Jamaica Gleaner as reporting national security minister Phillips saying that so far Operation Kingfish had cost the country $50 million and that financial assistance from overseas partners for personnel, equipment and training and intelligence was estimated as amounting to approximately $150 million. By any standards thee figures suggest substantial investment in intelligence-driven solutions.

133. Mr Sobers also makes much in his most recent reports of the failure by the government to increase the number of police from 8,500 to 10,000 as they announced they would; yet it is clear from earlier reports he produced for the Court of Appeal cases that the police have been given new resources from time to time and he has produced no evidence to show that the government has reneged on its intention and efforts to increase police numbers. Given the financial assistance provided by overseas governments, including the UK to help the government tackle crime, it is odd that he should attach significant weight to such a contingent point of fact. It is not at all clear to us that Mr Sobers ever recognises that, even if problems of effectiveness remain, the character of policing in Jamaica has changed and that the police are no longer accurately described as institutionally "extremely" militaristic and reactive in approach: see e.g. his March 2006 Report. This brings us back to our concern about Mr Sobers' reports appearing to reflect a fixed viewpoint.

134. A similar difficulty afflicts Mr Sobers' analysis of Jamaican crime statistics. Whilst we think he is right to emphasise that crime figures in the last 5 years are considerably higher than in the previous 5 years, we do not accept that he is right to insist that the latest figures represent no real improvement because 2005 (when the crimes figures soared to their highest ever) was "an extraordinary year". As Ms Brown correctly noted, even disregarding 2005, there was a reduction in the serious crime rate in 2006 as compared with 2004. Whilst we see some force in his criticism of the Tribunal in JS for describing recent developments in Jamaica's fight against crime as a "sea-change", equally it seems to us he is too dogmatic in characterising any reduction in the crime rate as meaningless.

135. We also find that his reports sometimes show a lack of perspective. For instance, a persistent theme of his reports is that the culture of "garrisonism" is not confined to the garrison communities within the Kingston Metropolitan Area (KMA), but is island-wide and that criminal gang violence has become "trans-geographic in reach and effect". Yet on his own figures, the crime statistics for areas outside the KMA are extremely low by comparison (the KMA accounts for 80% of serious crimes). In his letter of December 14 he reminds us that:

> "[a]s with organised crime everywhere, the casualties of gang violence are typically going to be those who are either directly or indirectly involving with the gang. In that respect, gang violence is naturally going to be limited to areas where gangs do operate".

136. Moreover, although he does refer in all his reports to gangs being able to operate island wide and to have networks, he fails to refer to any evidence showing that outside inner city areas they have achieved any kind of hold over local communities or imperilled basic law and order. He refers to some individual examples of gangs operating outside their "turfs", but is unable to give any empirical evidence to show that such activities amount to a consistent pattern. This is not in our view a trifling matter. What he has asserted in his reports for the Court of Appeal in A for example is in general terms. Gang leaders were said to have developed networks throughout the island. His opinion on this point was clearly seen as very significant to the Court of Appeal thinking in A. It also appears to have influenced the assessments made by local and international NGOs on this same issue. It is an opinion he has been expressing for a number of years. Yet when his reports for the A case and other cases are examined, nowhere is there any attempt to substantiate this opinion by reference to crime statistics relating to non-KMA areas or by reference to other research-based sources. All we appear to have are a small number of individual incidents (and isolated references such as that to the number of gangs in Montego Bay being 16-18). There are it is true similar general statements found in some of the established reports, but on the face of the evidence, it seems to us to be a classic example of what COI analysts refer to as "roundtripping": one source repeating another source who in turn repeats the same source – which at the end of the trail relies on just a small number of incidents.

137. We find Mr Sobers' latest opinions, as expressed in his letter of 14 December 2006 particularly revealing of his method of reasoning. In it he seeks to refute the suggestion that gang violence is confined to garrison communities. He explains that gangs operate in nearly all urban centres in Jamaica by instancing the Montego Bay area which has, he says, between 16-18 operational gangs. He concludes: "In effect, gang violence could be said to be 'limited' to inner-city urban areas in Jamaica. That suggests, he says, that" violence is a feature of every parish and of every centre of employment in the society". Yet in support of his conclusion that gangs are to be found not just within the garrison communities but in every parish, he cites just one example outside the KMA: Montego Bay. The reader is left in the dark as to what evidence there is regarding gang activity and its scale in all the other inner city areas outside the KMA and Montego Bay. Nowhere does he acknowledge either that on his own analysis here gangs have no significant presence in the *non*-inner city urban areas or rural areas. We find it very difficult to reconcile what he says here with what he has consistently stated in his earlier reports about gangs having "migrated" or having an organised presence island-wide.

138. We also discern lack of perspective in Mr Sobers' frequent references to criminal gangs being able to operate islandwide with "almost complete impunity". Nowhere does Mr Sobers explain how such a claim can be squared with the evidence, which he himself notes, that the Witness Protection programme, since 1995 has been able to protect 1,000 persons without losing anyone. Potentially that means criminal gangs have not been able to operate with complete impunity in some 1,000 cases. Even if we take the lower figure found elsewhere in the background evidence (e.g. the Jamaican FCO figure of 400 since 1997) and even if we entirely accept that the Witness Protection programme has sometimes not been made available, that is an extremely significant number of people.

139. We consider that at best the evidence he presents only supports the view than organised criminal gangs have a dominant presence within garrison communities and a

significant presence in other urban centres and that the larger gangs are sometimes able to carry out reprisals throughout Jamaica.

140. A related lack of perspective accompanies his references to the conflict in Jamaica between the government and police on the one hand and the organised criminal gangs on the other as demonstrating an "asymmetrical balance of power" with gangs having the upper hand. On its face this phraseology blurs important distinctions. Plainly, even if the conflict between the authorities of Jamaica on the one hand and organised criminal gangs on the other is of this nature in some *inner city* areas of the capital which are garrison communities, it is not the case that *outside* those areas these gangs have any significant power base or represent any significant countervailing force to that of the government. Even in Montego Bay he does not suggest that that is the case. Further, even confining focus to the capital as a whole, it is still plainly not the case that organised criminal gangs are vying with the authorities for control: at most they exercise or vie for control only in certain (garrison community) areas. That is not to say that in other areas of the city crimes do not occur or criminal gangs do not carry out crimes or that criminal gangs cannot from time to time stage operations disruptive of the life of the capital city generally; but to suggest as Mr Sobers' reports do, that, there exists any kind of balance of Jamaican-wide - or even just Kingston-wide - power in favour of criminal gangs is simply not borne out by the evidence he himself relies on.

Sufficiency of protection

141. When analysing the issue of sufficiency of protection it is imperative to bear in mind that in general if a person cannot establish a real risk of serious harm, the question of whether there is a sufficiency or insufficiency of protection against that harm does not arise: see Horvath. As emphasised by the Court of Appeal and House of Lords in Bagdanavicius, there will often be an evidential overlap between the two issues, but it is nonetheless valid to recognise that they are two separate analytical steps.

142. We took care earlier to set out the main propositions established by leading cases because we think they highlight several points which are important for disposal of this appeal.

143. First, in asylum-related appeals, statements about sufficiency of protection are not statements about whether protection can be universally provided – i.e. to all citizens without exception. As the wording of regulation 4 of the Protection Regulations (and Article 7 of the Qualification Directive) denotes, they are about the system of protection and whether under that system protection can "*generally*" be provided. Second, the test of protection is a practical one. For there to be effective protection it is not necessary that there be an absolute guarantee of protection; effective protection does not mean the elimination of all risk. Third, the test is one which focuses on whether protection within the state is factually available: protection can be generally afforded without any restriction on the type or form of protection or its sources, save for the requirement of an effective legal system. Whilst, as the wording of regulation 4 underlines, for there to be an ability to protect there is a requirement that there must be an effective legal system, there is not a requirement that serious crime levels most be kept within a specified level. With record-high crime levels being a frequent feature of many leading democratic states, it would be surprising if the ability of the authorities to protect in such states were seen to be disproved simply by reference to soaring crime figures. Further, although requiring deterrence (the detection, prosecution and punishment of acts constituting persecution or serious harm) the test does not confine protection afforded by the legal system to the

system of criminal law: That is important because, as Sedley and Arden LJs observe, civil laws (e.g. non-molestation injunctions) can play a part in the overall system of protection. Each of these observations is important to bear in mind in the Jamaican context. Fourth, as noted by Auld LJ at paragraph 6 of Bagdanavicius:

> "Notwithstanding systemic sufficiency of state protection in the receiving state, a claimant may still have a well-founded fear of persecution if he can show that the authorities know or ought to know circumstances particular to his case giving rise to his fear, but are unlikely to provide the additional protection his particular circumstances reasonably require; Osman."

144. In Dhima, Auld J (as he then was) made much the same point when stating:

> "...what is critical is a combination of a willingness and ability to provide protection to the level that can reasonably be expected to meet and overcome the real risk of harm from non-state agents. *What is reasonable protection in any case depends, therefore, on the level of the risk, without that protection for which it has to provide*" (emphasis added).

145. Does the above summary of relevant legal principles assist us in assessing the two issues of sufficiency of protection in Jamaica in general and the issue of sufficiency of protection for specific classes of persons facing a real risk of serious harm from criminal gangs (e.g. informers, homosexuals, female victims of domestic violence)? We consider that it does.

146. We do not find that the factual nature of the test of protection is one which Mr Sobers properly factors in to his assessment of effectiveness of protection. He places much emphasis on the fact that the police being under-strength and under-resourced means that in Jamaica there is a general insufficiency of protection. On his own account, as contained in his March 2006 report, the number of employees in Jamaica working in the private security industry is double that of the police force (said to be some 8,500). He justifiably makes the point that the private security sector essentially serves corporate interests and the rich and powerful and does not assist ordinary Jamaicans, at least those who are poor. Be that as it may, however, it cannot justifiably be said that the private security sector plays no significant role in bolstering the overall ability of the state to protect its citizenry, enabling, for example, police resources to be less stretched than they otherwise would. Yet Mr Sobers' exclusive focus on the protective role of the police overlooks that. Similarly, in the context of considering the problem of domestic violence directed at women, whilst Mr Sobers carefully notes the role of the civil law in the working of the domestic violence legislation, it is not clear to us that he takes adequate account of that when assessing the vulnerability of women from domestic violence.

147. Mr Sobers considers that lack of protection by the Jamaican state of its citizens is demonstrated by its inability to contain a gradual rise in the serious crime figures. From his reports and other sources it is incontrovertible that Jamaica has a very serious problem with criminal gangs. And it is clearly not a purely domestic problem, since there is strong evidence of the involvement of international syndicates involved in drug running and gun running. However, as already emphasised, we do not consider that the state of the serious crime figures can be taken as a sole indicator of whether Jamaica affords sufficient protection within the meaning of the Refugee Convention (see regulation 4 of the Protection Regulations). It seems to us that a range of other facts must play a part, including other social, political and economic indicators. That again is of some importance in the Jamaican context because the evidence we have suggests that in political and socio-economic terms Jamaica is far from being considered a country in crisis or failing to

perform the basic functions of a state. The COI Report for November 2006 describes Jamaica's political system as stable. Despite the problems described concerning ("symbiotic") involvement of some members of the two major political parties with organised crime, there is no suggestion that Jamaica is not a functioning parliamentary democracy. Although it is said to have unemployment at a rate or 15.5%, rampant underdevelopment, growing debt and high interest rates, it is not seriously suggested that these problems are as bad as they are in a good number of other third world economies. None of the above is intended to belittle the size of the political, social and economic problems that beset current-day Jamaica. But it is intended to highlight the point that although on serious crime indicators Jamaica performs extremely badly, this is not matched by its performance in terms of other relevant indicators. Not to have regard to a range of indicators is to fail to consider the issue of sufficiency of protection in Jamaica the round.

148. Even confining ourselves to the effectiveness of the criminal justice system, we return to the point we made earlier when giving our views on Mr Sobers' reports: even if criminal gangs have the ability to operate countrywide, the evidence clearly indicates that it is only inside the garrison communities in the KMA, that the gangs pose a major threat to law and order. As the Bertelsmann Transformation Index (BTI), a global ranking that analysis and evaluates development and transformation in 199 different countries, noted in its 2006 Report, only twelve out of sixty of Jamaica's constituencies were clarified as garrison communities to varying degrees and except in these constituencies "[*t]he state's monopoly on the use of force in Jamaica is widely secured" (emphasis added).*

149. Another factor which Mr Sobers places considerable emphasis upon in support of his view that the Jamaican state does not sufficiently protect its citizenry is the extent of police misconduct and corruption in the police force. Once again we can straightaway accept that police impunity and corruption are serious problems. However whilst the figures for the use of lethal force by the police are alarming (180 deaths in 2005), the evidence appears to indicate that a very significant number of those took place in the context of police operations against organised crime gangs within these garrison communities. It is not suggested that it is considered a major problem outside these communities. So far as corruption generally is concerned, Transparency International's Corruption Perceptions Index (CPI) 2005 recorded Jamaica's CPI score as 3.6. The CPI Score relates to perceptions of the degrees of corruption as seen by business people and country analysts and ranges between 10 (highly clean) and O (highly corrupt) (see COI Report, 18.03). Jamaica's score is not in the highly corrupt range. Moreover, even Mr Sobers' own references taken as a whole do not suggest that the range of anti-corruption initiatives relating to the police have simply been window-dressing. In the light of the latest evidence, e.g. that for 2006, forty-three police officers have been arrested on charges of misconduct, with one conviction and forty cases currently before the courts. Taken as a whole we find that the most the evidence shows is that, despite significant efforts, the government and police are not doing well in overcoming the corruption problem.

150. In short, the evidence does not bear out Mr Sobers' contention that there is Jamaica a general insufficiency of state protection. On this matter we reconfirm the guidance given in JS.

Protection against criminal gang violence

151. We turn to consider whether, even though generally willing and able to protect its citizenry, the Jamaican authorities can protect persons who face a real risk of persecution

or serious harm or treatment contrary to Article 3 of the ECHR in the form of targeting by criminal gangs. Mr Sobers' reports say they cannot.

152. So far as persons facing such targeting who live within the garrison communities to be found in the KMA, we think the evidence Mr Sobers presents, and that contained in the background materials, is strong. The resources that criminal gangs can draw on in order to carry out violence on their own turf on in other gang-controlled areas is well- illustrated by the 2005 US State Department Report which referred to the "well-armed gangs" trafficking in narcotics and guns "control[ing] many inner city communities". Such gangs are said to be "often ... equipped better than the police force and [to have] conducted coordinated ambushes of joint security patrols" (COI, 8.08). Within the garrison communities gang leaders (sometimes in alliance with local party leaders) can often act with impunity, although they have to vie for power with other "dons" or gang leaders. Whilst the authorities through Operation Kingfish and other initiatives appear able to disrupt these gangs, the evidence does not show that they have dismantled them: within these areas the gangs appear to be still largely in control.

153. As far as the ability of these gangs to operate outside the KMA is concerned, however, the evidence is far from being one-way. There is a considerable section of the evidence indicating that the major criminal gangs, even though they lack a power base outside their own "turf" areas, do have the wherewithal to carry out revenge attacks or reprisal killings against persons whom they have a serious and specific interest in targeting. Counterposing that, however, is very strong evidence indicating that they have failed to get their way in respect of anyone who has been admitted into the state's Witness Protection programme. The contrast with well-known historical examples of criminal gangs in the past century, e.g. the Mafia in the United States, who for several decades in the twentieth century at least were on a significant number of occasions able to "eliminate" or otherwise harm witnesses, is striking. In our view this evidence shows that the Jamaican state has both the willingness and ability to protect in cases where persons will be admitted into their Witness Protection programme. We acknowledge that this programme has shortcomings, for example, lack of resources and a lack of coverage of all those involved in criminal trials as witnesses. However, its record so far is still extremely impressive.

154. (In our view this evidence also casts considerable doubt on whether informers as a class can be seen as unable to receive effective protection. If they are able in significant numbers to enter this programme, then it would appear in broad terms that their protection can be secured. However, we lack evidence on this and the precise issue of protection for informers is not raised by the particular facts of this case.)

155. Nevertheless, we recognise that apart from the safety-net of this programme, there does appear to be a protection gap. For persons targeted by gangs who are not reasonably likely to be admitted into this programme, we think the evidence adduced by Mr Sobers and others strongly points to them not being able to secure protection from the authorities through the range of normal protective functions carried out by the authorities - unless they can internally relocate without being at real risk of detection by their persecutors.

156. This brings us to Mr Sobers' views on internal relocation.

Internal relocation

157. The language of Mr Sobers' reports does not appear to wholly rule out that internal relocation may be an available option for some individuals (e.g. those with wealth, see e.g.

paragraph 134 of his March 2006 Report). However for the most part he dismisses it in view of the following: the fact that Jamaica is a relatively small island; that there is a reasonably well developed network of roads and telecommunications; that persons relocating will be seen as stranger who stand out; and that there is a lack of a social welfare safety net. Some of these factors go to the issue of continuing risk of persecution, some to the issue of reasonableness.

158. As regards the former, Mr Sobers considers that the first three factors mean that it would be extremely difficult for a person who is targeted by a gang or a "persistent abuser" to remain undetected. We do not consider that this view is borne out by the evidence. Whilst that evidence does bear out that the criminal gangs, at least the major ones, are well organised and have considerable resources as well as networks, these appear to be very largely concentrated within their own areas or "turfs". There is nothing at all to suggest that they keep records or have any system of information-storing or information-sharing beyond ad hoc discussions. It is important also to bear in mind that criminal gangs cannot be considered as some kind of collective monolith, because we are told that much of their time is spent fighting each other for control of the markets in drugs, guns and prostitution. Even assuming that in every part of Jamaica there are persons who have connections with or work for organised gangs, the evidence does not show that such persons are generally familiar with or know who the sought enemies of these gangs are. In our view it is not reasonably likely they would be told to look out for specific individuals except in high profile cases. Further it is clear in our view that the day-to-day world of criminal gangs is constantly changing with those involved in gangs reacting to opportunities and events taking place around them.

159. We do not consider that the evidence even establishes that where criminal gangs have particular enemies whom they mark out for reprisal, they are generally able to track them down and carry out their revenge. We revert here to the facts and figures we have about the Witness Protection programme. On Mr Sobers' own figures, some 1,000 people have been assisted by this programme since 1995 and he does not dispute the government's claim that no one has been "lost" to the programme. It is noted that sometimes those who go into the programme are placed abroad, but this is not described as the norm. Not only are these facts indicative that witnesses can be protected, but it also suggests that a significant number of persons at risk of reprisals have been able to relocate within Jamaica, without being detected or at least subject to reprisal.

160. Mr Sobers places emphasis upon persons who move into communities for the first time being seen as strangers and standing out. The Amnesty International reports have emphasised that the range of factors of relevance would be whether persons would be identified as JLP or PNP by reference to their home area. However, even if these observations are correct, we do not find that such visibility is reasonably likely to result in their identity and whereabouts being relayed back to criminal gangs in any organised way. There is simply no evidence to suggest the existence of infrastructures of this type.

161. We accept Mr Sobers' evidence about Jamaica's developed system of transport networks and telecommunications and the fact that Jamaica is a relatively small country. At the same time, its size is not significantly different from a number of countries where UNHCR and national courts and Tribunals have accepted that internal relocation may in at least a range of cases be viable (e.g. Kosovo, which has an area of 5,000 square miles). Significant parts of Jamaica are known as "the country" and are markedly rural.

162. We accept that the considerations which Mr Sobers highlights are very relevant factors when examining the viability of internal relocation in any particular case, but so too, in our view, must be the question of the accessibility to any particular individual of the Witness Protection programme. It seems to us that it will be very important in Jamaican cases concerned with protection against a real risk of serious harm from criminal gangs, to first of all analyse whether the individual concerned will be able to receive assistance from this programme. Assuming it is decided a person on return *will be* admitted into this Programme, then we consider that the evidence overwhelmingly indicates that they will thereby be able to avoid any real risk of detection: we remind ourselves that no one has been "lost" to the programme so far. So far as the likely economic and social conditions faced by those within the Programme, whilst we do not rule out that unusual individual circumstances may make it unreasonable for them to be admitted into the programme, there is nothing to suggest that programme participants are generally exposed to destitution or unduly harsh living conditions.

163. When we refer to persons being "admitted" into the programme, we do not believe that the test can be what the individual's preferences are or whether there are hardships that will be involved (e.g. having to live for at least some period of time in difficult circumstances). The test is simply whether, if they sought access to it, they would be admitted to it.

164. What, however, would be the position of a person who would *not* be admitted to the Witness Protection programme? Here the first question to be asked is whether it is reasonably likely they will be traced and targeted in their new place of residence. As already indicated, we do not consider that, except in high profile cases, such persons would face a real risk of being detected by criminal gangs based within the KMA or other inner-city urban areas. But each case will turn on its own facts.

165. Even if it is decided there is no real risk of such detection, a person may still face a real risk, by virtue of it being unreasonable or unduly harsh for him to relocate: see paragraph 339O of HC395 as amended. Here, however, it must be borne in mind that the criteria identified by the House of Lords in Januzi are stringent. It will not suffice that there may be a lack of social welfare support combined with other difficulties: what matters is whether such a move will result for the individual in question in destitution or other forms of violation of a nonderogable human right.

166. We would re-emphasise at this point that what we have just delineated about insufficiency of protection for those unlikely to be accepted into the Witness Protection Programme, only becomes germane in a case where it has first been established that a criminal gang's behaviour poses a real and serious threat to an individual. In order to show that such a threat exists, it will not suffice to show that a criminal gang dislikes an individual or even that it has made threats of violence: it has to be shown that the gang has a real intent to inflict the threatened serious harm and to carry out its threats. We shall return to the importance of these considerations when we turn to examine the appellant's particular circumstances.

Particular social group (PSG)

167. Ms Asanovich sought to rely on K and Fornah. However, any consideration of this issue now has to be undertaken within the new legal framework established under the Protection Regulations. We mention this because obiter remarks by Lord Bingham and Lord Brown appear to suggest that the Qualification Directive provision, Article 9, on

which Regulation 6 is closely based, can be read disjunctively so that a person qualifies as a member of a PSG if he can show either "an innate characteristic..." *or* a "...distinct identity...", even though the wording of that Article would appear in its ordinary meaning to require a person to show both. The UK implementing provision also uses apparently conjunctive language.

168. At regulation 6 so far as is relevant it is stated:

> "(1) In deciding whether a person is a refugee:
> ...
> (d) a group shall be considered to form a particular social group where, for example:
> (i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
> (ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society;
> (e) a particular social group might include a group based on a common characteristic of sexual orientation but sexual orientation cannot be understood to include acts considered to be criminal in accordance with national law in the United Kingdom;
> ...".

169. Regulation 5(3) states that "An act of persecution must be committed for at least one of the reasons in Article 1(a) of the Geneva Convention".

170. However, we do not need to decide this issue here, since we do not consider it necessary in this case to make any findings on the issue of whether women (or some subgroup of women) in Jamaica are a PSG (either under regulation 6(1)(d)(i) on its own or under regulation 6(1)(d) (ii) on its own or under both). In view of the findings we go on to make on the appellant's case, no Convention reason issue arises in her case, since (as we shall come to) she has not established a well-founded fear of persecution. In any event we see no valid reason to go behind the findings made by the panel who adjourned this case for second stage reconsideration. Miss Brown is plainly right that the Tribunal has the power to limit the issues to be dealt with on second stage reconsideration: see Rule 45(4)(f)(iv) of the 2005 Procedure Rules. Further, we see no Robinson-obvious basis for re-examining the PSG issues created by the opinions of the House of Lords in K and Fornah. We doubt that women in Jamaica constitute a particular social group, in view of the fact that by and large they enjoy the same civic rights as men and do not face any general legal or societal discrimination. But even if we are wrong about that, the existence of such a group or sub-group in Jamaica is far from being something dictated by the principles in K and Fornah. Their lordships confirmed the principle established in Shah and Islam [1999] 2 AC 629 that whether women are a PSG would depend heavily on the conditions prevailing in the country concerned.

171. We leave open whether a sub-group of Jamaican women, namely women who are victims of sexual violence and/or domestic violence, constitute a PSG. We recognise the force of the assessment by Mr Sobers, Amnesty International and Women's Media Watch, among others, of the difficulties women in Jamaica face from sexual violence and domestic violence. However, Miss Asanovich's contention that such a group is a PSG is weakened in our view by Mr Sobers' evidence elsewhere, which states that women are not targeted because they are victims of rape; at the very least this opinion creates difficulties in showing that, even if there were such a PSG, there would be a causal nexus between that group and the persecution feared.

172. Plainly a family in Jamaica is capable of forming a PSG. However, on the facts in this case we also doubt whether the appellant could qualify as a member of a PSG of this kind: she has long ceased to enjoy any real family existence with F and the only real link that remains is that he has fathered her first child. The only basis for her being a member of a family would be if she were facing persecution for that reason, because he and his associates saw her and her daughter as his property; in other words the group would be purely defined by the persecution. Once again, however, we do not need to decide this question, for reasons already given.

The appellant's case

173. We note at the outset that on the particular facts of this case it is no longer contended that the appellant would be at real risk of being perceived as an informer: that matter was clarified by the Tribunal in the first-stage reconsideration. Although there are passing references to it in her skeleton argument Ms Asanovich did not seek to raise it afresh in her submissions before us and we see no valid reason for reviving this as an issue now.

174. Turning to the significance of the appellant's recent evidence in her latest statement and in her oral testimony before us about her rape having "marked and shamed" her, we agree with Miss Brown that it is significantly different in emphasis from her previous evidence about the gang rape incident. However, we are prepared to proceed on the basis of this evidence. In our view, it adds very little to the evidence as to the objective situation faced by rape victims, but it does provide further insight into the appellant's subjective state of mind.

175. The first question we must address is whether the appellant has shown she would be at risk of persecution: in what follows what we say about persecution applies equally to the issues of serious harm under paragraph 339C of the amended Immigration Rules and of ill-treatment contrary to Article 3 of the ECHR.

176. We accept that the appellant has shown past persecution: that entitles her to have her case succeed unless there are valid reasons to consider she would not face a repetition of that persecution: see paragraph 339K of the amended Immigration Rules.

177. Nevertheless, we do not consider the appellant would be a target any more for members of the gang who attacked her in 1999/2000. To begin with it must be recalled that her case is not one about a person being pursued by the One Order gang per se. F himself was a member of the One Order gang and his killing of another area leader was only said to have been taken up by (four) members of the gang from that area. It must also be recalled that the interest of these area gang members in her at the time was because they believed she knew the whereabouts of F. We find it highly unlikely, even if they were to re-encounter the appellant, that they would any longer see her as being able to give any information about his whereabouts. On the appellant's own evidence F has continued to live in Jamaica for the past six years or so and, even if (which is far from clear) he had been in hiding for some time, he has recently been known to have been shot and wounded. If those area gang members still wished to target him they would surely pursue recent leads, not ones over 6 years old. Although the appellant's evidence was that for a while after she had left her grandmother's house and gone to stay with a friend of her grandmother at a rural area some 45 minutes away, members of this gang visited her grandmother from time to time, she did not mention that continuing in recent years. According to Mr Sobers, although we think he goes beyond the evidence in saying that criminal gangs have organised networks island-wide, the One Order and Klansman gangs are well organised

and have good intelligence. If that is so, then it is not reasonably likely that someone like the appellant who has been off the scene for a long time, would still be of adverse interest to them as a means of locating F.

178. We do accept, nevertheless, that if she returned to her *home area*, which is we remind ourselves, an area within the KMA, there would be a real risk that her return there would be communicated to F. Whilst we do not consider that the authorities in Jamaica are generally unable to protect against domestic violence, it is reasonably likely if she went back to her grandmother's home that F would learn of her return. We are just persuaded also that, by virtue of her subjective fears and her traumatised state, she would not be able to seek the protection of the police and so would not be able to benefit from available assistance under the Witness Protection programme: we do not find it reasonably likely that she would approach the police in order to be admitted to it. We accept therefore that inside her home area she would face a real risk of persecution at his hands or the hands of his associates again, sooner or later.

179. However, we do not consider that the appellant would face a real risk of persecution if she relocated to another part of Jamaica. We note first of all that she was able to stay without incident for several months (it may indeed have been a longer period) in the area where her grandmother's friend lived, a rural area relatively close to her home area. We accept that during this time the appellant did not go out, but it remains that her grandmother had felt confident enough to leave her there rather than trying to arrange for her to leave Jamaica straightaway or move further away from the KMA. Even when the appellant left, her daughter stayed in the same place for a significant period of time, some eight months. Second, we come back to the point that in our view the gang members who pursued her in 1999/2000 because they thought she knew the whereabouts of F, would have known for some time that she was off the scene. It is open to considerable doubt that they would still have revenge against F in their minds, as the evidence suggest that the activities of gangs are highly contingent and dependent on rapidly changing events. If, however, they have continued the search for vengeance against F, it may possibly be they or their associates have been killed or imprisoned or have exacted their vengeance on some other members of F's local section of the One Order gang. We simply do not know: but it is certainly not a case where the evidence demonstrates a reasonable degree of likelihood that there are gang members who have a still-pressing intention to exact revenge against F. Third, we consider it at best a remote risk F would locate the appellant and her daughter outside her home area. Her grandmother has shown in the past that she would not divulge any information about the appellant's whereabouts; it has not been suggested that she and her husband were subjected to any threats directed against them if they did not divulge the appellant's whereabouts; and that is not likely to change. We know nothing about F's activities over the past six years, save that he has recently been involved in a shooting incident. As already noted, there is no recent evidence of his gang members still continuing to visit the grandmother to enquire about the appellant. If F has not been in prison, he may well have engaged in other relationships. Again we simply do not know, but it is far from being the type of case where the evidence demonstrates a reasonable degree of likelihood that there is a single-minded persecutor waiting for the appellant to return so he can renew his persecution. Further, there is an absence of any real evidence to show that members of the section of the One Order gang whose leader F killed have contacts all over Jamaica who would know to look out for this particular appellant. In such circumstances we find it very unlikely anyone locally in another part of Jamaica would convey information back to these men. Jamaica is a relatively small country but having a population of around 2.8 million people, it is far from being akin to one interactive

community where everyone gets to know who everyone else is. This is not a case either where the appellant would be under any type of duty to disclose to anyone her unhappy history with members of this gang or her connections with F. For a long time she did not even disclose it to her sister in the UK.

180. There remains the question of whether, even if the appellant would not face a continuing risk of persecution, it would be unreasonable or unduly harsh in her case to expect her to relocate.

181. Here there are competing considerations. Mr Sobers has emphasised his belief that she would be without a social welfare safety net. We are not persuaded that this is a major consideration. For one thing, the background evidence does not appear to back up this part of Mr Sobers' assessment. Paragraph 27.03 of the COI Report November 2006 states:

> "Residents of Jamaica may benefit from various Social Security and Welfare provisions, which are aimed at specific target groups. Those provisions include Public Assistance services for the aged, the disabled and the destitute, the Food Stamp Programme for those nutritionally at risk, and the Kerosene Programme targeting poor familiars following the removal of the subsidy on domestic kerosene ..."

182. We also note that the appellant was able to receive financial assistance in the past from her grandmother (with leaving the country) and we see no reason to think, six years later that the grandmother (with whom she keeps in touch) would be unable to assist if the appellant was threatened by economic hardships.

183. In any event, the test we have to apply is not whether there would be a lack of social welfare support, but whether in the appellant's and her daughter's particular circumstances there would be virtual destitution: see Januzi.

184. A further consideration in the appellant's case is her vulnerable psychological state. Dr Seear has expressed his concerns about her ability to cope with life back in Jamaica, given her subjective fears and anxieties. We note that Jamaica does have facilities for treating people with mental health problems: see COI Report, 26.46-26.52. Further, we are not persuaded that her psychological condition is sufficiently serious in itself to result in a real threat of inhuman or degrading treatment. As the Court of Appeal has emphasised in J, the threshold for establishing such a real risk in a foreign case is high. The principal reasons advanced by Miss Asanovich for thinking the appellant's situation would engage Article 3 was what her doctor now said about her risk of suicide. However, we are able to attach only very limited weight to the medical report of Dr Seear in this regard. In his latest report (15 August 2006) he refers to the appellant being at real risk of suicide, but fails to explain why he had not seen such a need to exist in his earlier reports on her condition: indeed in his 14 July 2005 Report he had expressly recorded the appellant as saying she would not act on any suicidal impulses out of concern for her daughter's welfare and he nowhere said he took a different view. The appellant has not sought psychiatric help and on Dr Seear's analysis her ongoing anxieties centre primarily around possible return to Jamaica, fluctuating depending on how imminent she thinks that is. Dr Seear may be an experienced medical practitioner, but he is not a psychiatrist and in the absence of any proper explanation for why he previously saw no suicide risk, we do not think his report, carries much weight. We also bear in mind that Dr Seear is not a country expert and insofar as he purports to give a risk assessment of how she would fare on return he bases himself very much on the objective truth of what the appellant has told him about the general circumstances prevailing in Jamaica.

185. We have not as yet made any comment on Mr Sobers' reference in his 31 October 2006 report concerning the risk the appellant would face by virtue of being labelled as a "deportee". As far as we are aware his sources for this consist in just one or two press cuttings: we have already made clear why such sources have their limitations. In any event, on their face they refer to principally male returnees who are widely perceived as being involved in criminality either in Jamaica or aboard or both. We consider that we should exercise great caution before treating this as a distinct risk factor.

186. In assessing the appellant's situation we have borne in mind throughout that she faces return to Jamaica along with her daughter. So far as the daughter's situation is concerned, we do not consider her position as a young girl would place her at real risk of serious harm: the evidence does not show that young Jamaican girls are generally at risk of serious harm in the form of sexual violence. We do not think risks arising from her particular circumstances are very different than they are for the appellant. We accept that F knows he has a daughter by the appellant, but we have not found it reasonably likely – given the viability of internal relocation – that F will come to learn of the return of the appellant and his daughter's whereabouts (even assuming he has not moved on to other relationships).

187. Even considered cumulatively we do not think that the appellant's and her daughter's circumstances, as we have identified them, would make relocation an unduly harsh or unreasonable option for them.

188. Miss Asanovich also sought to argue that the appellant's appeal should be allowed on Article 8 grounds, even if we decided to dismiss the asylum (and humanitarian protection) and Article 3 grounds. However her argument in respect of Article 8 were replicas of her arguments in respect of Article 3. Bearing in mind the high threshold that exists in respect of Article 8 claims based on the right respect for private life (Razgar [2004] UKHL 27), as further analysed by the Tribunal in WK [2006] UKAIT, we see no reason to conclude that the appellant meets that threshold.

189. For the above reasons we conclude:

The Immigration Judge materially erred in law.

The decision we substitute is to dismiss the appellant's appeal on asylum grounds, on humanitarian protection grounds and on human rights grounds.

Signed Date

Dr H H Storey, Senior Immigration Judge

Appendix: **List of Background Materials Before the Tribunal**[1]

Kerr Report on Political Tribalism, 1997 (extracts)
Report of National Committee on Crime and Violence, October 2001 (extracts)
Human Rights Watch, "Nobody's Children: Jamaican children in police detention and government institutions", 1999 report (extracts)
UNDP National Report by the Inter-Agency Campaign on violence Against Women and Girls (extracts), March 1999
US State Department Report 2004
US State Department Report 2005
CIPU Report, April 2005
Amnesty International Report on Jamaica, 25 May 2005
COI Request response, 5 August 2005
CIPU Report, October 2005
COI Request response, 10 October 2005
COI Request response, 7 December 2005
US State Department Report, 2006
CIPU Report, April 2006
Amnesty International report, "Sexual Violence against Women and Girls in Jamaica", 22 June 2006
Bertelsmann Transformation Index (BTI, 2006 Report (extracts)
Women's Media Watch opinion, 13 September 2006
Home Office COI Report, November 2006
Home Office Operational Guidance Note (OGN) on Jamaica for December 2006

Various press and media cuttings

[1] By "extracts" below is meant references contained in other listed materials.