



Home Office

OPERATIONAL GUIDANCE NOTE

JAMAICA

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1. Introduction

- 1.1** This document provides Home Office caseworkers with guidance on the nature and handling of the most common types of claims received from nationals/residents of Jamaica, including whether claims are or are not likely to justify the granting of asylum, humanitarian protection or discretionary leave. Caseworkers must refer to the relevant asylum instructions for further details of the policy on these areas.
- 1.2** Caseworkers must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive.
- 1.3** The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseworkers must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant Country of Origin Information (COI) and any other pertinent data, such as Country Caselaw.
- 1.4** COI is published by the Country of Origin Information Service (COIS) and is available on the Intranet.
- 1.5** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or humanitarian protection is being considered, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules.

- 1.6** Where a person is being considered for deportation, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Caseworkers must also consider if the applicant qualifies for discretionary leave in accordance with the published policy.
- 1.7** With effect from 1 April 2003 Jamaica is a country listed in Section 94 of the Nationality, Immigration and Asylum Act 2002 and the prima face evidence is that the current underlying situation in the country remains the same or similar to that considered when the country was first designated¹. Asylum and human rights claims must be considered on their individual merits. However, if, following consideration, a claim from an applicant who is entitled to reside in Jamaica is refused caseworkers must certify the claim as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country Assessment

- 2.1** Caseworkers should refer to the relevant COI Service Country of Origin Information material. An overview of the human rights situation in certain countries can also be found in the [Foreign & Commonwealth Human Rights and Democracy Report](#), which examines developments in countries where human rights issues are of greatest concern.
- 2.2 Actors of Protection**
- 2.2.1** Caseworkers must refer to Section 7 of the Asylum Instructions (AI) - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence.
- 2.2.2** Caseworkers must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so.
- 2.2.3** Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm and the applicant has access to such protection.
- 2.2.4** It has been reported in the 2012 US State Department Human Rights Report that the Jamaica Constabulary Force (JCF) has primary responsibility for internal security and is assisted by the Island Special Constabulary Force. The Jamaica Defence Force (JDF) has responsibility for national defence, maritime narcotics interdiction and JCF support. The JDF routinely conducted joint patrols and

¹ In [JB \(Jamaica\)\[2013\] EWCA](#) the Court of Appeal held that the inclusion of Jamaica on the section 94 list was unlawful. That judgment is being appealed and it has been stayed pending the hearing in the Supreme Court. In considering whether a claim is clearly unfounded case workers should carefully consider the facts of the particular case.

checkpoints in conjunction with the JCF. The Prime Minister has the approval authority for all JDF operations in support of the JCF. The Ministry of National Security exercises the Prime Minister's authority for oversight of the JCF and JDF. The JCF is led by a Commissioner who delegates authority through the ranks to constables. The force maintains divisions focusing on community policing, special response, intelligence gathering and internal affairs.²

- 2.2.5** Jamaica, particularly the capital city Kingston, suffers from a high crime rate – including violent crime. Gang violence and shootings are usually concentrated in inner city neighbourhoods, including West Kingston, Grant's Pen, August Town, Harbour View, Spanish Town and certain parts of Montego Bay.³
- 2.2.6** It was reported by the U.S Overseas Security Advisory Council (OSAC) in their report of 29 July 2013 that Kingston is rated "critical" for crime by the Department of State due to a high frequency of criminal activity throughout Jamaica. Violent crime is a serious problem, particularly in Kingston, however in 2012, Kingston saw a reduction in the murder rate and other violent crimes. This reduction may be attributed to proactive police actions. There were 1,083 murders, 1,218 shootings, 763 carnal abuse, 833 rape, 2,679 robberies, 3,094 break-ins and 691 larceny cases recorded in 2012. With a population of approximately 2.7 million people, the number of murders and other violence puts Jamaica in the top five tiers of the highest per capita homicide rates in the world. Most violent crimes, in particular murder, involve firearms.⁴ According to the Executive Director of Jamaicans for Justice (JFJ), police will sometimes "assign" multiple crimes to the same suspect, although the suspect may be dead or already convicted, to be able to count them in "cleared-up" statistics. The Executive Director added that police may also "assign" crimes to an individual to justify why police shot the individual in question.⁵
- 2.2.7** Crime can be attributed to several factors: poverty, retribution, drugs, gangs and politics. Providing an environment conducive to crime and hard to police enabled criminal elements and gangs to infiltrate wealthier areas. A lot of violent crimes took place in these types of areas. Police are unable to patrol and protect most neighbourhoods adequately, and as a result, burglaries are quite common. Most wealthy residents hired private armed guard forces to deter criminals.⁶
- 2.2.8** In 2010 the government created the Independent Commission of Investigations (INDECOM) to investigate actions by members of the security forces and other agents of the state that resulted in the death, injury or the abuse of the rights of a person. In April 2011, the INDECOM replaced the JCF's Bureau of Special Investigations (BSI) as the lead investigator of incidents involving fatal shootings by police.⁷

² US State Department Jamaica Country Report on Human Rights 2012 - 19 April 2013 (Section 1)
<http://www.state.gov/documents/organization/204673.pdf>

³ FCO Jamaica Travel Advice – 19 August 2013
<https://www.gov.uk/foreign-travel-advice/jamaica/safety-and-security>

⁴ U.S.Overseas Security Advisory Council (OSAC) Jamaica 2013 Crime and Safety Report, 29 July 2013
<https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=14289>

⁵ Immigration and Refugee Board of Canada, Jamaica: Crime situation, including organized crime; police and state response, including effectiveness; state protection for witnesses and victims of crime (2009-December 2012) [JAM104263.E] – January 2013
http://www.ecoi.net/local_link/237357/360250_de.html

⁶ U.S Overseas Security Advisory Council (OSAC) Jamaica 2013 Crime and Safety Report, 29 July 2013
<https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=14289>

⁷ US State Department Jamaica Country Report on Human Rights 2012 - 19 April 2013 (Section 1)

- 2.2.9** The INDECOM has 47 staff members, including 30 investigators, but quotes lack of resources to perform forensic analysis and identification of security personnel involved in incidents as major obstacles faced in its investigations of police killings. The Director of Public Prosecutions (DPP) issued its rulings on cases involving security forces on average 27 months after the final submission of files from the BSI or the INDECOM. In 2011 the INDECOM awaited rulings from the DPP on 40 cases. The INDECOM also expressed concern that agents of the state concealed their identities in interactions with the public, including incidents of killings by security forces.⁸ It is reported by the U.S State Department Human Rights Report 2013 that on many occasions the JCF employed lethal force in apprehending criminal suspects. However, it took many years to bring police officers to trial for alleged unlawful killings and the Courts have convicted only one police officer of an extrajudicial killing since 2006.⁹
- 2.2.10** According to official statistics from the INDECOM, there were 219 killings involving police during 2012. Human rights monitors indicate that some killings by police were unreported, with police allegedly meting out the justice they believed was unavailable through the judicial system. In most shooting incidents, police alleged that the victims were carrying firearms and opened fire on them. In many cases, however, eyewitness testimony contradicted the police accounts. In some cases, allegations of “police murder” were apparently not credible, because the killings occurred in areas where well-armed gangs trafficking in weapons, narcotics and running lottery scams controlled communities and were often better armed than the police force.¹⁰
- 2.2.11** Extrajudicial killings by the police remains a major problem in Jamaica, accounting for 12 percent of murders each year, according to Amnesty International. Since 2006, the government has paid an estimated J\$365 million to victims of such violence and it reportedly owes an additional J\$400 million. In March 2012, Jamaican police killed 21 people, including a 13-year-old girl, caught in the crossfire of a shootout between police and criminals, prompting calls for the authorities to mount an investigation into police operations. In October 2012, the Jamaica Civil Society Coalition and the human-rights group, JFJ criticized the lack of a preliminary report in the public investigation into the 2010 Tivoli Garden riots that led to the killing of dozens of civilians. Vigilante violence remains a common occurrence in Kingston and the Jamaican Police Commissioner, Owen Ellington in October 2012, condemned mob killings in Kingston and other parts of the island.¹¹
- 2.2.12** The JCF continues a community policing initiative to tackle the long-standing antipathy between the security forces and many poor inner-city neighbourhoods. Through the Community Safety and Security Branch, during 2012 the JCF conducted targeted training of 2,735 officers. The branch trained Community Safety Officers and assigned JCF workers to target schools as Resource Officers

<http://www.state.gov/documents/organization/204673.pdf>

⁸ US State Department Jamaica Country Report on Human Rights 2012 - 19 April 2013 (Section 1)

<http://www.state.gov/documents/organization/204673.pdf>

⁹ US State Department Jamaica Country Report on Human Rights 2012 - 19 April 2013 (Section 1)

<http://www.state.gov/documents/organization/204673.pdf>.

¹⁰ US State Department Jamaica Country Report on Human Rights 2012 - 19 April 2013 (Section 1)

<http://www.state.gov/documents/organization/204673.pdf>

¹¹ Freedom House, Freedom in the World 2013 Jamaica, January 2013

<http://www.freedomhouse.org/report/freedom-world/2013/jamaica>

to curtail school violence. These officers also served as liaisons between the students, faculty, parents and the police. The government bolstered these efforts through public education and by nominating deputy divisional commanders with responsibility to introduce community policing to all the communities within their division. All JCF officers were required to take a “graduated response” before the use of lethal force when possible. Officers were also required to take an Annual Refresher Course on the use of non-lethal equipment but this did not always occur, due to a lack of funds and equipment.¹²

- 2.2.13** Corruption remains a serious problem in Jamaica. Government whistleblowers who object to official acts of waste, fraud, or abuse of power are not well protected by Jamaican law, as is required under the Inter-American Convention against Corruption. Implementation of the 2002 Corruption Prevention Act has been problematic. Opposition leaders have accused the government of having connections to scams originating in Jamaica in which victims are told they have won the lottery, only to have their personal information stolen. The government has addressed the matter by amending a handful of laws, including the Evidence Act in November 2012. Jamaica was ranked 83 out of 176 countries surveyed in the Transparency International’s 2012 Corruption Perceptions Index.¹³ According to JCF records, 192 police officers, or 48.5 percent of the 396 officers who took voluntary lie-detector tests during 2012, did not pass or complete the test. The Assistant Police Commissioner did not state whether the officers who failed would be disciplined in any way. However, during 2012 officials retired 15 officers and denied re-enlistment to 27 officers for corruption or ethical reasons. In addition, authorities dismissed nine officers for corruption, charged 43 other officers with corruption and charged 45 citizens with corrupting JCF staff.¹⁴
- 2.2.14** The law provides for an independent Judiciary but the Judicial System relied entirely on the Ministry of Justice for all resources.¹⁵ The Executive Director of JFJ has expressed dissatisfaction with the effectiveness of the Judicial System and stated that it can take years for cases to come to trial. Several sources consulted by the Immigration and Refugee Board of Canada in a January 2013 Report also note that there is a backlog of cases going through the Courts. Freedom House reports that the backlog is growing and that the Justice System is also undermined by a shortage of Court workers at all levels. Difficulties in finding Jurors was a contributing factor to the backlog as there was a reluctance among some citizens to serve as Jurors for fear of retribution. According to sources, the Justice Minister has also expressed concern over corruption in the Judicial System as contributing to the ineffectiveness of the system.¹⁶ According to the U.S State Department Human Rights Report 2013, trials in many instances were delayed for years and some cases were dismissed because files could not be located or had been destroyed. Some trials suffered from antiquated rules of evidence as well as from lack of equipment for collecting and storing evidence.

¹² US State Department Jamaica Country Report on Human Rights 2012 - 19 April 2013 (Section 1) <http://www.state.gov/documents/organization/204673.pdf>.

¹³ Freedom House, Freedom House Freedom in the World 2013 Jamaica, January 2013, <http://www.freedomhouse.org/report/freedom-world/2013/jamaica>

¹⁴ US State Department Jamaica Country Report on Human Rights 2012 - 19 April 2013 (Section 1) <http://www.state.gov/documents/organization/204673.pdf>.

¹⁵ US State Department Jamaica Country Report on Human Rights 2012 - 19 April 2013 (Section 1) <http://www.state.gov/documents/organization/204673.pdf>.

¹⁶ Immigration and Refugee Board of Canada, Jamaica: Crime situation, including organized crime; police and state response, including effectiveness; state protection for witnesses and victims of crime (2009-December 2012) [JAM104263.E] – January 2013 http://www.ecoi.net/local_link/237357/360250_de.html

Evidence went missing, deteriorated in the warehouse, or could not be located when required.¹⁷

- 2.2.15** The Ministry of Justice operates a Victims Support Unit. According to an article published by the Ministry of Justice, the Unit provides support to crime victims through offices across the country and offers counselling services. As of August 2012, the team was made of 35 permanent members and an unspecified number of volunteers. According to the Executive Director of JFJ, in addition to counselling, the Victim Support Unit provides support through the court process and community training and is involved in “restorative justice.” The Executive Director expressed the view that the Victims' Support Unit “tries hard” but it is very small and lacks resources.¹⁸
- 2.2.16** Some criminal trials were dismissed because witnesses failed to come forward as a result of threats and/or intimidation or murder. The Ministry of National Security operates a witness protection programme and its main objective is to enlist legitimate witnesses of major crimes whose safety and security is at risk. The programme seeks to offer protection for these witnesses and provide support for the functioning of the wider criminal justice system. According to the Executive Director of JFJ the witness protection programme is ineffective and not trusted, however, according to the JCF, no individual who followed the rules of the programme has ever been killed, but noted that many individuals who qualified for the witness protection program either refused protection or violated the conditions of the program.¹⁹
- 2.2.17** The Executive Director of JFJ, stated that it is necessary for an individual to be in the witness protection program for years due to the slow court process and that the safe houses and some living subsidies are supplied, but the money offered to those in the witness protection programme was too little to live on adequately. She continued that it was also necessary for people in the witness protection programme to cease contact with their family and friends, to leave their jobs and for their children to leave schools.²⁰
- 2.2.18** According to the Jamaica Gleaner, the deeply entrenched anti-informer culture reinforces a high level of distrust between the lawmen and the people. The people will not pass information to the police for fear that their names will be linked to the investigations, hence putting themselves and their families at risk. In March 2012, the Head of Crime Stop, a programme focused on the fight against crime in Jamaica through forging strategic partnerships between communities, the police and the media, stated that the “crawling” justice system continues to nurture the anti-informer culture and that “the chance of a witness being identified

¹⁷ US State Department Jamaica Country Report on Human Rights 2012 - 19 April 2013 (Section 1) <http://www.state.gov/documents/organization/204673.pdf>.

¹⁸ Immigration and Refugee Board of Canada, Jamaica: Crime situation, including organized crime; police and state response, including effectiveness; state protection for witnesses and victims of crime (2009-December 2012) [JAM104263.E] – January 2013 http://www.ecoi.net/local_link/237357/360250_de.html

¹⁹ Immigration and Refugee Board of Canada, Jamaica: Crime situation, including organized crime; police and state response, including effectiveness; state protection for witnesses and victims of crime (2009-December 2012) [JAM104263.E] – January 2013 http://www.ecoi.net/local_link/237357/360250_de.html

²⁰ Immigration and Refugee Board of Canada, Jamaica: Crime situation, including organized crime; police and state response, including effectiveness; state protection for witnesses and victims of crime (2009-December 2012) [JAM104263.E] – January 2013 http://www.ecoi.net/local_link/237357/360250_de.html

in court cases that are dragged out for years is high.²¹ The U.S OSAC similarly reports that “the police have only resolved (made arrests) 44 percent of homicides annually, and they only convict perpetrators in five percent of the homicide cases. This leads both the public and police to doubt the effectiveness of the criminal justice system, leading to vigilantism, which exacerbates the cycle of violence. Based on their past experiences, most civilians fear that, at best, the authorities cannot protect them from organised criminal elements, and, at worst, are colluding with criminals, leading citizens to avoid giving evidence or witness testimonies.”²² The DPP, Paula Llewellyn, stated in July 2013 that in some cases, witnesses will accept money from relatives or friends of an accused person to discontinue a case or simply refuse to attend court.²³

2.2.19 If the applicant's fear is of ill-treatment/persecution by the state authorities, or by agents acting on behalf of the state, then it is improbable that they can apply to those authorities for protection. If the ill-treatment/persecution is at the hands of non-state agents, then each case must be considered on its individual facts and the assessment of whether effective protection is available should be considered in relation to the particular circumstances and profile of the claimant and the latest country of origin information.

2.3 Internal relocation.

2.3.1 Caseworkers must refer to the AI on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a ‘reasonable’ option, so as to apply the test set out in paragraph 339O of the Immigration Rules.

2.3.2 It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum.

2.3.3 Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account.

2.3.4 Caseworkers must refer to the gender issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

2.3.5 Where a category of applicants' fear is of ill-treatment/persecution by the state

²¹ Jamaica Gleaner, The secret of the inner city - 'See and blind! Hear and deaf!', 25 March 2012
<http://jamaica-gleaner.com/gleaner/20120325/lead/lead2.html>

²² U.S. Overseas Security Advisory Council (OSAC) Jamaica 2013 Crime and Safety Report, 29 July 2013
<https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=14289>

²³ Jamaica Gleaner, 'You can't sit for justice' - DPP blames frightened witnesses for collapse of high-profile cases, 25 July 2013
<http://jamaica-gleaner.com/gleaner/20130725/lead/lead1.html>

authorities, then internal relocation to escape that persecution will not generally be an option. Very careful consideration must be given as to whether internal relocation would be a viable way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents.

- 2.3.6** If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.3.7** The law provides for freedom of internal movement, foreign travel, emigration and repatriation and the government generally respects these rights in practice.²⁴ The Organisation for Economic Co-operation and Development (OECD)'s Social Institutions and Gender Index on Jamaica reports that women's freedom to access public space is limited in a number of ways in Jamaica. Firstly, the law provides that married women are obliged to adopt their husband's place of residence. However, there is a contradiction in the law where under Section 34 of the Matrimonial Causes Act, the domicile of a married woman is treated as though she was never married. Secondly, high levels of violence also impinges upon women's freedom of access to public space.²⁵
- 2.3.8** It may be practicable for applicants who may have a well-founded fear of persecution in one area to relocate to other parts of Jamaica where they would not have a well-founded fear and, taking into account their personal circumstances, it would not be unduly harsh to expect them to do so. The discrimination and exclusion faced by women in society²⁶ should be taken account of when assessing whether it would be unduly harsh to expect female applicants to internally relocate. A Country of Origin Information request should be submitted to the Country of Origin Information Service if more information is required.
- 2.3.9** Internal relocation will not generally be an option where a single woman with no male partner or children is perceived as a lesbian, whether or not that is the case. See SW (lesbians – HJ and HT applied) in 2.4 below. There are also likely to be difficulties for a man who is perceived as being homosexual in finding safety through internal relocation. See DW (Homosexual men; Persecution; Sufficiency of Protection) in 2.4 below.
- 2.3.10** Careful consideration must be given to the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant. Case workers need to consider the

²⁴ US State Department Jamaica Country Report on Human Rights 2012 - 19 April 2013 (Section 1) <http://www.state.gov/documents/organization/204673.pdf>.

²⁵ OECD, Social Institutions and Gender Index Jamaica Profile, 2012 <http://genderindex.org/country/jamaica>

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

ability of the persecutor to pursue the claimant in the proposed site of relocation, and whether effective protection is available in that area. Caseworkers will also need to consider the age, gender, health, ethnicity, religion, financial circumstances and support network of the claimant, as well as the security, human rights and socioeconomic conditions in the proposed area of relocation, including the claimant's ability to sustain themselves.

2.4 Country Guidance Caselaw

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

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

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

The Tribunal found that:

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

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

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

The Tribunal found that the authorities in general are willing and able to provide effective protection. However, unless reasonably likely to be admitted into the Witness Protection Programme, a person targeted by a criminal gang will not normally receive effective protection in his home area. Whether such a person will be able to achieve protection by relocating will depend on his particular circumstances, but the evidence does not support the view that internal relocation is an unsafe or unreasonable option in Jamaica in general: it is a matter for determination on the facts of each individual case.

**DW (Homosexual Men; Persecution; Sufficiency of Protection) Jamaica CG
[2005] UKAIT 00168 (28 November 2005)**

Men who are perceived to be homosexual and have for this reason suffered persecution in Jamaica are likely to be at risk of persecution on return. Men who are perceived to be homosexual and have not suffered past persecution may be at risk depending on their particular circumstances. The Secretary of State conceded that, as a general rule, the authorities do not provide homosexual men with a sufficiency of protection. There are likely to be difficulties in finding safety through internal relocation but in this respect no general guidance was given.

3. Main categories of claims

- 3.1** This section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Jamaica. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment.
- 3.2** It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, humanitarian protection, sufficiency of protection and internal relocation are set out in the relevant asylum instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.3** All asylum instructions (AIs) can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at [asylum policy instructions](#).
- 3.4** Each claim should be assessed to determine whether there is a reasonable likelihood that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in the Court of Appeal's

judgment in [Karanakaran](#) should be followed when deciding how much weight to be given to the material provided in support of the claim (see the AI '[Considering the asylum claim and assessing credibility](#)').

- 3.5** For any asylum cases which involve children either as dependants or as the main applicants, caseworkers must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The Home Office instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account.
- 3.6** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of humanitarian protection is appropriate. (See AI on [humanitarian protection](#)). Where an application for asylum and humanitarian protection falls to be refused, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules.
- 3.7** They must also consider whether there are any compelling reasons for granting discretionary Leave (DL) to the individual concerned. (See AI on [discretionary leave](#)).

Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR

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

Other severe humanitarian conditions and general levels of violence

- 3.10** There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment.
- 3.11** Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.
- 3.12** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for humanitarian protection.

Credibility

- 3.13** Caseworkers will need to assess credibility issues based on all the evidence available to them from the interview, documentary evidence and country of origin information. Caseworkers will need to consider credibility issues based on all the information available to them. For guidance on credibility see ‘Section 4 – Making the Decision’ in the AI [‘Considering the asylum claim and assessing credibility’](#).
- 3.14** Caseworkers must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file.
- 3.15** In all other cases, the caseworkers should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.
- 3.16 Criminal Gang Violence**
- 3.16.1** Applicants may make an asylum and/or human rights claim based on a fear of ill-treatment amounting to persecution at the hands of criminal gangs in Jamaica and claim that the police are unable to provide sufficient protection
- 3.16.2 Treatment** The U.S OSAC notes that “organised crime and other criminal elements are prevalent and extremely active in Jamaica. Most of the criminal activity is gang-related”.²⁷
- 3.16.3** Kingston's insular "garrison" communities remain the epicentre of most violence and serve as safe havens for gangs. Jamaica is a transit point for cocaine shipped from Colombia to U.S markets, and much of the island's violence is the result of warfare between drug gangs known as posses. Contributing factors include the deportation of Jamaican-born criminals from the United States and an illegal weapons trade.²⁸
- 3.16.4** In 2011, Amnesty International reported that crime and violence are widespread in Jamaica, especially in deprived and excluded inner-city communities where unemployment rates are high and access to basic services, such as water, electricity and security of housing tenure, are often poor. Years of state neglect have allowed some of these communities to become the fiefdom of gang leaders. Known as “dons”, gang leaders “collect taxes” from local businesses (through extortion); allocate jobs (both in the legal sector and in criminal activities); distribute food, school books and “scholarships”; and mete out punishment to those who transgress gang rules. Gang control is at its most pervasive in “garrison” communities. These are communities entirely under the control of one or other of the political parties. Party control is sometimes enforced by heavily armed gangs who coerce people in the community into voting for the party in

²⁷ U.S Overseas Security Advisory Council (OSAC), Jamaica 2013 Crime and Safety Report 29 July 2013, <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=14289>

²⁸ Freedom House - Freedom in the World 2013 – Jamaica 10 April 2013, <http://www.freedomhouse.org/report/freedom-world/2013/jamaica>

control. This situation has persisted under consecutive governments.²⁹

- 3.16.5** The “link between violence and politics has been highlighted by many criminologists and acknowledged by the Report of the National Committee on Political Tribalism issued in July 1997” which was appointed by the then Prime Minister.³⁰ The Report defined a “garrison community as “one in which anyone who seeks to oppose, raise opposition to or organise against the dominant party would definitely be in danger of suffering serious damage to their possessions or person thus making continued residence in the area extremely difficult if not impossible. A garrison, as the name suggests, is a political stronghold, a veritable fortress completely controlled by a party. Any significant social, political, economic or cultural development within the garrison can only take place with the tacit approval of the leadership (whether local or national) of the dominant party”.³¹ Former Police Commissioner and Head of the Army, Hardley Lewin acknowledges gang domination with political ties, describing the Tivoli Gardens constituency as the “mother of all garrisons”. The comment was made in the context of criticism of the police force’s inability to monitor effectively politically-controlled areas.³² Similarly, the U.S. Department of State 2013 Trafficking Report notes that “garrison communities, territories ruled by criminal “dons” are effectively outside of the government’s control”.³³
- 3.16.6** In its observations to the Inter-American Commission on Human Rights (IACHR) Report, the Government of Jamaica acknowledges that Jamaica continues to be challenged by high rates of crime and violence but remains committed to addressing the problem, despite financial and other challenges, in order, to ensure a comprehensive and multi-sectoral approach to fighting corruption, dismantling gangs and garrisons in communities and addressing the causes of violent crime. Jamaica highlights the efforts it has been making to tackle crime and violence and expresses that strenuous efforts continue to be made at the bilateral, regional and multi-lateral levels to identify best practices for tackling this problem. In this regard, Jamaica also stated that it is undergoing a major modernisation of its national security and law enforcement infrastructure to reduce levels of violent crime and transform the national security environment.³⁴

²⁹ Amnesty International, Jamaica: A long Road to Justice? Human Rights Violations under the state of emergency, 2. Background, May 2011,

<http://www.amnesty.org/en/library/asset/AMR38/002/2011/en/d452da6f-50b9-4553-919c-0ce0ccedc9d8/amr380022011en.pdf>

³⁰ Amnesty International, Jamaica: A long Road to Justice? Human Rights Violations under the state of emergency, Endnotes, 15, May 2011,

<http://www.amnesty.org/en/library/asset/AMR38/002/2011/en/d452da6f-50b9-4553-919c-0ce0ccedc9d8/amr380022011en.pdf>

³¹ Amnesty International, Jamaica: A long Road to Justice? Human Rights Violations under the state of emergency, Endnotes, 15, May 2011,

<http://www.amnesty.org/en/library/asset/AMR38/002/2011/en/d452da6f-50b9-4553-919c-0ce0ccedc9d8/amr380022011en.pdf>

³² Inter-American Commission on Human Rights – Report on the Situation of Human Rights in Jamaica, Chapter II Citizen, Security and Human rights, B. Situation of violence and insecurity in Jamaica, Paragraph 31, 10 August 2012

<http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>

³³ U.S. Department of State, Trafficking in Persons Report 2013: Jamaica, 19 June 2013,

<http://www.state.gov/documents/organization/210740.pdf>

³⁴ Inter-American Commission on Human Rights – Report on the Situation of Human Rights in Jamaica, Chapter II Citizen, Security and Human rights, B. Situation of violence and insecurity in Jamaica, Paragraph 31, 10 August 2012

<http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>

- 3.16.7** Long-standing relationships between elected representatives and organised crime, in which criminal gangs “guaranteed” voter turnout in certain neighbourhoods in exchange for political favours and protection, received special scrutiny in recent years as the U.S government pressed for the extradition of alleged drug trafficker Christopher "Dudus" Coke. The gang Coke reputedly led, the Shower Posse, was based in Tivoli Gardens, an area of Kingston that Bruce Golding represented in Parliament. In April 2010, the Washington Post reported that a JLP government official had signed a \$400,000 contract with a U.S lobbying firm to fight Coke's extradition. The public outcry in the United States and Jamaica forced Golding in May 2010 to order Jamaican security forces into Tivoli Gardens to arrest Coke, leading to days of violence in which 73 civilians and several police officers were killed. Coke was finally detained in late June 2011, reportedly on his way to surrender at the U.S embassy. In August 2011, after being extradited to the United States, he pleaded guilty to drug trafficking and assault charges under a plea bargain. He was sentenced to 23 years in prison in June 2012.³⁵
- 3.16.8** According to information received by the IACHR, there are at least 120 criminal gangs operating in Jamaica, who are thought to be responsible for 80 percent of all major crimes in the country.³⁶ In February 2012, the newspaper The Gleaner reported that “the People's National Party (PNP)-aligned Clansman gang was identified as the criminal bunch sitting at the top of a list of more than 200 gangs operating in Jamaica”. The gang, headquartered in De la Vega City, is said to have spread its tentacles across a number of communities in Spanish Town, Portmore and Clarendon. The Deputy Commissioner of Police, Glenmore Hinds, states that the JCF has taken on and has significantly dented the operations of the Clansman gang, but said that there was a lot more work to be done to weaken the PNP-aligned posse.³⁷
- 3.16.9** The flow of weapons into Jamaica remains a challenge. In keeping with the need to ensure that source countries undertake greater responsibility in preventing the illicit traffic of such weapons, a key priority for Jamaica remains increased collaboration with bilateral and regional partners to reduce the availability of illicit firearms and narco-trafficking to Jamaica as well as to facilitate cross-border identification and prosecution of traffickers. Of note is the fact that there is a regional task force on crime and security, which is responsible for law enforcement and national security in Member Countries of the Caribbean Community (CARICOM), and which is complemented by the 2011 CARICOM Declaration on Small Arms and Light Weapons. At the national level, the Government of Jamaica is finalising a comprehensive National Small Arms Policy which will seek to (a) implement legal and administrative controls to restrict the availability and misuse of firearms, ammunition and explosives and to ensure that they are properly and safely secured; and (b) develop programmes and policies that will address the supply, possession and use of illicit firearms at the community level.³⁸

³⁵ Freedom House - Freedom in the World 2013 – Jamaica, 10 April 2013, <http://www.freedomhouse.org/report/freedom-world/2013/jamaica>

³⁶ Inter-American Commission on Human Rights – Report of the situation in Jamaica on Human Rights – 10 August 2012

<http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>

³⁷ The Gleaner, Low Vote of Confidence in Police, 12 February 2012, <http://jamaica-gleaner.com/gleaner/20120212/lead/lead5.html>

³⁸ Inter-American Commission on Human Rights – Report of the situation in Jamaica on Human Rights – 10 August 2012

<http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>

- 3.16.10** The long awaited, “anti-gang legislation”, now officially titled the Criminal Justice (Suppression of Criminal Organisations) Act 2013, was tabled in the House of Representatives in June 2013 by the Minister of National Security, Peter Bunting. The legislation carries a special message for the dancehall community in which, among other things, it seeks to outlaw the use of signs, symbols, graffiti or song to promote or facilitate the “criminal activities of a criminal organisation”. The legislation also includes that the cases, except in “a few instances”, will be tried in a Circuit Court, by a judge sitting alone and the proceedings will be conducted in camera, meaning the media will be barred. The Circuit Court will also have jurisdiction over acts carried out by Jamaican citizens overseas which, had they been carried out in Jamaica, would have been offences under the proposed Act. The tabling of the Bill follows severe criticisms of the government’s delay from opposition spokesman on National Security and Justice, in bringing important anti-crime legislation to Parliament since 2012.³⁹
- 3.16.11** In 2013, the OSAC stated that the police are only able to resolve (make arrests) in 44 percent of homicides annually, and they only convict perpetrators in five percent of the homicide cases. This leads both the public and police to doubt the effectiveness of the criminal justice system, leading to vigilantism, which exacerbates the cycle of violence. Based on their past experiences, most civilians fear that, at best, the authorities cannot protect them from organised criminal elements and, at worst, are colluding with criminals, all of which leads citizens to avoid giving evidence or witness testimonies.⁴⁰ According to Amnesty International’s special report on Jamaica, “policing of inner-city communities has been largely conditioned by a view that criminalizes entire communities. This prejudiced perception has given rise in a number of instances to a tolerance of excessive use of force by the security forces. However, far from increasing protection from violent crime, such policing methods have exacerbated the public security problem.⁴¹ The IACHR, described in its August 2012 report that the “IACHR not only verified an extremely high and alarming level of violence in the country, but also confirmed that the measures taken by the Jamaican State have not been sufficient or effective to respond to this situation.”⁴²
- 3.16.12** The U.S Department of State noted that “non-governmental organisations (NGOs) reported that inner-city gang leaders and sometimes even fathers initiated sex with young girls as a “right.”⁴³ In 2006 Amnesty International concluded, “reprisal crime, including sexual violence, is a growing phenomenon connected to perceived or actual informing of criminal activity to the police, a personal or familial vendetta, or a form of political tribalism”.⁴⁴

³⁹ Jamaica Observer, Anti-Gang Legislation Tabled, 26 June 2013

<http://m.jamaicaobserver.com/mobile/news/Anti-gang-legislation-tabled>

⁴⁰ Overseas Security Advisory Council (OSAC) Jamaica 2013 Crime and Safety Report 29 July 2013

<https://www.osac.gov/pages/ContentReportDetails.aspx?cid=14289>

⁴¹ Amnesty International, Jamaica: A long Road to Justice? Human Rights Violations under the state of emergency, Endnotes, 15, May 2011,

<http://www.amnesty.org/en/library/asset/AMR38/002/2011/en/d452da6f-50b9-4553-919c-0ce0ccedc9d8/amr380022011en.pdf>

⁴² Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Jamaica, Chapter II Citizen, Security and Human rights, B. Situation of violence and insecurity in Jamaica, Paragraph 27, 10 August 2012, <http://www.oas.org/en/iachr/docs/pdf/Jamaica2012eng.pdf>

⁴³ U.S. Department of State, Country Report on Human Rights practices 2012: Jamaica, Section 6, 19 April 2013, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204461>

⁴⁴ Amnesty International, Sexual Violence against Women and Girls in Jamaica: "just a little sex", Guns gangs and rising levels of violence, 22 June 2006, <http://www.unhcr.org/refworld/docid/44c5f2a24.html>

See also: [Actors of Protection](#) (Section 2.2 above)

[Internal Relocation](#) (Section 2.3 above)

[Caselaw](#) (Section 2.5 above)

3.16.13 Conclusion General lawlessness, poverty or a lack of access to resources will not, in themselves, be sufficient to warrant the grant of asylum or humanitarian protection. Claimants who fear a criminal gang who are able to demonstrate that the gang poses a real and serious threat may be at risk of persecution in Jamaica. Unless reasonably likely to be admitted into the Witness Protection Programme, a person targeted by an organised criminal gang will not normally receive effective protection in his home area. Given continuing concerns around corruption as well as the resourcing and effectiveness of the Witness Protection Programme, case owners should refer to the most up to date country information to ascertain whether, in the circumstances prevailing at the time the decision is made and according to the individual profile of the claimant, effective protection is available through the Witness Protection Programme.

3.16.14 It may be practicable for applicants who may have a well-founded fear of persecution in one area to relocate to other parts of Jamaica where gang violence is less prevalent and where they would not have a well-founded fear and, taking into account their personal circumstances, it would not be unduly harsh to expect them to do so. The particular risks and difficulties facing female applicants, as set out at 2.3.4 and 2.3.5 should be considered in this respect.

3.16.15 It is important that case owners refer to the most up to date country information to ascertain whether, in the circumstances prevailing at the time the decision is made and according to the individual profile of the claimant, effective protection is available and whether internal relocation would not be unduly harsh.

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

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

3.17.2 Treatment The law prohibits “acts of gross indecency” (generally interpreted as any kind of physical intimacy) between persons of the same sex, in public or in private, which are punishable by 10 years in prison. There is also an “anti-buggery” law that prohibits consensual same-sex sexual conduct between men, but it is not widely enforced.⁴⁵ According to Amnesty International in their Report, Fifty Years Without The Liberty To Love, the laws of Jamaica have been used to justify the arbitrary arrest, detention and even torture of individuals who are suspected of being a LGBT person.⁴⁶

⁴⁵ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 6) <http://www.state.gov/documents/organization/204673.pdf>

⁴⁶ Amnesty International – Fifty Years without the Liberty to Love – 17 May 2012 <http://www.amnesty.org/en/library/asset/AMR38/001/2012/en/49565034-6213-4e45-b917-8d78ccf39a40/amr380012012en.pdf>

- 3.17.3** The US State Department International Travel Information states that Jamaican law contains specific prohibitions on certain sexual activities. These prohibitions have been used to target LGBT individuals. Government officials, religious leaders and news media have been known to make derogatory comments towards the LGBT community and discrimination on the basis of sexual orientation is widespread.⁴⁷
- 3.17.4** According to Freedom in the World 2013, sodomy is punishable by 10 years in prison with hard labour. Although Prime Minister Portia Simpson Miller stated that she would hire a gay man or lesbian to serve in her cabinet, her administration has made no attempts to repeal the country's anti-gay laws. In October 2012, two gay Jamaicans initiated a legal challenge to these laws with the IACHR⁴⁸ on the grounds that they are unconstitutional and promote homophobia throughout the Caribbean. The landmark action, supported by the UK-based Human Dignity Trust, is aimed at removing three clauses of the island's Offences Against Persons Act of 1864, commonly known as the "buggery" laws. The battle over the legislation is blamed by critics for perpetuating a popular culture of hatred for "batty boys", as gay men are derided in some dancehall music. The legal challenge is being taken to the IACHR, which is modelled on the European Court of Human Rights. Jamaica is not a full member and any ruling would only be advisory and not binding. However it would, nonetheless, send out a strong signal of international disapproval. The Offences Against Persons Act does not formally ban homosexuality but Clause 76 provides for up to 10 years' imprisonment, with or without hard labour, for anyone convicted of the "abominable crime of buggery". Two further clauses outlaw attempted buggery and gross indecency between two men.⁴⁹
- 3.17.5** Homophobia was widespread in the country, and through the songs and the behaviour of some musicians, the country's dancehall culture helped perpetuate homophobia. In January 2013, Freedom House reported that harassment and violence against members of the LGBT community remains a major concern and is frequently ignored by the police. According to the Jamaican Forum of Lesbians, All-Sexuals and Gays (J-FLAG), nine gay men were killed in 2012.⁵⁰ The J-FLAG continued to report serious human rights abuses, including assault with deadly weapons, "corrective rape" of women accused of being lesbians, arbitrary detention, mob attacks, stabbings, harassment of gay and lesbian patients by hospital and prison staff and targeted shootings of such persons. Police often did not investigate such incidents. During 2012 J-FLAG received 68 reports of sexually motivated harassment or abuse, which includes 53 cases of attempted or actual assault, including 15 reports of displacements. J-FLAG data showed that young people, ages 18 to 29, continues to bear the brunt of violence based on sexual orientation. This violence creates a climate of fear that prompted many gay persons to emigrate, while the gross indecency laws meant those who

⁴⁷ International Travel Information: Jamaica 21 June 2013

http://travel.state.gov/travel/cis_pa_tw/cis/cis_1147.html

⁴⁸ Freedom House, Freedom in the World 2013 Jamaica, January 2013

<http://www.freedomhouse.org/report/freedom-world/2013/jamaica>

⁴⁹ The Guardian - Gay Jamaicans Launch Legal Action Over Island's Homophobic Laws – 26 October 2012

<http://www.theguardian.com/world/2012/oct/26/jamaica-gay-rights-homophobic-laws/print>

⁵⁰ Freedom House, Freedom in the World 2013 Jamaica, January 2013

<http://www.freedomhouse.org/report/freedom-world/2013/jamaica>

remained were vulnerable to extortion from neighbours who threatened to report them to the police as part of blackmailing schemes.⁵¹

- 3.17.6** According to the J-FLAG Executive Director, "lesbians are raped, often in brutal ways, which goes underreported because of the general stigma and shame around rape". The Executive Director of JFJ indicated that while lesbians may be slightly more tolerated, their sexual orientation must stay hidden and they cannot show signs of affections in public such as holding hands. Sources consulted by the Immigration and Refugee Board of Canada indicated that it is rare for transgendered people to be publicly visible. The Executive Director of JFJ noted that there have been cases of assault directed at transgendered individuals.⁵²
- 3.17.7** Gay men were hesitant to report incidents against them because of fear for their physical well-being. Human rights NGOs and government entities agreed that brutality against such persons, primarily by private citizens, was widespread in the community. An Assistant Commissioner of Police claimed just before he retired in July 2012 that the country's reputation as homophobic was merely "hype" and that life for LGBT persons was improving. He suggested that the real problem was gay-on-gay crime and members of the community cross-dressing in public. In November 2012 two campus security guards beat a reportedly gay university student when he sought refuge in their office from a gang of fellow students who were chasing him. The incident sparked outrage and condemnation across a wide spectrum of society. The security company fired the two guards and the university established a working group of administrators, teachers and students to develop a sensitisation and education program to deal with intolerance and bullying and to recommend corrective measures.⁵³
- 3.17.8** Human Rights Watch has stated that Jamaican police should conduct a thorough, impartial and effective investigation into the murder of Dwayne Jones at the hands of a mob in Montego Bay, sometime between 21 and 22 July 2012. Jones, 16, was found dead on 22 July after being attacked at a party he was attending dressed in women's clothing. According to news reports, when someone at the party identified Jones as male, a crowd chased him as he fled. Police found his body on the road, with multiple stab wounds and a gun wound. Some individuals have sought to justify Jones' killing with comments in the media that he provoked the attack by "bringing his behaviour into the public" however, on 29 July 2012, the Justice Minister, Senator Mark Golding, made a statement condemning Jones' brutal murder and called on the police to "spare no effort in bringing the perpetrators to justice." Leading human rights groups - including the J-FLAG, JFJ and Quality of Citizenship Jamaica (QCJ) - have also called on the government to condemn the killing and investigate the crime.⁵⁴
- 3.17.9** Male inmates deemed by prison wardens to be gay were held in a separate facility for their protection. The method used for determining their sexual orientation was subjective and not regulated by the prison system, although

⁵¹ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 6) <http://www.state.gov/documents/organization/204673.pdf>

⁵² Immigration and Refugee Board of Canada Jamaica: Treatment of sexual minorities, including legislation, state protection and support services (2009-December 2012) 11 January 2013 <http://www.refworld.org/docid/512224b22.html>

⁵³ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 6) <http://www.state.gov/documents/organization/204673.pdf>

⁵⁴ Human Rights Watch - Jamaica: Cross-Dressing Teenager Murdered – 1 August 2013 <http://www.refworld.org/docid/51fb8c444.html>

inmates were said to confirm their sexual orientation for their own safety. There were numerous reports of violence against gay inmates, perpetrated by the wardens and by other inmates, but few inmates sought recourse through the prison system.⁵⁵

- 3.17.10** The laws of Jamaica send a message to the entire population that discrimination, harassment and violence against people who are, or are perceived to be, 'different', is okay, according to Amnesty International. As a result, LGBT persons faced disproportionately high levels of discrimination when accessing healthcare, housing, employment and other services. The perpetrators of the vast majority of these crimes are allowed to walk free with little or no investigation when reported to the police.⁵⁶
- 3.17.11** The Office of the Special Rapporteur for Freedom of Expression was informed of the decision of television channels, CVMTV and Television Jamaica, to not authorise the broadcast of a commercial entitled "love & respect," which reportedly sought to promote tolerance of diversity in sexual orientation. An activist from the LGBT community, who was one of the actors in the commercial, requested the intervention of the Broadcasting Commission. The institution reportedly found no legal reason for the commercial not to be aired and urged the parties to engage in dialogue. No agreement was reached, and in October 2012 the activist filed a civil complaint against the aforementioned channels, alleging the violation of his right to freedom of expression.⁵⁷
- 3.17.12** The Office of the Special Rapporteur for Freedom of Expression expresses its concern over the promotion, in some media outlets, of openly discriminatory and homophobic messages that could incite violence against persons belonging to LGBT groups.⁵⁸
- 3.17.13** According to sources consulted by the Immigration and Refugee Board of Canada in a January 2013 report, sexual minorities can have difficulty accessing services dedicated to HIV prevention or treatment. A study by the Joint UN Programme on HIV/AIDS shows that the prevalence rate of HIV among Jamaican men who have sex with men is approximately 32 percent compared to 1.6 percent in the population in general in 2007.⁵⁹
- 3.17.14** The Executive Director of JFJ added that while some HIV/AIDS organisations and the Ministry of Health try to "push for greater tolerance", members of the LGBT community are not always "well-tolerated" within local clinics. The Pride In Action Programme Manager likewise stated that the Ministry of Health has made attempts to eliminate stigma and discrimination within the context of HIV prevention but that the implementation of policies and rules depends on the

⁵⁵ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 Section 6
<http://www.state.gov/documents/organization/204673.pdf>

⁵⁶ Amnesty International – Fifty Years without the Liberty to Love – 17 May 2012
<http://www.amnesty.org/en/library/asset/AMR38/001/2012/en/49565034-6213-4e45-b917-8d78ccf39a40/amr380012012en.pdf>

⁵⁷ IACHR - Annual Report of the Inter-American Commission on Human Rights 2012 – 5 March 2013, paragraph 350, <http://www.refworld.org/docid/51ff7cbd4.html>

⁵⁸ IACHR - Annual Report of the Inter-American Commission on Human Rights 2012 – 5 March 2013, paragraph 351, paragraph 350, <http://www.refworld.org/docid/51ff7cbd4.html>

⁵⁹ Immigration and Refugee Board of Canada, Jamaica: Treatment of sexual minorities, including legislation, state protection and support services (2009-December 2012) 11 January 2013
<http://www.refworld.org/docid/512224b22.html>

attitudes of individuals. A news release from the Ministry of Health states that the Ministry had organised consultations on reducing stigma and discrimination towards those living with HIV/Aids in Jamaica. In addition, according to media reports, the Minister of Health has called for legislation criminalizing homosexual behaviour to be repealed, "for the greater good."⁶⁰

3.17.15 According to Boris Dittrich, Advocacy Director in the LGBT Rights Program at Human Rights Watch, homophobia is so bad that human rights defenders advocating the rights of LGBT people are not safe in Jamaica and he states that Jamaica should act on its international obligations to prevent discrimination. The Jamaican media reported two homophobic incidents in June 2012 in which violence was threatened or used to injure innocent civilians, simply because they were suspected of being homosexual. On 21 June 2012, in Jones Town, Kingston, the police had to intervene as an angry crowd gathered in front of a house where five homosexuals were staying. Homophobic threats, including death threats, caused one of the most outspoken campaigners for the rights of LGBT people, Maurice Tomlinson, to flee Jamaica in January 2012. He told Human Rights Watch and the Inter American Commission that he had asked police in Montego Bay to protect him, but that the police officer in charge responded by saying, "I hate gays, they make me sick." He fled to Canada, where he received two more death threats by email in February and March 2012. Upon the request of the former Assistant Police Commissioner, he returned briefly to Kingston for an investigation, but the police had not followed up with him.⁶¹ In June 2012, it was noted that members of the LGBT community reported to J-FLAG that eight gay men had been murdered within the last three months, bringing to the fore the reality that despite progress towards greater tolerance, the LGBT community continues to be at great risk of violence.⁶²

3.17.16 Amnesty International notes in its annual report for 2012 that LGBTI organisations reported an increase in attacks, harassment and threats. Many such attacks were not fully and promptly investigated.⁶³ Sources consulted by the Immigration and Refugee Board of Canada in a January 2013 report indicate that police often fail to take action regarding incidents of violence directed at sexual minorities. According to the J-FLAG Executive Director, police officers were perpetrators in 12 out of the 84 incidents reported to the NGO in 2011. A 2011 shadow report submitted to the UN Human Rights Committee by a coalition of organisations indicates that authorities are "unresponsive" regarding cases of violence against lesbians and that many lesbians and transgender people "are afraid to report sexual crimes committed against them for fear that the police will perpetuate the abuse or humiliate them".⁶⁴

⁶⁰ Immigration and Refugee Board of Canada, Jamaica: Treatment of sexual minorities, including legislation, state protection and support services (2009-December 2012) 11 January 2013

<http://www.refworld.org/docid/512224b22.html>

⁶¹ Human Rights Watch, Jamaica: Combat Homophobia – 18 July 2012

<http://www.unhcr.org/refworld/country,,,JAM,,500916232,0.html>

⁶² Jamaica Forum for Lesbians, All-Sexuals and Gays (J-FLAG), Gays saddened by recent murders, call on Prime Minister to act, 14 June 2012

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

⁶³ Amnesty International – Annual Report 2013 Jamaica, 23 May 2013

<http://www.amnesty.org/en/region/jamaica/report-2013>

⁶⁴ Immigration and Refugee Board of Canada Jamaica: Treatment of sexual minorities, including legislation, state protection and support services (2009-December 2012) 11 January 2013

<http://www.refworld.org/docid/512224b22.html>

3.17.17 The July 2012 National Survey of Attitudes and Perceptions of Jamaicans Towards Same-Sex Relationships found that while Jamaicans continue to have strong negative attitudes towards homosexuality, one in every five Jamaicans were tolerant of LGBT persons and would support an addendum to the charter of rights affording rights to the LGBT community. The study was a follow up to a 2011 survey and used a nationally representative sample of 1,000 persons between 18 and 84 years and two focus groups. “These findings speak to the progress we are making as people in respecting the humanity, dignity and equality of LGBT persons,” said Dane Lewis, J-FLAG’s Executive Director. “However, given that we have a vibrant LGBT community, much more still needs to be done so we can move forward as a cohesive and just society that intends to become the place of choice to live, work, raise families and do business.”⁶⁵ Approximately 53% of the sample felt that professional help can change a homosexual’s sexual orientation to heterosexual; this represents an increase of about 6% compared to the previous study. Respondents felt that male (88%) and female (83.7%) homosexuality and bisexuality (83.5%) were immoral. Most business persons said that they were not likely to hire persons who were known to be non-heterosexual, mostly because they felt that it would make their co-workers uncomfortable. Most, however, said that they would not fire someone because of their sexual orientation.⁶⁶ Overall, there is very little variance between the results of the two studies. This study shows the persistence of strong negative views towards same sex relationships across all sectors of society.

3.17.18 In October 2013, J-FLAG reported that “Every month we intervene in about ten (cases involving young people), most of whom are young male adolescents, whose families have put them out because of their real or perceived sexual or gender identity,” and that there has been a significant increase in the number of cases since 2011.⁶⁷

See also: [Actors of Protection](#) (Section 2.2 above)

[Internal Relocation](#) (Section 2.3 above)

[Caselaw](#) (Section 2.4 above)

3.17.19 Conclusion Jamaica is a deeply homophobic society and there are reports of LGBT persons facing a high level of violence and discrimination. In general the Jamaican authorities do not provide gay men, lesbians, bisexuals and transgender persons or those perceived as such with effective protection. There are also likely to be difficulties in finding safety through internal relocation. In the case of [DW \(Homosexual Men; Persecution; Sufficiency of Protection\)](#), it was found that in a country like Jamaica, where homophobic attitudes are prevalent across the country, it would be unduly harsh to expect a gay man or

⁶⁵ J-FLAG, New Study finds More Jamaicans Feel LGBT Persons Deserve Equal Rights and Protection of the Law – 05 September 2012 <http://www.jflag.org/2012/09/>

⁶⁶ JFLAG, National Survey of Attitudes and Perceptions of Jamaicans Towards Same Sex Relationships, 31/07/2012, *Executive Summary* <http://www.jflag.org/wp-content/uploads/2012/09/2012-ATTITUDES-AND-PERCEPTIONS-OF-JAMAICANS-TOWARDS-SAME-SEX-RELATIONSHIPS.pdf>

⁶⁷ FLAG, J-FLAG condemns parents who abandon children, 2 October 2013 <http://www.jflag.org/news-events/>

someone who is perceived as such to relocate. The 2011 country guidance case of [SW \(Lesbians – HJ and HT applied\)](#) found that single women with no male partner or children risk being perceived as lesbian, whether or not that is the case, unless they present a heterosexual narrative and behave with discretion and because the risks arise from perceived as well as actual lesbian sexual orientation, internal relocation does not enhance safety. It was also found that perceived lesbians also risk social exclusion (loss of employment or being driven from their homes). In addition, the Supreme Court in the case of [HJ \(Iran\)](#) made the point that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.

- 3.17.20** If there is a real risk that a gay man, lesbian or bisexual or those perceived as such, has, or will, become known, the applicant would on return to Jamaica face a real risk of discrimination and violence by members of the public or criminal gangs, to the extent that this would amount to persecution. As gay men, lesbians, bisexuals and transgender persons in Jamaica may be considered to be members of a particular social group, if they are at risk they should be granted asylum.
- 3.17.21** However, if an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation.
- 3.17.22** If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well founded fear of persecution due to their sexual orientation.

3.18 Victims of Domestic Violence

- 3.18.1** Some female applicants may seek asylum on the grounds that they fear domestic violence and are unable to seek protection from the authorities. Occasionally the applicant may state that the abuser is involved with a criminal gang and that this would also prevent the applicant from gaining protection.
- 3.18.2 Treatment** Social and cultural norms perpetuate violence against women, including spousal abuse. The law prohibits domestic violence and provides remedies including restraining orders and other non-custodial sentencing. Breaching a restraining order is punishable by a fine of up to J\$10,000 (\$112) and six months' imprisonment. The NGO Woman Inc. reported that women frequently complained that police failed to treat domestic violence as a crime and take the necessary reports. The JCF instituted a domestic abuse sensitivity training program for police officers in downtown Kingston. The Bureau of Women's Affairs (BWA) submitted to Parliament a draft National Plan of Action on Violence against Women and Gender-Based Violence that aims to provide a comprehensive strategy guiding the government's response to the problem and began implementing some of the strategies while awaiting its approval. NGOs

expressed concerns that in the short term there was insufficient funding for police investigations of gender-based violence and for counselling and shelter for victims. Woman Inc., with a small subsidy from the government, operated the only shelter for battered women in the country.⁶⁸ In 2012, IACHR noted that is insufficient to meet the level of need. The shelter is located in Kingston and can accommodate only 11 people (including children) at any one time. Furthermore, shelter is temporary and a stay may last for up to ten days followed by a review and is granted for emergencies only.⁶⁹

- 3.18.3** The 2009 Sexual Offences Act criminalizes spousal rape, but only in certain circumstances, namely when the parties have separated or when proceedings to dissolve the marriage or have it annulled have begun, when the husband is under a court order not to molest or cohabit with his wife, or when the husband knows he suffers from a sexually transmitted infection. Human rights groups continued to advocate for a more comprehensive law on spousal rape. The authorities reported 833 rapes and 763 cases of carnal abuse (sexual relations with girls under the age of 16), compared with 738 rapes and 637 cases of carnal abuse in 2011. The BWA believes that the true incidence is significantly higher than the statistics indicate, given the problem of under-reporting, due to fear of stigma, retribution or further violence. The JCF Centre for Investigation of Sexual Offences and Child Abuse, led by a female deputy superintendent, handled sex crimes.⁷⁰
- 3.18.4** Amnesty International reports that police statistics revealed a decrease in complaints of sexual crime against women and girls in 2011 compared to 2010. However, in May 2011, the police stated that sexual attacks against children aged between 11 and 15 had increased compared with the same period in 2010.⁷¹ According to Freedom in the World 2013, legal protections for women were inadequately enforced and violence and discrimination remain widespread. Women were under represented in government, holding just seven seats in the House of Representatives.⁷²
- 3.18.5** No legislation addresses sexual harassment and no legal remedy exists for victims of sexual harassment. The BWA carried out workshops to sensitise public sector workers to the issue of sexual harassment. NGOs have advocated for legislation on sexual harassment since the early 1990s and continued to advocate for the immediate drafting and enactment of such legislation.⁷³
- 3.18.6** According to Amnesty International's Annual Report covering the events of 2012, sexual violence against women and girls remained a concern. On 27 September 2012, following a meeting with several government and civil society representatives, the Office of the Prime Minister promised a plan of action to

⁶⁸ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 6) <http://www.state.gov/documents/organization/204673.pdf>

⁶⁹ Inter-American Commission on Human Rights (IACHR), Report on the Situation of Human Rights in Jamaica, 10 August 2012, Rights of Women, B, Violence paragraph 228 <http://www.refworld.org/docid/51ff65004.html>

⁷⁰ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 6) <http://www.state.gov/documents/organization/204673.pdf>

⁷¹ Amnesty International Annual Report 2012, 24/05/2012 <http://www.amnesty.org/en/region/jamaica/report-2012>

⁷² Freedom House, Freedom in the World 2013 – Jamaica, January 2013 <http://www.freedomhouse.org/report/freedom-world/2013/jamaica>

⁷³ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 6) <http://www.state.gov/documents/organization/204673.pdf>

address violence against women. In July 2012, the CEDAW Committee recommended, among other things, strengthening the capacity of the BWA, collecting and compiling comprehensive data on violence against women, and strengthening victim assistance and support programmes.⁷⁴

- 3.18.7** In its June 2013, concluding observations, the Committee on Economic, Social and Cultural Rights reports that “despite the measures taken by the Government to address violence against women and girls, such as the expansion of the Centre for Investigation of Sexual Offences and Child Abuse, the Committee expresses its profound concern at the high rates of domestic and sexual violence and the lack of a comprehensive strategy to address the phenomenon (art.10)”.⁷⁵
- 3.18.8** The 2012 IACHR report notes that it has also received information indicating that violence against women is an alarming problem in Jamaica. Impunity has prevailed with respect to most of these acts, which are then reproduced in a context of social tolerance.⁷⁶ It further notes that the gravity of the problem of domestic violence is not matched with an equivalent State response. Domestic violence is not always viewed as a crime, in part due to the perceived lower social status of females in Jamaica. Additionally, women’s organisations claim that the way violence is presented in the media promotes it as “normal” and/or “justified” and shows violence as appealing to youth. Police officers are averse to enforcing laws related to domestic violence, which results in the victims’ mistrust of the law enforcement system.⁷⁷

See also: [Actors of Protection](#) (Section 2.2 above)

[Internal Relocation](#) (Section 2.3 above)

[Caselaw](#) (Section 2.4 above)

- 3.18.9 Conclusion** Domestic violence is widespread in Jamaica. Serious concerns have been raised about the effectiveness of protection available to victims of domestic violence given the inadequate enforcement of legislative provisions and regarding the lack of access to shelter and assistance.
- 3.18.10** While it may be possible in some cases for a woman to relocate to other parts of Jamaica to escape domestic violence, the personal circumstances of the individual applicant should be taken into account when assessing whether it would be unduly harsh to expect them to do so. In this respect, the discrimination

⁷⁴ Amnesty International 2013 Jamaica, 23 May 2013

<http://www.amnesty.org/en/region/jamaica/report-2013#section-72-6>

⁷⁵ UN Committee on Economic, Social and Cultural Rights, Concluding observations on the combined third and fourth periodic reports of Jamaica, adopted by the Committee at its fiftieth session (29 April– 17 May 2013), 10 June 2013, paragraph 19

<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmIBEDzFEovLCuW%2brPmVOEQ8s4fiqdgChfZjqOY%2bB6b6oy37g%2fWxne%2f1JqSJAqTXGPmsZnl4WlHpoGYpUQFrLJktAcJ8tpN3oG8rC1VCqirstEqGpuYagLsk49>

⁷⁶ Inter-American Commission on Human Rights (IACHR), Report on the Situation of Human Rights in Jamaica, 10 August 2012, Rights of Women, B, Violence paragraph 216

<http://www.refworld.org/docid/51ff65004.html>

⁷⁷ Inter-American Commission on Human Rights (IACHR), Report on the Situation of Human Rights in Jamaica, 10 August 2012, Rights of Women, B, Violence paragraph 221

<http://www.refworld.org/docid/51ff65004.html>

and exclusion faced by women in society in general should be considered. Internal relocation will not be appropriate where a single woman with no male partner or children is likely to be perceived as a lesbian, whether or not that is the case. See [SW \(Lesbians – HJ and HT applied\)](#) in 2.4.

- 3.18.11** Women applicants who can demonstrate that they have a well-founded fear of persecution as a result of domestic violence and have no recourse to state protection or internal relocation should be granted asylum as a member of a particular social group.

3.19 Prison Conditions

- 3.19.1** Applicants may claim that they cannot return to Jamaica due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Jamaica are so poor as to amount to torture or inhuman treatment or punishment.

- 3.19.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of humanitarian protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

- 3.19.3 Consideration** According to the US State Department Human Rights Report 2013, in 2012 prisons and detention centres were severely overcrowded and presented serious threats to life and health. The government could not ensure the physical safety of prisoners. The UN Special Rapporteur on torture in a 2010 report called the conditions of detention “appalling” and in some cases “inhumane,” although he did not find instances of torture. With a maximum rated capacity of 4,652 inmates, the corrections system contained approximately 4,000 adult inmates, including at least 200 women and girls. However, there was considerable overcrowding, since rated capacity reflected both high- and low-security facilities, some capacity was unusable due to staffing shortfalls and most inmates were held in high-security facilities. There was no separate facility for female juveniles. Although the law prohibits the incarceration of children in adult prisons in most cases, approximately 100 juveniles were held in adult jails. Another 347 juveniles were in detention in juvenile-only facilities.⁷⁸

- 3.19.4** According to Freedom in the World 2013, ill-treatment by prison guards has also been reported and conditions in detention centres and prisons are abysmal. According to recent reports, children from abusive homes are routinely placed into police custody together with common criminals for periods of up to two weeks.⁷⁹ In March 2012, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment expressed concern about cases of torture and ill-treatment by law enforcement bodies, including reported de facto extrajudicial killings by police, and the lack of prompt and thorough investigations launched into allegations of ill-treatment or excessive use of police force. The Special Rapporteur observes that although complaints and allegations of abuse

⁷⁸ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 1) <http://www.state.gov/documents/organization/204673.pdf>

⁷⁹ Freedom House, Freedom in the World 2013 Jamaica, 10 April 2013 <http://www.refworld.org/docid/5171048e18.html>

are reportedly sent to the Inspectorate Unit of the Ministry of National Security for investigation, the fact remains that this mechanism is marred by allegations of a lack of independence and ineffectiveness and that the complaints are essentially addressed to the same body alleged to have perpetrated ill-treatment.⁸⁰

According to the US State Department Human Rights Report 2013, physical abuse of prisoners by guards continued, despite efforts by the Government to remove abusive guards and improve procedures. When prisoners raise allegations of abuse by Correctional Officers, the charges are first reviewed by Corrections Officials, then by an Inspector from the Ministry of National Security, and finally by the police. Authorities file charges against Correctional Officers for abuse if evidence is found to support the allegations. However, official complaints and investigations were infrequent.⁸¹

3.19.5 In 2011, the time the security forces can legally hold persons before charging or releasing them was extended from 48 to 72 hours. However, police sometimes reportedly hold individuals for as long as five weeks. Although the law requires police to present a detainee in Court within a reasonable time, in practice authorities sometimes remanded suspects for psychiatric evaluation, at times for as long as three years when their cases are “lost in the system.”⁸² The Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment expresses concern that pre-charge detention cases has reportedly ranged from three to 25 days, in violation of domestic law.⁸³ The Horizon Adult Remand Centre, built originally as a warehouse, holds some of the country’s most hardened criminals, approximately 80 percent of whom have links to criminal gangs. Persons detained without charge, remandees and convicted criminals are held in the same facility and often share cells.⁸⁴ According to the 2012 Annual Report from the IACHR, “the problem of overcrowding is even more critical in the police holding cells, where those under arrest are locked up with persons in remand (preventive detention) in completely inadequate spaces. The delegation visited the holding cells of Spanish Town and Hunts Bay police stations and found that the detainees have to share dark, un-ventilated and dirty cramped cells. Police officers in Spanish Town reported that the mentally-ill detainees were locked-up in the bathroom of the holding section. The delegation was particularly shocked by the inhumane conditions found at Hunts Bay police station, where the detainees, crowded in numbers of up to six persons per cell, lived amongst garbage and human waste with absolutely no consideration for their dignity”.⁸⁵

⁸⁰ UN Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Addendum : Follow-up to the recommendations made by the Special Rapporteur visits to China, Denmark, Equatorial Guinea, Georgia, Greece, Indonesia, Jamaica, Jordan, Kazakhstan, Mongolia, Nepal, Nigeria, Paraguay, Papua New Guinea, the Republic of Moldova, Spain, Sri Lanka, Togo, Uruguay and Uzbekistan, 1 March 2012, paragraphs 49, 52

<http://www.refworld.org/docid/51406b1b2.html>

⁸¹ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 1) <http://www.state.gov/documents/organization/204673.pdf>

⁸² US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 1) <http://www.state.gov/documents/organization/204673.pdf>

⁸³ UN Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Addendum : Follow-up to the recommendations made by the Special Rapporteur visits to China, Denmark, Equatorial Guinea, Georgia, Greece, Indonesia, Jamaica, Jordan, Kazakhstan, Mongolia, Nepal, Nigeria, Paraguay, Papua New Guinea, the Republic of Moldova, Spain, Sri Lanka, Togo, Uruguay and Uzbekistan, 1 March 2012, paragraphs 51

<http://www.refworld.org/docid/51406b1b2.html>

⁸⁴ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 1) <http://www.state.gov/documents/organization/204673.pdf>

⁸⁵ Inter-American Commission on Human Rights (IACHR), Report on the Situation of Human Rights in

- 3.19.6** Hunt's Bay Lockup held prisoners in a cage-like structure open to the rain and sun and the gazes of passersby. The women's prison, Fort Augusta, with about 300 inmates, had no indoor water supply. Inmates had to obtain water from a central source in containers they supplied themselves. Female juveniles were also held at Fort Augusta. Renovation delays caused by budget shortages postponed the planned December transfer of Fort Augusta inmates to an upgraded South Camp Facility, where juveniles would be separated from adults. No new transfer target date was scheduled.⁸⁶
- 3.19.7** Conditions at the juvenile lock-ups were poor. Investigations into the Moneague, Half-Way Tree, Admiral Town, and Glengoffe juvenile detention facilities revealed that minors reported contracting fungus from the conditions in the cells and from sleeping on cold concrete. Juvenile inmates also complained of roaches crawling over them during the day and at night. At the Admiral Town lock-up, juveniles were let out of their cells for only five minutes each day to bathe and use the toilet. At both Admiral Town and Half-Way Tree, the minor inmates were supplied with bottles in which to urinate.⁸⁷
- 3.19.8** The budget for prisons and lockups was inadequate in light of the overwhelming challenges and demands facing the system. Non-violent youth offenders were under the jurisdiction of the Social Services Agency, which generally sent them to unsecured halfway houses called “places of safety” or “juvenile remand centres” after removing them from their homes. However, because the law does not clearly define an “uncontrollable child,” a large number of minors were classified as uncontrollable and detained for long periods without regard to the nature of their offences. In the case of juveniles held in two of the adult facilities, even when police attempted to have officers from the Social Services Agency retrieve minor detainees, the Agency failed to do so, thereby obliging the police to co-mingle them with adults. Authorities trained officers handling juvenile detainees in child psychology, behavioural modification techniques, child-management strategies and national and international human rights laws.⁸⁸
- 3.19.9** Throughout the system medical care was poor, primarily a result of having only three full-time doctors and one full-time nurse on staff. Four part-time psychiatrists cared for at least 225 diagnosed mentally ill inmates in 12 facilities across the island. Prisoners in need of dentures and unable to eat the prison food encountered difficulties gaining access to a dentist. Prison food was poor, and prison authorities frequently ignored inmates’ dietary restrictions. Additionally, only approximately J\$174 (\$1.90) was budgeted to provide a prisoner three meals per day. At least seven prisoners died in detention during 2012, five from natural causes, one due to an unknown cause, and one by hanging. At the end of 2012 authorities were investigating whether the hanging victim was a suicide or a victim of foul play.⁸⁹

Jamaica, 10 August 2012, Chapter VI Conditions in prisons and penitentiaries and the rights of persons deprived of liberty, B, Detention and prison conditions paragraph 190

<http://www.refworld.org/docid/51ff65004.html>

⁸⁶ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 1) <http://www.state.gov/documents/organization/204673.pdf>

⁸⁷ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 1) <http://www.state.gov/documents/organization/204673.pdf>

⁸⁸ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 1) <http://www.state.gov/documents/organization/204673.pdf>

⁸⁹ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 1)

- 3.19.10** The government allowed private groups, voluntary and religious organisations, local and international human rights organisations and the media to visit prisons and monitor prison conditions and such visits took place during 2012.⁹⁰
- 3.19.11** There was no reports of political prisoners or detainees.⁹¹
- 3.19.12** The government took no tangible actions to address the UN Special Rapporteur's findings in 2010 that officers at the Hunt's Bay Police Station were "very obstructive, unco-operative, aggressive and openly threatened his team during their visit." However, reacting to what she deemed "terrible conditions" in the prisons, the chief justice instructed all resident magistrates to conduct regular visits of police lock-ups and forward their observations to her office in writing. She counselled the magistrates to remind police of detainees' right to due process.⁹²
- 3.19.13** There was no specific prison ombudsman. Although prisoners could make complaints to the Public Defender's Office without censorship, and representatives usually could enter the detention centres and interview prisoners without hindrance, official complaints and investigations were infrequent.⁹³
- 3.19.14 Conclusion** Conditions in prisons and police stations in Jamaica are extremely poor with overcrowding, hygiene and poor basic facilities being particular problems. Some detainees have been reported to have been subjected to physical abuse which can amount to torture. Conditions in both prisons and police stations may in individual cases reach the Article 3 threshold., The individual factors of each case should be considered to determine whether the person is at real risk of detention and whether detention will cause a particular individual to suffer treatment contrary to Article 3 - relevant factors to consider being the likely length of detention, the type of detention facility and the individual's age, gender, sexual orientation and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of humanitarian protection will be appropriate.

4. Unaccompanied minors claiming in their own right

- 4.1** Unaccompanied minors claiming in their own right who have not been granted asylum or HP can only be returned where the Secretary of State is satisfied that safe and adequate reception arrangements are in place in the country to which the child is to be returned.
- 4.2** At present the Home Office does not have pre-approved arrangements in place with NGOs or other organisations in Jamaica to provide alternative adequate reception arrangements in cases where the minor cannot be returned to their

<http://www.state.gov/documents/organization/204673.pdf>

⁹⁰ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 1)

<http://www.state.gov/documents/organization/204673.pdf>

⁹¹ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 1)

<http://www.state.gov/documents/organization/204673.pdf>

⁹² US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 1)

<http://www.state.gov/documents/organization/204673.pdf>

⁹³ US State Department Jamaica Country Report on Human Rights Report 2012 - 19/04/2013 (Section 1)

<http://www.state.gov/documents/organization/204673.pdf>

family. Those who cannot be returned should be considered for leave as an Unaccompanied Asylum Seeking Children (UASC).

- 4.3 Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of UASC as soon as possible after the claim for asylum is made, while ensuring that those endeavours do not jeopardise the child's and/or their family's safety.
- 4.4 Information on the infrastructure within Jamaica which may potentially be utilised to assist in endeavouring to trace the families of UASC, can be obtained from the Country of Origin Information Service (COIS).
- 4.5 Caseworkers should refer to the AI: [Processing an Asylum Application from a Child](#), for further information on assessing the availability of safe and adequate reception arrangements, UASC Leave and family tracing. Additional information on family tracing can be obtained from the [interim guidance](#) on Court of Appeal judgment in [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#).

5. Medical treatment

- 5.1 Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR.
- 5.2 Caseworkers should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).
- 5.3 The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.
- 5.4 That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, and the absence of resources through civil war or similar human agency.
- 5.5 The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3

ECHR.

5.6 All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.

5.7 Where a caseworker considers that the circumstances of the individual applicant and the situation in the country would make removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of discretionary leave. Caseworkers must refer to the AI on [Discretionary Leave](#) for the appropriate period of leave to grant.

6. Returns

6.1 There is no policy which precludes the enforced return to Jamaica of failed asylum seekers who have no legal basis of stay in the United Kingdom.

6.2 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.

6.3 Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [chapter 53.8 of the Enforcement Instructions and Guidance](#).

6.4 Individuals can return voluntarily to their country of origin / place of habitual residence at any time in one of three ways:

- leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK
- leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or
- leaving the UK under one of the [Assisted Voluntary Return \(AVR\) schemes](#).

**Country Specific Litigation Team
Immigration and Border Policy Directorate
Home Office
December 2013**