

Comments on the Operational Guidance Note on Jamaica, prepared for Still Human Still Here by Christel Querton (Asylum Aid), Matt Merefield and Andrew Esterday, Research Information and Policy Unit (RIPU) of the Immigration Advisory Service (IAS)

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Introduction

1. This document has been prepared by members of the Still Human, Still Here campaign. It is being published, along with the COI referred to within in it, to help legal practitioners representing asylum seekers. It is meant to be used as a guide to some of the COI available. It was prepared 25 May 2010. There is, however, no guarantee that the COI referred is comprehensive and it should not be a substitute for case specific COI research.

2. **THIS DOCUMENT IS A GUIDE FOR LEGAL PRACTITIONERS OF RELEVANT COI, WITH REFERENCE TO THE OPERATIONAL GUIDANCE NOTE ON JAMAICA ISSUED ON 01/06/09. THIS DOCUMENT SHOULD NOT BE SUBMITTED TO UKBA, THE TRIBUNAL OR IN PROCEEDINGS. LEGAL**

PRACTITIONERS ARE WELCOME TO SUBMIT THE COI REFERED TO IN THIS DOCUMENT.

3. The current OGN on Jamaica is in need of review. It is over 1 year old having been issued on 01/06/09 and is primarily based on a COIS report which was issued on 18/08/08. A more recent COIS report has been released on 24/12/09. It is significant in this regard that the source material cited in the section relied upon for 3.6.2 (Treatment) of the OGN, (the COIS report, section 8 [Crime], 2008) ranges from an earliest publication date of 04/08/04 to a latest publication date of 02/07/08, whilst the source material cited in the same section of the most recent COIS report range over the period 19/09/04 to 13/10/09. Even if a new OGN were to be published currently, if it relied on the COIS report dated 24/12/09 it would be dependent on material whose publication (at the most recent) would be at least six months prior to the OGN itself.

Criminal Gang Violence

4. The section on Criminal Gang Violence (3.6) reaches several conclusions that are, in part, based on source material. These include the following:

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

(ii) It is ... 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, except where the circumstances of an individual applicant indicate otherwise, it would not be unduly harsh to expect them to do so

The reviews below demonstrate that these conclusions are not well-grounded in terms of the wider range of available source material, or in terms of the range of source material actually drawn upon in the OGN.

Review of 3.6.2 Treatment

5. The summary presented in section 3.6.2 (Treatment) is (a) not sufficiently current, (b) fails to provide a sufficiently accurate reflection of the situation in Jamaica, and (c) is not adequately transparent as it only references the COIS report (2008) without referring to the specific source material relied upon in the COIS report itself. Similarly, the summary is over-reliant on one source, the COIS report (2008).

6. Section 3.6.2 (Treatment) gives a brief outline of (i) murder rates, (ii) the involvement of gangs, (iii) drugs, and (iv) territorial dispute, (v) the dispersion of murder incidents throughout Jamaica, (vi) the political connections of certain gangs, and (vii) the age of actors involved.
7. Several examples of the difference that a use of more current material might have made to the summary given in section 3.6.2 (Treatment) are given below:

(i) Currency and accuracy of information on murder rates and intensity of criminal violence:

8. The first line of the section 3.6.2 on Treatment reads as follows:
‘The murder rate in Jamaica exceeded 51 per 100,000 persons in 2007, an increase from the 2006 rate of 45 per 100,000 but lower than the 2005 rate of 62 per 100,000’.

More precisely, according to an Associated Press Report, In 2009 Jamaica had about 1,660 homicides, close to the record set in 2005 (Associated Press, 01/01/10; USDOS, 11/03/10; see also Radio Jamaica, 02/07/09). That figure represents approximately 61.48 murders per 100,000 (figures derived from OSAC, 04/03/10), and an increase of 4% over the year 2008 (Jamaica Gleaner, 09/01/10). A more recent article by The Economist (11/03/10) reports a slightly higher figure for 2009 of 1672 murders (the figure for 2005 was 1674 - see AI, 01/04/08, fn. 2), and the Weekly Gleaner (14-20/01/10) and Associated Press (ASW, 09/01/10) cite the 2009 figures as 1680, surpassing the record of 2005.

It might also be relevant to note that the murder rate has increased dramatically in recent years, having occurred at a rate of 33 per 100,000 inhabitants in 2000 (see AI, 01/04/08, fn.3).

9. These brief notes on currency above demonstrates that the information on murder rates is no longer accurate and in fact, as the Jamaica Gleaner puts it, the country has just suffered its ‘bloodiest year ever’ (09/01/10).
10. Even at the time of writing however, the OGN failed to produce a sufficiently accurate picture of the intensity of criminal violence in Jamaica of which the murder rate is one reflection. Such a picture could have been obtained from the AI report, ‘Let them kill each other: public security in Jamaica’s inner cities’ (01/04/08), published several months before the 2008 OGN, which describes, in depth, the ‘full security crisis’ that

Jamaica faces in its inner cities. The Jamaicans for Justice report 'Roadmap to a safe and secure Jamaica', (01/05/06) similarly describes the situation as a 'crisis of public safety'.

(ii) Currency and accuracy of information on gangs:

11. The relevant passage of section 3.6.2 (Treatment) is as follows:

'Much of the violence is reportedly perpetrated by street gangs vying for control of lucrative drug rings or fighting over turf. There are known areas of confrontations such as Tivoli Gardens in Kingston and Spanish Town in St Catherine. Some of these gangs are also associated with political parties. The One Order gang, with connections to the JLP, has been involved in a turf war in Spanish Town with Klansman gang, which has connections to PNP sympathisers'. (Note: the JLP is the Jamaican Labour Party, and the PNP is the People's National Party')

One of the things this passage does not achieve is to outline the degree to which gangs are responsible for murders in Jamaica. A useful source on this is The Jamaica Gleaner (09/01/10) which states that '[O]f the 1,680 murders in 2009, intra-gang and internal gang feuds, plus reprisals, were blamed for the 859 murders'.

(iii) Currency and accuracy of information on gangs and drugs

12. More up to date information on the relationship between gangs and drugs is available in The Economist (11/03/10), which is in turn based on the INCSR (01/03/10) which describes the depth of the problem of the narco-industry in and via Jamaica. See also the AP (01/01/10) article. See section (iv) below in regards to the source material addressing links between politics, corruption, criminality, and gangs.

(iv) Currency and accuracy of information on gangs and territory

13. As noted in the 2009 Jamaica COIS report, the AI report (01/04/08) states as follows:

"The worst violence is reported during times when rival gangs within a community or in adjacent neighbourhoods are competing over territorial control, which is referred to by communities as "the war".

As noted in the 2009 Jamaica COIS report, the AI report (01/04/08) reported on the consequences of inter-gang territorial disputes as follows:

At such times of heightened confrontation, the entire population can be held hostage, shut down by barricades and unable to leave their homes after 5pm, the time when shooting starts. Children cannot go out to play and are often prevented from attending school, either because the schools are closed or because it is too dangerous for either pupils or teachers to attend. Often children are so traumatized by the violence that even if schools are still functioning, they are sometimes just too frightened to leave home. People working outside the community have problems getting to work as public and private transport has to be suspended because of the violence. Reaching a health clinic can also be difficult, particularly if the closest one is in the 'enemy' community."

(v) Currency and accuracy of information on the dispersion of murder and other serious criminal incidents throughout Jamaica

14. Section 3.6.2 (Treatment) gives the examples of Tivola Gardens in Kingston, and Spanish Town in St Catherine as sites of gang violence.
15. These brief instances do not provide an adequate picture of the dispersion of crime throughout Jamaica. The Jamaica Gleaner (09/01/10) reports that amongst 'the areas with the most murders were St James - 240, St Andrew south - 238, St Catherine north - 179, St Catherine south - 164, Clarendon - 161, and St Andrew north - 121', whilst the parish recorder with the lowest number of murders was St Mary (see also AI, 01/04/08, and Jamaica's most wanted [09/08/09] for the murder figures on a parish by parish basis).
16. The US State Department Travel information for Jamaica (13/10/09) noted that serious crime was a particular problem in the nation's capital, Kingston, whilst Amnesty International (01/04/08) reported that the inner city regions of Kingston, St Catherine, and St. Andrew were all areas a gang-based criminality, and that the worst levels of violence were generally to be found in the disadvantaged inner city areas ('ghettoes'). In Kingston, between 35-40% of the population lives in the so-called 'ghettoes'.
17. This additional source material presented identifies the inner city regions as being of particular concern (see JG, 09/01/10; USD, 13/10/09; AI, 01/04/08). Further to that, it should be noted that the Government of Jamaica's 2009 *Gang Threat Assessment* states that there are '268 gangs operating in 16 of the JCF's (Jamaica Constabulary Force's) 19 policing divisions, islandwide'. It seems reasonable to conclude that while the information presented in the OGN and the additional material presented here identify inner-city areas as being of particular concern, the 2009 *Gang Threat Assessment* data suggests that the problem of gangs is not confined to these areas alone, and that the problem is not far from being 'islandwide' (JIS, 23/01/10).

(vi) Politics, corruption, criminality, and gangs

18. Section 3.6.2 (Treatment) states that '[S]ome of these gangs are associated with political parties'.
19. The OGN's treatment of the relationship between gangs and political power is insufficient, partly because it has been inadequately sourced.
20. The source material relied upon (from the 2008 COIS Jamaica report) does not make the link in the way expressed by the OGN, but instead cites an undated Jamaica's for Justice report which stated that Jamaica's gang culture grew out of structures created by its political wars. A search of the Jamaica's for Justice website found that it is not possible to identify which report the COIS report refers to. It should be noted in this context that the strong tendency of the Jamaica's for Justice organisation including its publication arm is to focus on addressing the inadequacies of state protection and justice in Jamaica (for example, reports in recent years have included 'Pattern of impunity: a report on Jamaica's investigation and prosecuting of deaths at the hands of the state [report presented to the Inter-American Commission on Human Rights]', 06/06/06).
21. Although the OGN recognises the relevance of the connection between criminal gangs and violence its summary lacks a further level of analysis. For example, the AI report (01/04/08, p6,8) noted that 'garrison communities' – those entirely controlled by one or other of the political parties – were most likely to experience high levels of gang violence. Amnesty also describes the way that gangs have filled a power-vacuum left by the state and in garrison communities operate with relative autonomy (e.g. over issue of law and order and well as welfare). Garrison communities are an ingrained feature of Jamaica's political tribalism, and strong links exist between the gang leaders of political communities and some political actors (AI, 01/04/08, p9, 16).
22. The INCSR (USSD, 01/03/10) reports that within the 'increasingly brazen criminal activity which continues to threaten civil society' a 'particular focus of control has been the increasing activity of organised crime, which permeates both the legitimate business sector as well as the political sector'.
23. The INCSR (USSD, 01/03/10) also reports on links between the ruling Jamaican Labour Party and a 'high profile Jamaican crime lord' who 'essentially controls' Tivoli Gardens (a neighbourhood of Kingston which is a 'key constituency' for the Jamaican Labour Party). The report observes that the Government of Jamaica's recent failure to co-operate

on extradition demonstrates a lack of commitment to tackle transnational organised crime (see also AP, 29/10/09).

Review of 3.6.3 Sufficiency of Protection

24. At section 3.6.9 the OGN concludes that:

[F]or applicants who fear, or who have experienced, ill-treatment as a result of criminal gang violence in Jamaica there is, in the light of the ongoing initiatives by the Jamaican Government, a general sufficiency of protection.

It also concludes, albeit with reservations, that:

[T]he civilian authorities generally maintain effective control of the security forces (3.6.8).

25. The available source material is at odds with these conclusions as, when taken in the round, it tends to paint a picture of ineffective and insufficient state protection from criminal gang violence in Jamaica.

26. The Jamaicans for Justice report 'Roadmap to a safe and secure Jamaica', (01/05/06) describing the situation as a 'crisis of public safety' explains that this phrase refers to 'the inability of the responsible state institution to adequately protect the citizenry from criminal victimization'. The report (p1.) added that 'everyday the 'average' urban citizen witnesses a number of incidents of law violations and public disorder that go unchallenged by the authorities and their fellow citizens'.

27. Speaking on Radio Jamaica (HJT, 17/03/10) Peter Bunting, the Spokesman on National Security for Jamaica's opposition People's National Party, has said a violent uprising in a section of West Kingston on March 15th reflects the extent of the breakdown of law and order in Jamaica, Radio Jamaica (25/04/10) also recorded the views of a commentator who stated that 'the inability of the security forces to protect the average citizen has led many residents to feel the need to implement their own form of protection'.

28. The 2007 USSD (11/03/08) report (cited in section 9.05 of the COIS 2008 report which is relied upon by the OGN) states as follows: '[F]aced with a homicide rate exceeding 51 per 100,000 persons, an increase from the 2006 rate of 45, the JCF generally was not effective'. OSAC reported that the Jamaican police are 'unable to protect neighbourhoods'. The INCRS report (USSD, 01/03/10) reported that Jamaica had a 5% conviction rate for murders. The Weekly Gleaner (14-20/01/10) reports that with

regard to the gang-related murders, 14 per cent were cleared up last year, down from 18 per cent in 2008 and approximately 20 per cent in 2007. But it is not only the ratios that have worsened. The actual numbers for the clear-up of gang-related homicides have dropped: 122 in 2009; 134 in 2008; and 158 in 2007.

29. Amnesty International (19/04/10) recorded that the failure of state protection was particularly acute in inner city neighbourhoods, and noted that these were often under the de facto control of gangs.
30. Associated Press (23/11/09) reports that the Government of Jamaica is actively considering use of military troops to augment the inadequacy of the police in their efforts to control crime in the country. In November 2009 Jamaica's police commissioner resigned over his force's failure to tackle Jamaica's rising crime rates.
31. Amnesty International (19/04/10) also records the impunity which Jamaica's police enjoy from prosecution over the killing of civilians, gives examples of civilians who have been killed by the police, and state that 272 persons died in 2007, 224 in 2008 and 253 in 2009. Amnesty notes that '[I]n the past 10 years, only four police officers have been convicted for their involvement in killings out of a total of more than 1,900 reports of fatal shootings'. Jamaicans for Justice (28/10/09) reported that a significant proportion of the killings have been extra-judicial. Caribbean Media Corporation (04/12/09) reports that the acting police commissioner has voiced concern over the links between some members of the police force and criminal groups, and in particular, was concerned about police officers acting as bodyguards for gang members.
32. The OGN is correct to identify the incompleteness of a range of ongoing initiatives by the Government of Jamaica.
33. For further example, the INCSR (USSD, 01/03/10) stated that the 'GOJ's ambitious anti-corruption and anti-crime legislative agendas announced in 2007 remain stalled in parliament' (see also AI, 19/04/10; WG, 18-24/06/09).
34. The INCRS report (USSD, 01/03/10) stated that 'pervasive public corruption continues to undermine efforts against drug-related and other crimes, and plays a major role in the safe passage of drugs and drug proceeds through Jamaica. For the first time corruption ranked second to crime and violence as the area of greatest concern for Jamaicans'.
35. USSD (11/03/10) reports 'a notable increase in the number of arrests of officers for corruption', but concludes (as does the OGN) that 'the corruption and impunity within

the [police] force remained'. USSD (11/03/10) reports that '[A] 2007 media poll and a survey by the Caribbean Policy Research Institute found that the public believed more than half of the JCF was corrupt'.

36. In early December 2008 the Inter-American Commission on Human Rights visited Jamaica to observe the country's human rights situation. Amongst its preliminary findings (IACHR, 05/12/08) it stated as follows:

The IACHR observed an alarming level of violence in Jamaica that has affected all sectors of society for many years. The persistence of this widespread violence has had severely negative consequences for the human rights of the Jamaican people. ... although the government has undertaken certain constructive efforts to address the problem, these remain insufficient. They are hampered by inadequate resources, a failure to sufficiently address the severe shortcomings of the security forces and the judicial process, and the lack of integral, effective policies to ameliorate the social conditions that generate the violence.

37. This conclusion echoes that of the INCSR (USSD, 01/03/10) which cites 'internal, judicial and political roadblocks as hindering efforts to reform the police'. Amnesty (19/04/10) also notes, however, that the JCF is undergoing an ongoing process of reform.

38. The OGN (3.6.6) states that 'Operation Kingfish has been successful in disrupting major criminal networks'. The INCSR (USSD, 01/03/10), however, states that Operation Kingfish was limited by corruption (referring, in particular, to government and political links with organised crime).

39. Radio Jamaica (20/03/08) reported on criticisms of the state's witness protection programme made by several participants, who stated that their concerns related to 'the level of protection as well as financial and emotional support being given'. The Canadian government identified Jamaica's witness protection programme as an area in need of funding assistance (T&T, 22/04/09). The Caribbean Media Corporation (21/07/09) recorded the views of Amnesty as follows:

systematic intimidation and the frequent murder of witnesses, combined with a low detection rate for violent crime, contributed to the diminishing number of serious cases reaching trial. It said that at least six state witnesses were killed last year" heightening concerns about the adequacy of the witness protection programme".

40. Taking the representative but not comprehensive group of source material used in this commentary allows us to conclude that the civilian authorities often do not have effective

control over the security forces nor does the state provide effective or a sufficient level of protection for citizens fearing violence from criminal gangs; they are not able, for example, to ensure police protection of inner city and other areas of Jamaica where civilians have felt the need to seek recourse to either self-protection or suffer the rule of gangs. Jamaica's police force suffers from corruption, and employs practices (including extra-judicial killing) that abuse the rights of Jamaican citizens. Citizens who come forward to act as witnesses run the risk of intimidation and even killing, and the witness protection programme has not, despite the claims of the state, provided sufficient protection to those it has sought to protect. Programmes and policies designed to improve state protection are ongoing, but marred by political and criminal factors, these have not progressed to a sufficient extent.

Review of 3.6.10 Internal Relocation

41. The relevant passage of the OGN reads as follows:

The law provides for freedom of movement within the country and the Government generally respects this right in practice. [19] It is therefore 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, except where the circumstances of an individual applicant indicate otherwise, it would not be unduly harsh to expect them to do so.

42. The following commentary is based on current source material and bears relevance for the issue of relocation for those fearing harm from criminal individuals or groups:

The Jamaicans for Justice report 'Roadmap to a safe and secure Jamaica, 01/05/06' states that 'violence has become a familiar part of everyday life in urban Jamaica' and adds that in those regions of the country 'there are 'few persons that remain untouched by this violent criminality – regardless of class, colour, or creed'.

43. As noted above, The Jamaica Gleaner (09/01/10) reports that amongst 'the areas with the most murders were St James - 240, St Andrew south - 238, St Catherine north - 179, St Catherine south - 164, Clarendon - 161, and St Andrew north – 121', whilst the parish recorder with the lowest number of murders was St Mary (see also AI, 01/04/08). The US State Department Travel information for Jamaica (13/10/09) noted that serious crime was a particular problem in the nation's capital, Kingston, whilst Amnesty International (01/04/08) reported that the inner city regions of Kingston, St Catherine, and St. Andrew were all areas a gang-based criminality, and that the worst levels of violence were

generally to be found in the disadvantaged inner city areas ('ghettoes'). In Kingston, between 35-40% of the population lives in the so-called 'ghettoes'.

44. Also noted above was the Government of Jamaica's 2009 *Gang Threat Assessment* statement that there are '268 gangs operating in 16 of the JCF's (Jamaica Constabulary Force's) 19 policing divisions, islandwide'. It seems reasonable to conclude that while the information presented in the OGN and the additional material presented here identify inner-city areas as being of particular concern, the 2009 Gang Threat Assessment data suggests that the problem of gangs is not confined to these areas alone, and that the problem is not far from being 'islandwide' (JIS, 23/01/10).
45. Associated Press (25/04/10) describes Jamaica's north-west is a troubled region, and reports an incident of gang killing in the region. Radio Jamaica, (25/04/10) similarly describes parts of the north-west as lawless areas in which citizens have felt the need to protect themselves in the absence of state protection.
46. Jamaica Caves Organization (24/05/09) provides an advice page for tourists on safety from crime and advises that the specific tourist resort locations used by most tourists are protected, but tourists travelling beyond these protected areas risk encountering various forms of crime. The New York Times reaches a similar conclusion whilst noting that private security firms help secure the tourist resort locations.
47. Associated Press (23/11/09) reports that the planned military support for state action against criminal activity will be include Jamaica's rural areas (see also APW, 09/05/08, which reports that the rural parishes of St Catherine and Clarendon suffer high rates of crime). Associated Press (10/12/08) also note that gangs involved in displacing Jamaican citizens from their homes are active in rural areas as well as East Kingston.
48. The JCF crime statistics for 2007 and 2008 (JMW, 09/08/09) give the following murder figures by Parish for 2007 and 2008:

Parish	2007	2008
St Andrew	288	453
St Catherine	288	295
St James	188	214
St Mary	199	163
Clarendon	119	163
Manchester	31	52
Westmoreland	41	51
St. Thomas	32	41

Hanover	25	33
Trelawny	21	29
St Ann	39	28
St Elizabeth	25	21
Portland	16	11

These figures indicate that although there are significant regional differences, no region in Jamaica is free from violent crime.

49. Caribbean 360 (29/01/10) reports that large and powerful gangs in Jamaica (often involved in the powerful transnational narco-industry) are franchising out their work to gangs working in other Jamaican parishes. This inter-connectivity suggests that risks emanating in one location (e.g. from gang-related crime and violence) may not be confined to that area.

50. Best Country reports (undated) provide a population density map for Jamaica showing that some parishes have relatively low population density. It should be noted that in those areas a particular concern might be the problem of visibility for newcomers as it may not be possible to be 'unknown' as a newcomer to an area.

Gay Men and Lesbians

Treatment

51. The OGN in the section on gay men and lesbians states that:

3.7.2 Treatment. *Although it is not illegal to be a gay man in Jamaica, the Offences Against Persons Act prohibits "acts of gross indecency" between men, in public or in private, which are punishable by ten years in prison. No laws target lesbians or lesbian conduct.*

3.7.3 *There continue to be reports of arbitrary detention, mob attacks, stabbings, harassment of gay patients by hospital and prison staff, and targeted shootings of gay men.*

3.7.8 *Where a gay man, lesbian or bisexual is able to establish a real risk of persecution or Article 3 treatment, the lack of evidence that there is sufficient protection for gay men, lesbians or bisexuals means that sufficiency of protection cannot be relied upon.*

52. We note that the OGN currently reflects available objective country information on Jamaica that the treatment of gay men amounts to persecution. There are numerous

sources reporting violent attacks against homosexuals in Jamaica.¹ The Church is also openly stating that homosexuality will not be accepted in Jamaica² and Ministers including the Prime Minister have stated that they have no intentions of changing the laws.³

53. The Inter-American Commission on Human Rights expressed concerns at the treatment and discrimination against people on the basis of their sexual orientation.⁴ More specifically, the Commission noted “in particular, the IACHR found the violent persecution and fear to which gays and lesbians are subject in Jamaica to be deplorable”.⁵

Perceived Homosexuals

54. The Country Guideline case of **DW (Homosexual Men – Persecution – Sufficiency of Protection) Jamaica CG [2005] UKAIT 00168** established that:

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

55. There have been many reports that men who are perceived as homosexuals are also at risk of persecution. Amnesty International has reported violent attacks on people who

¹ Amnesty International, Amnesty International Report 2009: Jamaica, 28/05/2009. Human Rights Watch, Jamaica: Condemn Homophobic Remarks, 19/02/2009. US Department of State, 2008 Human Rights Report: Jamaica, 25/02/2009. News One, Gays In Jamaica Live In Fear, 20/07/2009. HJT Research, New York Times says Jamaica is a "dire" place for gays, 27/02/2008. Metropolitan Community Churches (USA), MCC Moderator Calls for Immediate Actions In Response to Jamaican Anti-Gay Mob Violence, 06/02/2008. Human Rights Watch, Jamaica: Shield Gays from Mob Attacks, 01/02/2008. Inter-American Commission on Human Rights (IACHR), IACHR Issues Preliminary Observations on Visit to Jamaica, 05/12/2008. HJT Research, Calls for gays to be murdered in Jamaica, 23/02/2007. Human Rights Watch, Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic, 16/11/2004. Amnesty International, Jamaica: Battyboys affi dead" ["Faggots have to die"], 17/05/2004.

² News One, Gays In Jamaica Live In Fear, 20/07/2009. HJT Research, Church leaders say homosexuality will not be accepted in Jamaica, 18/02/2008. Human Rights Watch, Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic, 16/11/2004.

³ News One, Gays In Jamaica Live In Fear, 20/07/2009. Repeating Islands, News: Debate on Sodomy Laws in Jamaica, 04/03/2009. HJT Research, Jamaican opposition leader rules out any legalisation of homosexuality, 09/07/2007. HJT Research, Jamaican official warns gays against inciting violence by flaunting their sexuality, 25/04/2007.

⁴ Inter-American Commission on Human Rights (IACHR), IACHR Issues Preliminary Observations on Visit to Jamaica, 05/12/2008.

⁵ Inter-American Commission on Human Rights (IACHR), IACHR Issues Preliminary Observations on Visit to Jamaica, 05/12/2008.

have been perceived to be homosexuals⁶ and the Refugee Documentation Centre in Ireland found that:

Violence against men who have sex with men, ranging from verbal harassment to beatings, armed attacks, and murder, is pervasive in Jamaica. Physical attacks against gay men and men perceived to engage in homosexual conduct are often accompanied by expressions of intent to kill the victim, such as "Battyman fi dead" [gay men must die] (emphasis added).⁷

State Protection

56. In regards to sufficiency of protection, the OGN notes at paragraph 3.7.8 that:

Where a gay man, lesbian or bisexual is able to establish a real risk of persecution or Article 3 treatment, the lack of evidence that there is sufficient protection for gay men, lesbians or bisexuals means that sufficiency of protection cannot be relied upon.

This is in accordance with the Country Guideline determination of **DW (Homosexual Men – Persecution – Sufficiency of Protection) Jamaica CG [2005] UKAIT 00168** which stated that:

At the beginning of the first reconsideration hearing Mr Blundell made an important concession. He told us that, after careful consideration, the Secretary of State was not going to take any point in relation to sufficiency of protection in Jamaican homosexual cases. He was not saying that the Secretary of State would not argue the point in very particular circumstances but, as a general rule, he would not argue that the authorities would provide a Jamaican homosexual with a sufficiency of protection. Furthermore, although there is no specific concession, Mr Blundell has not argued that this appellant or other homosexuals at risk of persecution in their home area should be expected to relocate within Jamaica.⁸

57. The OGN is correct in identifying the lack of state protection for those who risk persecution due to their sexual orientation. There have been several reports of the police failing to investigate attacks against homosexuals and in certain cases participating in the attacks.⁹

58. It was reported by Human Rights Watch that a governing party Member of Parliament called for the outlawing of gay organizations and life imprisonment for homosexual

⁶ Amnesty International, Jamaica: Amnesty International condemns homophobic violence, 16/04/2007.

⁷ Refugee Documentation Centre (Legal Aid Board, Ireland), Treatment of Homosexuals in Jamaica, 19/02/2010.

⁸ Paragraph 8.

⁹ Gay City News (USA), Jamaican Mob Threatens to Murder Gay Men, 22/02/2007. Peter Tatchell (UK), Jamaican gay leader escapes lynching: Police batter victim of homophobic mob, 20/02/2007. Human Rights Watch, Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic, 16/11/2004.

conduct.¹⁰ The Jamaican prime Minister has also affirmed that he would not allow homosexuals into the Cabinet.¹¹ State protection is unavailable throughout the country and cannot be a ground for the justification of refusal to grant asylum or Humanitarian Protection. We note that, in light of the available and objective country information, homophobic behaviour and the risk of violence against homosexuals and perceived homosexuals is prevalent throughout the country. The OGN acknowledges this fact in its conclusion at paragraph 3.7.11 where it states that “Jamaica is a deeply homophobic society”. HJT Research quoted from Newsweek Magazine on 8 September 2007 that “Jamaica is bolstering its image as one of the most virulently anti-gay societies in the Western Hemisphere”.¹²

Internal Relocation

59. The OGN states with regards internal relocation for gay men and lesbians that:

3.7.9 Internal relocation. Alleged gay men and lesbians in inner city areas are at particular risk of homophobic violence. The law provides for freedom of movement within the country and the Government generally respects this right in practice.²⁷ It may therefore be practicable for applicants to relocate to other parts of Jamaica where homophobic violence is less prevalent and where they would not face treatment that would amount to persecution. Whether it would be a viable option for them to do so will depend on individual circumstances. For example, there is no evidence that lesbians face serious mistreatment but where they, or bisexual women, do have a localised well-founded fear of mistreatment it will in most cases be possible for them to avoid the threat by moving to a different part of Jamaica and it may be reasonable for them to do so. Equally, a gay or bisexual man who is habitually ‘discreet’ about his sexuality but who has a well-founded fear of mistreatment because it has been ‘discovered’ locally can move to another part of the country where his sexuality is not publicly known and it would not be unduly harsh to expect him to do so. But where a gay or bisexual man would readily be identified as such wherever he lived, internal relocation would not be an option.

60. The Country Guideline case of **DW (Homosexual Men – Persecution – Sufficiency of Protection) Jamaica CG [2005] UKAIT 00168** states that:

We find that, in a small country like Jamaica, where homophobic attitudes are prevalent across the country and the appellant, because of his appearance and demeanour, would be perceived as homosexual wherever he went, he would be at risk of persecution and infringement of his Article 3 human rights throughout Jamaica. As he is at risk of persecution there is no question but that it would be unduly harsh to expect him to relocate.¹³

¹⁰ Human Rights Watch, Jamaica: Condemn Homophobic Remarks, 19/02/2009.

¹¹ Inter Press Service News Agency (IPS), Rights-Jamaica: Bad Place to Be Gay Just Got Worse, 28/05/2008.

¹² HJT Research, Newsweek: No let up to homophobia in Jamaica, 10/09/2007.

¹³ Paragraph 70.

And that:

*Internal relocation is not, as a rule, available to a perceived homosexual who, as a stranger in another part of Jamaica, is likely to be regarded with suspicion, even before his homosexuality is identified. He is also likely to lose any protection he might have had from family and friends in his home area.*¹⁴

In the absence of state protection of homosexuals there can only be internal relocation in an area where there is no risk of persecution. The country information and Country Guideline case law demonstrates that homophobic attitudes and attacks on homosexuals occur throughout the island and that internal relocation is therefore not a viable possibility. Please also refer to our comments on state protection above.

61. Internal relocation should also be assessed in terms of the viability of relocation and whether it would not be unduly harsh for the applicant to relocate. There have been many reports of homosexuals being evicted from their homes by their neighbours and the community in which they live and becoming homeless as a result. Human Rights Watch stated that:

*Men who have sex with men and women who have sex with women are routinely subjected to verbal and physical harassment, in many cases violently evicted from their homes and driven from their towns.*¹⁵

Human Rights Watch has reported many house evictions of people perceived to be homosexual by the community in which they live, many had become homeless as a result of the threats they had received.¹⁶ The US Department of State also notes attacks and intimidation at the homes of those perceived to be homosexuals.¹⁷ Amnesty International has also reported that once someone's sexuality is known they are often forced to leave their homes due to threats of attacks.¹⁸

Lesbians

62. The OGN states that lesbians in Jamaica are not at risk of persecution. The OGN states more precisely that:

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

¹⁴ Paragraph 75.

¹⁵ Human Rights Watch, Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic, 16/11/2004.

¹⁶ Human Rights Watch, Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic, 16/11/2004.

¹⁷ US Department of State, 2008 Human Rights Report: Jamaica, 25/02/2009.

¹⁸ Amnesty International, Jamaica: Battybwoys affi dead" ["Faggots have to die"], 17/05/2004.

persecution or Article 3 treatment, sufficiency of protection cannot be relied upon. Where the well-founded fear is a localized one it may be possible for the applicant to avoid the threat by moving to a different part of Jamaica. However, only if it clearly could not reasonably be argued that an applicant would experience persecution or ill-treatment were she to relocate and it is clear that it would not be unduly harsh for her to do so should a claim be certified on this basis. Where exceptionally it is found that a lesbian does have a well-founded fear of persecution in Jamaica and that she could not avoid the threat by internal relocation or it would be unreasonable for her to do so, as lesbians in Jamaica are a particular social group a grant of asylum would be appropriate.

63. Human Rights Watch found that lesbians are also the target of “community violence and police harassment” and that their complaints to the police are often ignored in a similar manner to complaints by gay men.¹⁹ The Refugee Documentation Centre in Ireland also stated that “lesbian women were subject to sexual assault as well as other physical attacks” and that this violence was “widespread in the community”.²⁰
64. There have been numerous reports of murder and sexual violence against lesbians in Jamaica.²¹ Human Rights Watch said that “women who are or are perceived to be lesbians are at an even greater risk of rape, as they may be targeted for sexual violence based on both their gender and sexual orientation”.²² Newsweek reported that lesbians were targeted by hate crime and that some had been raped.²³ HJT Research quoted from TIME Magazine which had noted that “rampant violence against gays and lesbians” in Jamaica had led human rights groups to dub the country “the most homophobic place on earth”.²⁴
65. Amnesty said they had received:

*Reports of specific acts of violence against lesbians, namely rape and other forms of sexual violence. There are reports of lesbians being attacked on the grounds of ‘mannish’ physical appearance or other visible ‘signs’ of sexuality. Some reports of abduction and rape emanate from inner-city communities, where local NGOs have already expressed concerns about high incidences of violence against women.*²⁵

¹⁹ Refugee Documentation Centre (Legal Aid Board, Ireland), Treatment of Homosexuals in Jamaica, 19/02/2010.

²⁰ Refugee Documentation Centre (Legal Aid Board, Ireland), Treatment of Homosexuals in Jamaica, 19/02/2010.

²¹ News One, Gays In Jamaica Live In Fear, 20/07/2009. US Department of State, 2008 Human Rights Report: Jamaica, 25/02/2009. Human Rights Watch, Jamaica: Investigate Murder of Alleged Lesbians, 27/07/2006. Human Rights Watch, Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic, 16/11/2004. The Guardian, 'If you're gay in Jamaica, you're dead', 02/08/2004. Amnesty International, Jamaica: Battyboys affi dead" ["Faggots have to die"], 17/05/2004.

²² Human Rights Watch, Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic, 16/11/2004.

²³ HJT Research, Newsweek: No let up to homophobia in Jamaica, 10/09/2007.

²⁴ HJT Research, Another anti-gay attack in Jamaica as mob targets men at Montego Bay carnival, 03/04/2007.

²⁵ DIVA Lesbian Magazine, No Women No Cry : lesbians in Jamaica, undated, <http://www.divamag.co.uk/diva/features.asp?AID=357>

66. The sexual violence towards lesbians is grounded in a belief that women can be cured of their homosexuality by having sex with a man. Human Rights Watch said that “women who have sex with women reported that they were subjected to constant threats of sexual violence, in some cases serious enough to force them to leave their homes and their neighborhoods”.²⁶
67. It was reported that women who have sex with women were pressurised by society to also have sex with men, to establish relationships with men and have children “because doing so is a critical part of establishing their identity as adult women”.²⁷
68. The national press in Jamaica is citing the prevalence of lesbianism as spreading like a “fungus”.²⁸
69. The Guardian reported that although the plight of lesbians in Jamaica is less well reported than the treatment of gay men, “their lives are no less difficult”.²⁹

Discretion

70. In July 2010, the UKBA re-issued the Jamaica OGN in light of the Supreme Court case of **HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31**. The revised OGN simply states that the section on gay men and lesbians is currently under review and that case owners should consult a Senior Caseworker as necessary. The following section therefore comments on the section as issued in the 1 June 2009 Jamaica OGN and has been update following the Supreme Court judgment.
71. The OGN seems to apply the principle of discretion in expressing one’s sexual identity with the concept of internal relocation. See in particular paragraph 3.7.14 which states that:

In some cases it may be reasonable to expect an applicant to relocate internally – for example where their lifestyle is discreet but their sexuality has become known locally. But where the factors outlined in paragraph 3.7.12 above mean that the applicant would readily be identified as gay wherever he lived, internal relocation would not be an option.

The concept of internal relocation or internal flight alternative is not compounded with the requirement of being discreet. In other words being discreet is not a factor in assessing the viability of internal relocation.

²⁶ Human Rights Watch, Hated to Death: Homophobia, Violence, and Jamaica's HIV/AIDS Epidemic, 16/11/2004.

²⁷ Refugee Documentation Centre (Legal Aid Board, Ireland), Treatment of Homosexuals in Jamaica, 19/02/2010.

²⁸ Jamaica Gleaner, High school girls gone gay!, 12/03/2006.

²⁹ The Guardian, 'If you're gay in Jamaica, you're dead', 02/08/2004.

72. The Country Guideline case of **DW (Homosexual Men – Persecution – Sufficiency of Protection) Jamaica CG [2005] UKAIT 00168** said on discretion that:

*However, an individual may allege that, were he to return to Jamaica, he cannot be expected to modify his behaviour or hide his sexuality. How is such an allegation to be approached? In these circumstances the test is not whether he should be expected to accept any restraint on his liberties but would he in fact act in the way he says he would. We rely on the judgment of Buxton LJ in **Z v SSHD [2005] Imm AR 75** at paragraph 16 where it is said;*

*“Although S395 was presented to the court that granted permission in this appeal as a new departure in refugee law, and for that reason justifying the attention of this court, in truth it is no such thing. McHugh and Kirby JJ, at their paragraph 41, specifically relied on English authority, **Ahmed v SSHD [2000] INLR 1**. It has been English law at least since that case, and the case that preceded it, **Danian v SSHD [1999] INLR 535**, that, in the words of the leading judgment of Simon Brown LJ at pp 7G and 8C – D:*

“In all asylum cases there is ultimately a single question to be asked: is there a serious risk that on return the applicant would be persecuted for a Convention reason.... The critical question: if returned, would the asylum seeker in fact act in the way he says he would and thereby suffer persecution? If he would, then, however unreasonable he might be thought for refusing to accept the necessary restraint on his liberties, in my judgment he would be entitled to asylum.”

It necessarily follows from that analysis that a person cannot be refused asylum on the basis that he could avoid otherwise persecutory conduct by modifying the behaviour that he would otherwise engage in, at least if that modification was sufficiently significant in itself to place him in a situation of persecution.”³⁰

73. As a point of general concern are paragraphs 3.7.8 Internal Relocation and 3.7.14 of the Conclusion. Both fail to adequately address the issue of ‘discretion’ that often arises in LGBT asylum/ human rights applications particularly in the light of the Supreme Court case of **HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31**.

74. The Supreme Court unanimously held that to pretend that one’s sexual orientation or sexuality does not exist or that the behavior by which it manifests itself can be suppressed is to deny that person’s fundamental right to be who they are. Lord Hope said that the Court of Appeal in the case of *J v Secretary of State for the Home Department* should have considered that it was “wrong to say that an applicant for protection was “expected” to live discreetly if it was intended as a statement of what the applicant must do”. Lord Hope clearly stated that it was a fundamental error to refuse asylum to an applicant on the basis that it would be reasonable to expect him to be discreet even if s/he is unwilling or

³⁰ Paragraph 77.

unable to do so. The Lords accepted the proposition put forward by the appellants that what should be considered is not what the applicant could do if returned but what he would do. The Supreme Court thereby rejected the 'reasonably tolerable' test established by the Court of Appeal in *J v Secretary of State for the Home Department*.

75. The Lords set out a two stage process to be considered when examining a claim for asylum based on fear of persecution due to one's sexual identity. The first stage is to consider whether the applicant is gay. The second stage includes a series of questions related to what the situation will be on return. The questions in the second stage relate to how the applicant will behave if returned and how others will react to that behaviour. More specifically:

- 1) Is there a risk of persecution for gays who live openly in the country of origin?
- 2) What would the applicant do if returned to his country of origin? In assessing how the applicant will behave on return, "he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it". What is reasonably tolerable to conceal is not part of this test. If the applicant would live openly and thereby be exposed to a real risk of persecution, s/he has a well-founded fear of persecution.
- 3) If the applicant would in fact live discreetly, the decision-maker must consider *why* he would do so.
- 4) If the applicant chooses to conceal part of his sexual identity on return in response to social pressures or for cultural or religious reasons and not due to a fear of persecution then s/he will not be granted asylum. Lord Hope expressly stated that the applicant should not expect to live a life as openly as s/he does in the UK as the purpose of the Refugee Convention is not to guarantee to everyone the same human rights standards as in the country of refuge.
- 5) If the applicant is likely to conceal his/her sexual identity due to a fear of persecution, or because the fear of persecution is a material reason for living discreetly, it will be necessary to assess whether the fear is well-founded and if it is asylum must be granted.

Victims of Domestic Violence

Treatment

76. The UN Committee on the Elimination of All Forms of Violence against Women noted “with grave concern the extent, intensity and prevalence of violence against women, especially sexual violence, in Jamaica”.³¹ The *Jamaica Observer* reported that, according to statistics from the Jamaica Constabulary Force, 2,501 cases of domestic violence went to court in 2008 (5 Mar. 2009).³² The Immigration and Refugee Board of Canada reported that culturally it was still acceptable in Jamaica for a husband to beat his wife.³³ The Board also reported that “according to police statistics that appeared in a March 2004 news article, domestic violence was the second leading cause of homicide from 1997 to 2002, accounting for 29 per cent or 1,401 of all murders reported (*Jamaica Gleaner* 14 Mar. 2004)”.³⁴ Amnesty International reported that “almost a third of total murders were attributed to domestic violence between 1997 and 2002. Yet it is estimated that only 10 per cent of women who are battered report the abuse”.³⁵

77. A very recent article from the *Jamaica Gleaner* reported that:

The opposition senator called for a reduction in domestic violence.

*"We know that domestic violence - and the minister of national security will agree with me - that domestic violence contributes the most to the crime rate that we have. Most of the murders are in domestic situations," she argued.*³⁶

78. Amnesty International found in its report on sexual violence against women in Jamaica that:

*As elsewhere in the world, women in Jamaica are most at risk in their homes – more than half of all violence against women occurs in the home, and just over half of this is perpetrated by intimate partners. Women are nearly thirty times more likely than men to have a sexual assault related injury and the perpetrator is usually someone they know.*³⁷

79. The UN Committee for the Elimination of Discrimination against Women noted in its observations to Jamaica’s report that:

³¹ Amnesty International, Jamaica: Now is the time to stop sexual violence against women and girls! Action Circular Update, 27/11/2006.

³² Immigration and Refugee Board of Canada, Jamaica: Domestic violence, including legislation and availability of state protection (2008 - 2009), 11/01/2010.

³³ Immigration and Refugee Board of Canada, Jamaica: Domestic violence, including legislation and availability of state protection (2008 - 2009), 11/01/2010.

³⁴ Immigration and Refugee Board of Canada, Jamaica: Update to JAM41517.E of 2 May 2003, domestic violence, including police response to complaints, 25/05/2004.

³⁵ Amnesty International, Sexual violence against women and girls in Jamaica: "just a little sex", 22/06/2006.

³⁶ *Jamaica Gleaner*, Falconer points finger at domestic violence, 24/04/2010.

³⁷ Amnesty International, Sexual violence against women and girls in Jamaica: "just a little sex", 22/06/2006.

*The entrenched stereotypical attitudes with regard to the role of women and men and the persistence of gender-based violence within the society constitute obstacles to the full implementation of the Convention.*³⁸

The Committee further concluded that:

*The Committee expresses its concern about the persistence of gender-based violence and domestic violence, including marital rape. The Committee also expresses its concern about the high incidence of incest and rape, and the lack of a holistic governmental strategy to identify and eradicate gender-based violence.*³⁹

State Protection

80. There is no information in the COIS Report on Jamaica to suggest that the laws to prevent domestic violence and protect women are being implemented in practice. The COIS Report section on Women is extremely short and repetitive.⁴⁰ It briefly outlines the law relevant in cases of domestic violence but provides no information on the implementation of these laws.

81. Freedom House reported in its annual report that although the legislation was in place to protect women victims of sexual violence and domestic violence, “enforcement remains lacking”.⁴¹ The Immigration and Refugee Board of Canada also found that enforcement of the legislation against domestic violence and reporting attacks remained serious problems.⁴² The Board also identified problems of resources in order to obtain effective state protection from domestic violence and that unless the victim fell into a witness protection programme there would be no other protection available.⁴³

82. The Inter-American Commission for Human Rights concluded that:

[Jamaica] must act to translate its obligations under national and international law into practice. Direct service providers reported that women do not trust the judicial

³⁸ Office of the United Nations High Commissioner for Human Rights (OHCHR), Concluding Observations of the Committee on the Elimination of Discrimination against Women: Jamaica, 02/02/2001.

³⁹ Office of the United Nations High Commissioner for Human Rights (OHCHR), Concluding Observations of the Committee on the Elimination of Discrimination against Women: Jamaica, 02/02/2001.

⁴⁰ COIS Report 24/12/2009, paragraphs 20.01-20.15.

⁴¹ Freedom House, Freedom in the World 2009: Jamaica, 16/07/2009.

⁴² Immigration and Refugee Board of Canada, Jamaica: Domestic violence, including legislation and availability of state protection (2008 - 2009), 11/01/2010.

⁴³ Immigration and Refugee Board of Canada, Jamaica: Domestic violence, including legislation and availability of state protection (2008 - 2009), 11/01/2010.

*system as a mechanism to prevent or respond to gender-based violence. Sources concurred in indicating that the courts are slow and the processes cumbersome. Various sources indicated that victims of sexual violence, for example, may be subjected to bias or disrespect in all stages of the process.*⁴⁴

Amnesty International further noted that there was discrimination against women and girls in the police and the judicial system and that women's testimony in court is given explicitly less weight than men's.⁴⁵ It was also reported that women were experiencing delays in courts proceedings when seeking protective measures against their husbands.⁴⁶ The UN Committee on the Elimination of All Forms of Violence against Women noted that legal aid was not available to women victim of gender-based violence and that:

*Violence against women "has not been addressed in a holistic and systematic manner, and that measures designed to combat and eradicate all forms of violence against women are not enforced in practice" (ibid., Para. 15).*⁴⁷

83. Although the law was amended in 2004⁴⁸ there has been a regular increase in cases of domestic violence and spousal rape.⁴⁹ The Jamaica Gleaner reported that "despite the passing of the Domestic Violence Act (1995) and its amendment (2004), gender-based violence against women physically, sexually and emotionally is still widespread".⁵⁰ Amnesty International found in its annual report that sexual violence against women and girls remained widespread in Jamaica.⁵¹
84. Amnesty International welcomed the adoption of the Sexual Offences Act in July 2009 but noted that women's rights groups had expressed concerns at the definition of rape in

⁴⁴ Inter-American Commission on Human Rights (IACHR), IACHR Issues Preliminary Observations on Visit to Jamaica, 05/12/2008.

⁴⁵ Immigration and Refugee Board of Canada, Jamaica: Legislation governing domestic violence and its enforcement, 30/04/2007.

⁴⁶ Immigration and Refugee Board of Canada, Jamaica: Domestic violence, including legislation and availability of state protection (2008 - 2009), 11/01/2010.

⁴⁷ Immigration and Refugee Board of Canada, Jamaica: Legislation governing domestic violence and its enforcement, 30/04/2007.

⁴⁸ Immigration and Refugee Board of Canada, Jamaica: Legislation governing domestic violence and its enforcement, 30/04/2007.

⁴⁹ HJT Research, Domestic violence increasing in Jamaica, 27/11/2007. Jamaica Gleaner, Domestic violence statistics alarming, 21/07/2008.

⁵⁰ Jamaica Gleaner, Women's Rights are human rights - Protection from harm or abuse, 21/04/2010.

⁵¹ Amnesty International, Amnesty International Report 2009: Jamaica, 28/05/2009.

the Act and that the Act criminalizes rape within marriage but only in certain circumstances.⁵²

85. The US Department of State reported that social and cultural attitudes in Jamaica led to the perpetuation of violence against women.⁵³ The State has failed to invest sufficient resources into combating violence against women and offering related services. Amnesty International noted for example that there was only one women's shelter in Kingston.⁵⁴

86. There was a general reluctance by the police to become involved in domestic issues, which led to cases not being pursued vigorously when reported.⁵⁵ The Immigration and Refugee Board of Canada found that "*The Jamaica Observer* states that the police do not "attach much significance to domestic violence".⁵⁶ The Board also reported that:

The counsellor at the (WICCW) in Kingston explained that the manner in which the police handle a case of domestic violence depends on its gravity: in cases of severe bodily harm, the police will encourage the woman to seek medical help and will also carry out an investigation (21 Aug. 2001). In most cases, however, the tendency is to send women to the Women Inc Crisis Centre for Women for counselling (ibid.).⁵⁷

87. The Immigration and Refugee Board of Canada found that domestic violence was rarely addressed because of the police's ineffectiveness in investigating domestic abuse but also women's economic dependence on their husbands. More precisely, the Board noted that:

According to the programme officer at the Women's Media Watch, the police are "ineffective" in enforcing laws because of "traditional attitudes" towards women, which permeate the police and the judiciary (21 Aug. 2001). However, the counsellor at the Women Inc Crisis Centre for Women explained that laws are not enforced because women are not willing to see their spouses, who are also fathers to their children, prosecuted. This, she explained, is due to the fact that women are still

⁵² Amnesty International, Jamaica: Submission to the UN Universal Periodic Review: Ninth session of the UPR Working Group of the Human Rights Council, November-December 2010, 19/04/2010.

⁵³ US Department of State, 2009 Human Rights Report: Jamaica, 11/03/2010.

⁵⁴ Amnesty International, Jamaica: Submission to the UN Universal Periodic Review: Ninth session of the UPR Working Group of the Human Rights Council, November-December 2010, 19/04/2010. Immigration and Refugee Board of Canada, Jamaica: Effectiveness of the Domestic Violence Act, 1999-2000, 16/10/2000. HJT Research, Only one crisis shelter for women fleeing domestic violence in Jamaica, 18/12/2006.

⁵⁵ COIS Report para. 20.13. US Department of State, 2009 Human Rights Report: Jamaica, 11/03/2010.

⁵⁶ Immigration and Refugee Board of Canada, Jamaica: Domestic violence, including police responses to complaints (2001 to April 2003), 02/05/2003.

⁵⁷ Immigration and Refugee Board of Canada, Jamaica: Protection and/or redress available to victims of domestic violence and attitudes of the police and the judiciary toward women who report such cases, 01/10/2001.

*dependent on men and sometimes they lack the financial resources to take the case to the courts of justice.*⁵⁸

The Board concluded in an earlier study that women were reluctant to report incidents of domestic abuse because they were often made to feel that the situation was their fault.⁵⁹

88. In a study on sexual violence against women, Amnesty International found that the police were unwilling to offer protection to victims of sexual violence in their homes and that there was a general culture of disbelief of women who claimed they had been sexually assaulted by their partners. More specifically, the report found that:

*Respondents in a survey on the subject stated that the police would not be sympathetic, and would only visit them as a last resort. In the succinct words of one interviewee: "Police nah come.. Police nah come". Although roughly two-thirds of respondents said women should go to the police if they were beaten by their partners. In cases of marital rape, where police have little legal authority to intervene, women have little chance of achieving prevention of further acts of sexual violence, access to justice or redress. In another case reported to Amnesty International, a woman was raped in her own home. She reported the rape to the police. The police were uninterested in her story, saying that she was partially to blame as she was wearing a skimpy top and shorts.*⁶⁰

89. HJT Research reported that:

Assistant Commissioner of Police John McLean told the Jamaica Observer that a "code of silence" seems to surround domestic violence.

*"A lot of persons, women especially, tend to cover up the abuse because of embarrassment and because of financial dependence on the abuser. But if they continue to put up with the problem, it will only get worse. No one should have to sit back and accept abuse," McLean said.*⁶¹

90. The Jamaica Gleaner has provided a useful summary of the problems faced by victims of domestic violence in accessing justice:

⁵⁸ Immigration and Refugee Board of Canada, Jamaica: Protection and/or redress available to victims of domestic violence and attitudes of the police and the judiciary toward women who report such cases, 01/10/2001.

⁵⁹ Immigration and Refugee Board of Canada, Jamaica: Effectiveness of the Domestic Violence Act, 1999-2000, 16/10/2000.

⁶⁰ Amnesty International, Sexual violence against women and girls in Jamaica: "just a little sex", 22/06/2006.

⁶¹ HJT Research, Domestic violence increasing in Jamaica, 27/11/2007.

It is expressed concern that the inadequacy of response of the legal system, the persistence of stereotypes that devalue women, insufficient training of criminal justice personnel, and the lack of enforcement measures designed to combat violence against women have contributed to a de facto culture of impunity, constituting an obstacle for women's access to justice.

The committee, while noting that the Jamaican Government has made some effort to address such violence against women, including the passage of the amendment to the Domestic Violence Act and the ratification of the Convention of Belm do Par, was concerned that so far, the problem has not been addressed in a holistic and systematic manner, and that measures designed to combat and eradicate all forms of violence against women are not enforced in practice.

The committee said that the prevailing gender stereotypes and patriarchal culture and macho image of men may be contributing factors to the levels of violence against women.

The committee spoke of insufficient means of judicial recourse for victims, and a lack of victim services and protection, and of effective punishment of perpetrators of such violence.⁶²

Internal Relocation

91. What decision-makers should consider when determining whether relocation would be unduly harsh for women refugees is the cumulative effects of relocation itself in terms of social, cultural, economic, legal and psychological aspects. Protection in the area of relocation must be effective and of a durable nature. Decision makers should also ensure that access to the area of relocation is safe.

92. Decision-makers should refer to the Asylum Policy Instructions on Gender and in particular note that:

In considering the reasonableness of relocation the decision-maker may need to take into account gender issues. For example, in certain countries, financial, logistical, social, cultural and other factors may mean that women face particular difficulties. This may be particularly the case for widows or single parents. Women may have family ties i.e. children who are not able to relocate, they may face a particular form

⁶² Jamaica Gleaner, Women's Rights are human rights - Protection from harm or abuse, 21/04/2010.

*of discrimination in the place of relocation, or be unable to work such that they cannot survive in the place of relocation.*⁶³

Conclusion

93. The COIS report dated 24 December 2009 notes that Jamaica has ratified the UN Convention on the Elimination of All Forms of Discrimination against Women. No reference is made however on the comments made by the CEDAW Committee on Jamaica's failure to implement the Convention. The COIS Report of 2009 correctly reports the prevalence of violence against women in Jamaica.⁶⁴ Generally the COIS Report on Women in Jamaica is not correctly organised into the section relating to violence against women, legal rights and socio and economic rights. The information provided is duplicated and does not provide a comprehensive understanding of the laws protecting women against violence, including domestic violence, the implementation of these laws in practice and the practical effects of these laws, the social and cultural attitude by the general public and organs of the state to violence against women and the availability and accessibility of services for women victims of domestic violence.

94. There is no information in the COIS Report relevant for an assessment of the viability of internal flight alternative for women seeking asylum. We refer you to our general section on internal relocation below for the type of country information that would be necessary for an adequate assessment of whether relocating internally is feasible.

Prison Conditions

Introduction

95. Section 3.9 of the U.K. Border Agency's Operational Guidance Note (OGN) of 01/06/2009⁶⁵ concerns prison conditions in Jamaica. Section 3.9.3, Section 3.9.4, and Section 3.9.5 all contain country information, while Section 3.9.6 reaches a conclusion based on this country information. These sections state, in full (footnotes omitted):

3.9.3 *Prison conditions remain poor in Jamaica, primarily due to overcrowding and poor sanitary conditions. Medical care is also poor, primarily a result of having few doctors or nurses. Men and women are incarcerated in separate facilities under similar conditions, except that women's prisons are generally not overcrowded.*

⁶³ APIs on Gender in the Asylum Claim.

⁶⁴ COIS Report 24/12/2009, para. 20.09.

⁶⁵ UK Border Agency, "Operational Guidance Note: Jamaica," 01/06/2009.

Although the law prohibits the incarceration of children in adult prisons, some juveniles are held in adult jails reportedly because there are no juvenile facilities with adequate security. The majority of pre-trial detainees are held in police custody either in police stations or in remand centres, generally separate from convicted prisoners.

3.9.4 *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. In general, the Government allows private groups, voluntary and religious organisations, local and international human rights organisations, and the media to visit prisons and monitor prison conditions.*

3.9.5 *Male inmates deemed by prison wardens to be gay are held in a separate facility for their protection. The method used for determining their sexual orientation is reportedly subjective and not regulated by the prison system, although inmates often admit they are gay for their own safety. There were numerous reports of violence against gay inmates during 2008, perpetrated both by the wardens and by other inmates, but few inmates sought recourse through the prison system.*

3.9.6 Conclusion. *Whilst prison conditions in Jamaica are poor with overcrowding and poor basic facilities being particular problems, conditions are unlikely to reach the Article 3 threshold. Therefore, even where applicants can demonstrate a real risk of imprisonment on return to Jamaica a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.*

96. Every piece of country information in Section 3.9 of the OGN is drawn from either the 2007 or 2008 U.S. State Department Human Rights Report on Jamaica: those which reference the UKBA's COIS Report of August 2008 cite the U.S. State Department's 2007 Human Rights Report on Jamaica,⁶⁶ while other sections directly cite to the U.S.

⁶⁶ UK Border Agency, "Country of Origin Information Report: Jamaica," 18/08/2008.

State Department's 2008 Human Rights Report.⁶⁷ No other sources are referenced in Section 3.9; the information in these USSD reports was published in early 2008 and early 2009, and is therefore no longer current.

97. The country information contained in the OGN should not rely on a single source, but rather should be corroborated with other reliable sources of information. The OGN would more accurately reflect the current situation in Jamaica by incorporating information from other sources, such as those cited in the latest UKBA COIS Report on Jamaica (24/12/2009),⁶⁸ and a recent (19/02/2010) preliminary report from the United Nations Special Rapporteur on Cruel, Inhuman or Degrading Treatment or Punishment, which presents the evidence collected by the Special Rapporteur on a fact-finding mission specifically to monitor Jamaica's prison conditions.⁶⁹
98. Moreover, the U.S. State Department has recently (11/03/2010) published its 2009 Human Rights Report on Jamaica,⁷⁰ with updated and new information on prison conditions: Section 3.9 of the OGN, which relies exclusively on past USSD Human Rights Reports to portray the current situation in Jamaica, should at the very least adopt the USSD's own updates.

Review of Section 3.9.3: Prison Conditions in General - poor sanitary conditions & overcrowding

99. The relevant section of the OGN states:

3.9.3. Prison conditions remain poor in Jamaica, primarily due to overcrowding and poor sanitary conditions. [...]

This statement comes directly from the USSD 2007 Human Rights Report, sections of which are presented in the Jamaica COIS report of August 2008 (Section 13.01).⁷¹ More recent information on Jamaica presents a much starker portrayal of prison conditions.

100. The new 2009 USSD report, from 11/03/2010, retains the same statement that "prison conditions remain poor in Jamaica, primarily due to overcrowding and poor sanitary conditions."⁷² However, the new report also includes information which

⁶⁷ U.S. State Dept., "2008 Human Rights Report: Jamaica," 25/02/2009.

⁶⁸ UK Border Agency, "Country of Origin Information Report: Jamaica," 24/12/2009.

⁶⁹ United Nations Press Release, "UN Special Rapporteur presents preliminary findings on his mission to Jamaica," 19/02/2010.

⁷⁰ U.S. State Dept., "2009 Human Rights Report: Jamaica," 11/03/2010.

⁷¹ UK Border Agency, "Country of Origin Information Report: Jamaica," 18/08/2008.

⁷² U.S. State Dept., "2009 Human Rights Report: Jamaica," 11/03/2010.

elaborates on these poor conditions, and which was not included in previous USSD reports. The new USSD report states:

Prison conditions remained poor, primarily due to overcrowding and poor sanitary conditions. Men and women were incarcerated in separate facilities under similar conditions. Cells in some facilities had little natural light and inadequate artificial light. Hunt's Bay Lockup held prisoners in a cage-like structure open to the rain and sun and the curious gazes of passers-by. The women's prison, Fort Augusta with about 200 inmates, had no indoor water supply. Inmates had to fetch water in containers they provided themselves from a central spigot or well. Inmates who did not own a container could not bathe.

Prison food was poor, and wardens were observed serving themselves generously with whatever meat was available, leaving only leftover gravy for the inmates. Mattresses were not provided; inmates slept on the concrete floors. Those with access to funds and outside contacts were permitted to purchase thin foam mattresses that often became infested with bedbugs. Ringworm was a common malady.⁷³

101. To give a more accurate portrayal of current prison conditions in Jamaica, the OGN, like the updated USSD report, should include country information that gives readers a more detailed understanding of just how “poor” the conditions in Jamaica really are.

102. Other recent country information also adds evidence to how dire prison conditions in Jamaica are. In its most recent report on Jamaica, Freedom House spoke of the “appalling conditions in detention centers and prisons.”⁷⁴ In March 2010, the director of Prison Fellowship Jamaica, an organisation which works with prison inmates in the country, stated that the prison system faces “systemic” problems, particularly the lack of space and inadequate sanitary facilities, and that the Jamaican government lacked the political will to address these problems.⁷⁵ In February 2010, Manfred Nowak, the United Nations Special Rapporteur on Cruel, Inhuman or Degrading Treatment or Punishment, visited Jamaica and presented his preliminary findings on 19/02/2010.⁷⁶ While the UN Special Rapporteur did note some positive developments in Jamaica, the preliminary report as a whole constitutes a scathing condemnation of prison conditions in the

⁷³ Ibid.

⁷⁴ Freedom House, “Freedom in the World 2009: Jamaica,” 16/07/2009.

⁷⁵ The Jamaica Gleaner, “Gov’t not addressing island’s problems – minister,” 05/03/2010.

⁷⁶ United Nations Press Release, “UN Special Rapporteur presents preliminary findings on his mission to Jamaica,” 19/02/2010.

country.⁷⁷ In a section entitled “Inhuman conditions of detention and ill-treatment,” The UN Special Rapporteur writes, “I was most concerned about the appalling conditions of detention in general, which reflect a complete disrespect for the human dignity of persons in conflict with the law.”⁷⁸ The UN Special Rapporteur was particularly shocked by the conditions in police detention:

During the visits, I witnessed that detainees were locked up in overcrowded, filthy cells, infested with rats, cockroaches and lice, and with an unbearable stench to them. Many cells were in complete darkness, resembling caves, and with poor ventilation. The time detainees were allowed to be outside their cells, including for using the toilet, was extremely limited. They were otherwise dependent on police officers to allow them out to use the toilet and, when officers refused, they were forced to urinate and defecate in plastic bags and bottles and in plates in front of other detainees. They were often forced to sleep on concrete bunks or on the floor. Although in some cases they were allowed to receive visitors, they were not always able to see them, and when they could, it was always through the grills and only for a few minutes. Access to medical care also depended on the goodwill of the authorities. The overall impression was one of arbitrariness.⁷⁹

103. At many correctional facilities, the Special Rapporteur also found appalling conditions:

The facilities visited displayed a broad range of quality from the fairly poor to examples of good practice. The two main prisons (St. Catherine Adult Correctional Centre and Tower Street Adult Correctional Centre) are ancient facilities, which were built for storehousing people and are not fit for modern correctional purposes of rehabilitating and re-socializing criminal offenders. They are overcrowded, lack sanitary facilities, and any meaningful opportunities for education, work and recreation. In addition, basic amenities, such as electricity, medical treatment and the use of toilets, depend on the goodwill of warders. I also found credible complaints by prisoners of beatings by the officers.⁸⁰

104. In addition, recent information specifically concerning overcrowding in Jamaican prisons would enhance the OGN’s accuracy and currency. The latest COIS report (December 2009) on Jamaica⁸¹ contains relevant information on prison conditions which

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ UK Border Agency, “Country of Origin Information Report: Jamaica,” 24/12/2009.

was not available in the August 2008 COIS report relied upon in the current OGN. Section 13.01 of the report cites a Jane's Sentinel Country Risk Assessment, which provides specific data as to precisely how overcrowded Jamaica's prisons are:

13.01 Jane's Sentinel Country Risk Assessments – Jamaica (Security and Foreign Forces), dated 22 October 2008, reported that Jamaica currently has 11 prisons across the island, although there are plans to replace nine of these with a new super prison with improved facilities. Jane's also noted that: "Prisons with a total design capacity of 2,700 held 3,948 inmates in 2005. Most of the excess is in Tower Street in Kingston, designed for 650, which holds 1,642, and St Catherine prison, designed for 650, which holds 1,642. The average annual cost per prisoner was JMD591,000." [87d]⁸²

Review of Section 3.9.3: Medical Care in Jamaica's prisons

105. The relevant section of the OGN states:

3.9.3 [...] Medical care is also poor, primarily a result of having few doctors or nurses. [...]

This statement, taken from the 2007 USSD Human Rights Report cited in the August 2008 COIS report, is supported by the cited country information. However, the 2008 USSD report available at the time the OGN was produced actually went into greater detail on just how few medical practitioners are available to serve Jamaica's prison population:

Medical care also was poor, primarily a result of having only three full-time doctors, one full-time nurse, and one psychiatrist to cover 13 facilities with 4,790 inmates across the island.⁸³

106. The most recent USSD Report (11/03/2010) contains a similar statement, with the number of medical staff remaining constant, and the number of prisoners staying virtually the same:

⁸² Ibid.

⁸³ U.S. State Dept., "2008 Human Rights Report: Jamaica," 25/02/2009.

Prison medical care was also poor, primarily a result of having only three full-time doctors, one full-time nurse, and one psychiatrist to cover 12 facilities (eight adult, four juvenile) with almost 5,000 inmates across the island.⁸⁴

107. However, the 2009 USSD Report on Jamaica differs from the 2008 USSD report by going into even more detail on not just the quality of medical care available to Jamaican prisoners, but also the terrible effects it can have on prisoners. Following the statement cited immediately above, this report goes on to state:

One prisoner died after breaking a leg; prison staff claimed there was no vehicle available to transport him to the hospital, and by the time he was brought in, complications from diabetes had caused infection and the prisoner died. Other prisoners in need of dentures and unable to eat the prison food encountered difficulties in gaining access to a dentist. A doctor who treated the girls at Armadale made repeated requests to have two sexually active, HIV-infected inmates removed, to no avail. She also reported that many inmates at Armadale were suicidal, homicidal, or suffered from psychosis and received no treatment.⁸⁵

Review of Section 3.9.3: Conditions for Women in Jamaica's Prisons

108. The relevant section of the OGN states:

3.9.3. [...] Men and women are incarcerated in separate facilities under similar conditions, except that women's prisons are generally not overcrowded. [...]

This statement is taken word for word from the 2008 USSD Human Rights Report.⁸⁶ However, it should be noted that the most recent USSD Human Rights Report on Jamaica (11/03/2010) has deleted the language “except that women’s prisons are generally not overcrowded,” and this report gives evidence that conditions for women in Jamaican prisons are just as overcrowded and poor as for men.⁸⁷ Thus, the current USSD Report reads:

Prison conditions remained poor, primarily due to overcrowding and poor sanitary conditions. Men and women were incarcerated in separate facilities under similar conditions. Cells in some facilities had little natural light and inadequate artificial

⁸⁴ U.S. State Dept., “2009 Human Rights Report: Jamaica,” 11/03/2010.

⁸⁵ Ibid.

⁸⁶ U.S. State Dept., “2008 Human Rights Report: Jamaica,” 25/02/2009.

⁸⁷ U.S. State Dept., “2009 Human Rights Report: Jamaica,” 11/03/2010.

*light. Hunt's Bay Lockup held prisoners in a cage-like structure open to the rain and sun and the curious gazes of passers-by. The women's prison, Fort Augusta with about 200 inmates, had no indoor water supply. Inmates had to fetch water in containers they provided themselves from a central spigot or well. Inmates who did not own a container could not bathe. [...]*⁸⁸

Review of Section 3.9.3: Conditions for Pre-trial Detainees in Jamaica

109. The relevant section of the OGN states:

3.9.3 [...] The majority of pre-trial detainees are held in police custody either in police stations or in remand centres, generally separate from convicted prisoners. [...]

This sentence is taken from the 2008 COIS Report (citing the 2007 USSD Human Rights Report) and the 2008 USSD Human Rights Report; this same statement is also present in the most recent USSD 2009 Human Rights Report on Jamaica.⁸⁹ However, this sentence alone does not fully reflect current country information, which presents damning evidence that, while pre-trial detainees may be held separately from convicted criminals (as the USSD reports), these pre-trial detainees are often held in appalling conditions for long periods of time, even years, without being charged with a crime. As mentioned above in section 2, the UN Special Rapporteur found appalling conditions for individuals in police custody.⁹⁰ In addition, the preliminary report of the UN Special Rapporteur goes on to say of police detention:

If people were held in such inhuman conditions for up to 48 hours, i.e. the maximum duration of police custody in most countries of the world, the problem would not be that severe. But in Jamaica, police lock-ups are at the same time used as remand centres, where persons awaiting trial can be held for several months or even years. I was shocked to discover that a detainee had been held in police custody for five years. [...] Police custody should only be used for short-term detention not exceeding a maximum of 48 hours. If charged within 48 hours, a person who is not released on bail, should then be transferred to a remand facility under a different authority from the police. I gained the impression that these extremely long periods

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ United Nations Press Release, "UN Special Rapporteur presents preliminary findings on his mission to Jamaica," 19/02/2010.

*of police custody under unbearable conditions are calculated to cause such personal distress as to force them to confess.*⁹¹

110. Moreover, the UN Special Rapporteur found that conditions in the Horizon remand centre, a facility for individuals who have been charged with a crime and are awaiting trial, were almost as bad as in the police stations:

*I consider the conditions in this detention facility to be extremely harsh, notwithstanding the fact that remand detainees are to be presumed innocent until found guilty. The conditions were better than in the police stations, but still raised serious human rights concerns. One of the main complaints of the detainees was the arbitrariness and lack of water, sometimes for a number of days.*⁹²

111. Sources, including the UN Special Rapporteur's preliminary findings, reported on a recent (08/02/2010) disturbance at the Horizon remand centre, where the detainees revolted against the guards in protest at their appalling conditions. The UN Special Rapporteur states:

*The resulting suppression of this frustration by the authorities, through the use of force, can only be described as excessive. Rather than maintaining order, a number of officials used the incident as an opportunity for administering corporal punishment, leading to severe injuries in a number of cases. The medical evidence gathered, together with the fact that very few officers suffered light injuries while almost 60 detainees were injured, some with broken limbs, leads me to conclude that severe pain was intentionally inflicted for the purpose of punishment, amounting to torture.*⁹³

112. Jamaicans for Justice, a Jamaican human rights NGO, reported on 19/04/2010 that one of the detainees injured in these disturbances at the Horizon centre had been held at the remand centre for six years without trial.⁹⁴ The UN Special Rapporteur stated that this uprising could have been prevented if conditions were more humane, and reported that detainees at Horizon showed him letters that they had written (and which the officials had ignored) to protest the conditions at the centre weeks before the uprising.⁹⁵

⁹¹ Ibid.

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Jamaicans for Justice, "Six years in jail without trial," 19/04/2010.

⁹⁵ BBC Monitoring Latin America, "Jamaican prison uprising could have been prevented, says UN official," 20/02/2010.

Review of Section 3.9.3: Prison Conditions for Juveniles in Jamaica

113. The relevant section of the OGN states:

3.9.3. [...] Although the law prohibits the incarceration of children in adult prisons, some juveniles are held in adult jails reportedly because there are no juvenile facilities with adequate security. [...]

This sentence is taken from the 2008 COIS Report (citing the 2007 USSD Human Rights Report) and the 2008 USSD Human Rights Report. However, while it has retained this same language, the U.S. State Dept. has also added additional information on prison conditions for juveniles in its 2009 Human Rights Report:

At the Armadale Juvenile Correctional Center where 50 girls, ages 13 to 16, were held in severely overcrowded conditions, lockdown was a common punishment for unruly behavior and other infractions. Although the use of lockdown was supposed to be limited to 24 hours, inmates reported lockdowns that lasted more than a month. During lockdown the girls were not permitted to use the bathrooms; instead, buckets or newspapers were used and removed each morning.

On May 22, fire broke out in the Armadale facility when police threw a tear gas canister into the locked dormitory. It ignited a foam mattress, and five girls died in the flames. Many more were injured, and two more girls died in the hospital from their injuries. The lack of sufficient or operable fire extinguishers led directly to the deaths of the inmates. Reports concluded that supervision and staffing was grossly inadequate, with staff often working double shifts. Inmates reported that they were forced to eat their meals with their hands as no eating utensils were provided. The facility was closed immediately after the fire.

[...]

Authorities moved girls to the women's prison from other facilities due to incorrigibly violent behavior. After the closure of Armadale, nine of those girls were moved to the notorious Horizon maximum-security remand center where the island's most violent male offenders are held. In October the Office of the Children's Advocate announced that it would investigate reports of children being held in police lock-ups.

114. The current USSD report continues to contain a similar statement to that cited by the current OGN, but this statement now contains new information about the young age of those juveniles held in adult facilities:

Although the law prohibits the incarceration of children in adult prisons in most cases, some juveniles as young as 13 years old were held in adult jails because there were no juvenile facilities with adequate security. Authorities jailed juveniles convicted of murder in an adult facility, but police were prohibited from holding children under 14 in adult police detention.

115. Moreover, there is evidence that the situation for individuals who have yet to be convicted of a crime, as analysed above, extends to juveniles: IPS News reported in February 2010 that 80 juveniles, between the ages of 13 and 17, who have yet to be tried for a crime and thus should be held in remand centres, were actually held in lockups with convicted criminals.⁹⁶ One Jamaican human rights lawyer stated in February 2010 that, despite the publicity generated by the Armadale fire, the government of Jamaica has been slow to make any changes to the appalling conditions for juveniles in Jamaica's prison system,⁹⁷ and the human rights NGO Jamaicans for Justice issued a public letter chastising the Jamaican government for failing to improve the plight of juveniles despite the reports of the terrible conditions at Armadale.⁹⁸

116. The report by UN Special Rapporteur on 19/02/2010 also shows that conditions for juveniles in Jamaican detention centres remain extremely poor, even after the publicity of the Armadale fire.⁹⁹ The UN Special Rapporteur states that, although some juvenile centres had a relatively high standard, one centre for boys "...demonstrated a disturbing system of repression and regular corporal punishment"; these boys "were never allowed to leave the buildings, depriving them of any recreational activities in the open air," and "the overseers appeared to be aware of the use of corporal punishment by certain warders, but did not give the impression of taking serious measures to deal with the situation."¹⁰⁰ In addition, the Special Rapporteur was concerned that centres, including the Horizon centre called "notorious" in the USSD report above, which were meant to hold only adults, were also holding juveniles, and he stated: "Even more

⁹⁶ Inter Press Service News Agency (IPS), "Jamaica: Young Offenders Caught Up in Adult System," 23/02/2010,.

⁹⁷ Ibid.

⁹⁸ Jamaicans for Justice, "JFJ Appalled at the Lack of Urgency Displayed by the Government," 09/03/2010.

⁹⁹ United Nations Press Release, "UN Special Rapporteur presents preliminary findings on his mission to Jamaica," 19/02/2010.

¹⁰⁰ Ibid.

worrying is the fact that children continue to be held together with adults in police lock-ups.”¹⁰¹

Review of Section 3.3.9: Situation for Prisoners with Mental Disabilities

117. Although the August 2008 COIS report, upon which the current OGN often relies, contains a long section on prisoners with mental disabilities in Jamaica, there is no mention in the current OGN of the specific situation for prisoners with mental disabilities.

118. The August 2008 COIS Report, in Section 13.10, presents evidence that mentally ill prisoners are targeted for sexual abuse by correctional officers and other prisoners; this evidence states that 75 mentally inmates were infected with HIV due to this sexual abuse, and that 3 died of AIDS due to the subsequent failure of the prison system to treat them.¹⁰² The August 2008 COIS Report, in Section 13.11, also cites evidence stating that the Jamaican prison system is, as a whole, inadequately equipped to provide proper services to inmates with mental illnesses.¹⁰³

119. More recent information from the UN Special Rapporteur confirms that the situation for prisoners with mental illnesses in Jamaican prisons remains dire. The UN Special Rapporteur states:

*Persons with mental disabilities, suspected or convicted of a crime, are not held in a separate psychiatric institution. Rather, they are detained in special wings of correctional centres. In the case of police stations, they are held together with other detainees. The conditions in which these particularly vulnerable persons are held, together with a lack of adequate medical attention, are damaging to their physical and mental health. Persons suffering from a severe mental illness need placement in a secure psychiatric institution.*¹⁰⁴

Review of Section 3.9.4: Country Information on Abuse of Prisoners by Correctional Officers

120. The relevant section of the OGN states:

¹⁰¹ Ibid.

¹⁰² UK Border Agency, “Country of Origin Information Report: Jamaica,” 18/08/2008.

¹⁰³ Ibid.

¹⁰⁴ United Nations Press Release, “UN Special Rapporteur presents preliminary findings on his mission to Jamaica,” 19/02/2010.

3.9.4 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. In general, the Government allows private groups, voluntary and religious organisations, local and international human rights organisations, and the media to visit prisons and monitor prison conditions.

This paragraph is taken word for word from the August 2008 COIS Report (Section 13.02),¹⁰⁵ which cites the USSD 2007 Human Rights Report, the language of which did not change in the USSD 2008 Human Rights Report.¹⁰⁶ However, while OGN Section 3.9.4 accurately represents the original source, showing that there exists a process by which prisoners can raise allegations of abuse, this section fails to give an accurate portrayal, even based on the sources available at the time the OGN was written, of the prevalence and degree of prisoner abuse by correctional officers in Jamaican prisons.

121. The 2007 USSD report on Jamaica, cited in the August 2008 COIS Report, begins its section on “Torture and other cruel, inhuman and degrading punishment” with this sentence:

*Although the law prohibits such practices, reports of physical abuse of prisoners by guards continued, despite efforts by the government to remove abusive guards and improve procedures.*¹⁰⁷

122. This sentence is replicated in the same section of the 2008 USSD report.¹⁰⁸ Moreover, the authors of section 13.02 of the August 2008 COIS Report chose to present this same sentence immediately before the statement “When prisoners raise allegations of abuse by correctional officers....”¹⁰⁹ Section 13.02 of the August 2008 COIS Report thus states:

“Although the law prohibits such practices, reports of 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 correctional officials, then by an inspector

¹⁰⁵ UK Border Agency, “Country of Origin Information Report: Jamaica,” 18/08/2008.

¹⁰⁶ U.S. State Dept., “2008 Human Rights Report: Jamaica,” 25/02/2009.

¹⁰⁷ UK Border Agency, “Country of Origin Information Report: Jamaica,” 18/08/2008.

¹⁰⁸ U.S. State Dept., “2008 Human Rights Report: Jamaica,” 25/02/2009.

¹⁰⁹ UK Border Agency, “Country of Origin Information Report: Jamaica,” 18/08/2008.

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 allegation.”¹¹⁰

123. OGN Section 3.9.4’s omission of this sentence concerning reports of abuse by prison guards, which is presented with such prominence in the sources upon which OGN Section 3.9.4 relies, leads to an inaccurate picture of whether or not prisoners are actually abused by prison officials in Jamaica. Because of the evidence that prisoner abuse does indeed occur, it is not sufficient for the OGN simply to say that a process exists for “when prisoners raise allegations of abuse”: from this statement, it does not necessary follow that prisoners are indeed abused and would actually need to make use of this process. The impact of this key omission of the August 2008 COIS Report and USSD information is multiplied by the fact that the OGN makes no reference at all to the fact that prisoners are actually abused by correctional officers in Jamaica.

124. In fact, both the sources available in June 2009, including the UKBA’s August 2008 COIS report, and sources that have become available since the OGN’s publication, show that abuse of prisoners by correctional officers in Jamaican prisons is widespread and has lead to prisoner deaths. The August 2008 COIS Report cites evidence of a prisoner dying while in police custody (Section 13.03)¹¹¹ and of prison guards investigated after one prisoner was killed by fellow inmates (Section 13.04).¹¹² This COIS Report also contains an extensive section on mentally ill prisoners, which was not referenced in the OGN: there is evidence contained in Section 13.10 that mentally ill prisoners were targeted for sexual abuse by correctional officers and other prisoners; this evidence states that 75 mentally inmates were infected with HIV due to this sexual abuse, and that 3 died of AIDS due to the subsequent failure of the prison system to treat them.¹¹³

125. The most recent USSD Human Rights Report on Jamaica (11/03/2010) retains the language of the 2007 and 2008 reports: “...reports of physical abuse of prisoners by guards continued...”¹¹⁴ More recently, in February 2010, the UN Special Rapporteur found that that abuses of prisoners in Jamaica are so terrible that, while they may not explicitly constitute torture “in the classical sense,” these abuses could perhaps amount to

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ U.S. State Dept., “2009 Human Rights Report: Jamaica,” 11/03/2010.

torture.¹¹⁵ On his visit to inspect Jamaican prison conditions, the UN Special Rapporteur found “a general atmosphere of violence and aggression in almost all places of detention, and a frequent use of beatings as a form of punishment.”¹¹⁶ More specifically, he states:

With the exception of isolated instances, I have not found torture, in the classical sense of deliberately inflicting severe pain or suffering as a means of extracting a confession or information, to be a major problem in Jamaica. This may be partly due to the commendable rule that lawyers or Justices of the Peace must be present during interrogations, which acts as an important safeguard against torture. Severe pain and suffering applied for the purpose of punishment can, however, also amount to torture. I have found a considerable number of cases, which were corroborated by medical evidence, where persons have been subjected to different degrees of beatings in order to punish them. This is true for example, in relation to the events of 8 February 2010 in the Horizon Remand Centre as recounted below. [Emphasis added.]¹¹⁷

126. As analysed above on pre-trial detainees, the UN Special Rapporteur also stated that the violent suppression of the detainee uprising at the Horizon remand centre in February 2010 “leads me to conclude that severe pain was intentionally inflicted for the purpose of punishment, amounting to torture.”¹¹⁸ The UN Special Rapporteur was so concerned that these conditions in Jamaica could amount to torture of prisoners, he recommended that Jamaica ratify the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and criminalise torture under Jamaican domestic law.¹¹⁹ According to one source, the Jamaican government has not yet responded to the UN Special Rapporteur’s findings.¹²⁰

Review of Section 3.9.4: The Complaint Mechanism for Abused Prisoners

127. The relevant section of the OGN states:

3.9.4 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. [...]

¹¹⁵ United Nations Press Release, “UN Special Rapporteur presents preliminary findings on his mission to Jamaica,” 19/02/2010.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Inter Press Service News Agency (IPS), “Jamaica: Young Offenders Caught Up in Adult System,” 23/02/2010.

More information would need to be included if the OGN were to accurately reflect how efficient and effective the process for obtaining justice for abused prisoners really is. In its latest Human Rights Report (11/03/2010), the USSD added additional information (in bold below), which was not included in the previous human rights reports, to this section on the prisoner complaint process:

*[...] When prisoners raised allegations of abuse by correctional officers, the charges were 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.**¹²¹ [...] [Emphasis added.]*

128. Moreover, the preliminary findings from the UN Special Rapporteur in February 2010 also provide evidence that, while a complaint mechanism does exist for prisoners alleging abuse, it is inadequate: the Special Rapporteur states that, “It was also apparent that detainees had no knowledge of or trust in any complaints mechanisms available to them.”¹²²

Review of Section 3.9.5: Gay Inmates in Jamaican Prisons

129. The relevant section of the OGN states:

3.9.5 Male inmates deemed by prison wardens to be gay are held in a separate facility for their protection. The method used for determining their sexual orientation is reportedly subjective and not regulated by the prison system, although inmates often admit they are gay for their own safety. There were numerous reports of violence against gay inmates during 2008, perpetrated both by the wardens and by other inmates, but few inmates sought recourse through the prison system.

This section’s language is from the USSD report of 2007 (cited in the August 2008 COIS Report) and the USSD 2008 Report. The language has been retained, nearly word for word, in the 2009 USSD Human Rights Report,¹²³ and the situation for gay inmates in Jamaica remains poor. The UN Special Rapporteur, in his February 2010 preliminary

¹²¹ U.S. State Dept., “2009 Human Rights Report: Jamaica,” 11/03/2010.

¹²² United Nations Press Release, “UN Special Rapporteur presents preliminary findings on his mission to Jamaica,” 19/02/2010.

¹²³ U.S. State Dept., “2009 Human Rights Report: Jamaica,” 11/03/2010.

report on Jamaica's prisons, agreed that efforts are made to separate gay inmates for their protection, but he suggested that this also amounts to further punishment inflicted upon these inmates; the report states: "Although efforts were made to hold homosexuals in different sections for their own protection, the consequence of the separation amounted to a loss of privileges of a punitive character."¹²⁴

Death Penalty

Introduction

130. Section 3.10 of the U.K. Border Agency's Operational Guidance Note (OGN) of 01/06/2009¹²⁵ concerns the use of the death penalty in Jamaica. Section 3.10.1 and Section 3.10.2 contain country information, while Section 3.10.3 reaches a conclusion based on this country information. These sections state, in full (footnotes omitted):

3.10 Death penalty

3.10.1 Jamaica retains the death penalty but this has not been implemented since 1988. In 1993, the UK Privy Council ruled that five years on death row constituted unusual and inhumane punishment, thus establishing a five-year limit for prisoners on death row.

3.10.2 A 1992 amendment to the Offences Against the Person Act paved the way for two categories of murder - capital murder, which attracts the death penalty and non-capital murder for which the sentence is life imprisonment. On 7 July 2004, the London-based Privy Council won a reprieve for more than 60 prisoners on death row after finding that the 1992 Offences Against the Persons Act was inconsistent with section 17(1) of Jamaica's Constitution. In November 2008, Jamaica's parliament voted to keep the death penalty. There are reportedly nine male prisoners currently held on death row.

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

¹²⁴ United Nations Press Release, "UN Special Rapporteur presents preliminary findings on his mission to Jamaica," 19/02/2010.

¹²⁵ UK Border Agency, "Operational Guidance Note: Jamaica," 01/06/2009.

131. This section of the OGN cites two sources, the August 2008 UKBA COIS Report¹²⁶ and a BBC News article of November 22, 2008.¹²⁷ This information is more than 18 months old: the OGN's accuracy and currency would be enhanced by the inclusion of more recent country information on Jamaica. In addition, since only two sources are currently cited, the OGN would be enhanced by the inclusion of information from a greater variety of sources.

Review of Section 3.10.1

132. The relevant section of the OGN states:
3.10.1 Jamaica retains the death penalty but this has not been implemented since 1988. In 1993, the UK Privy Council ruled that five years on death row constituted unusual and inhumane punishment, thus establishing a five-year limit for prisoners on death row.

This sentence cites the August 2008 COIS Report¹²⁸ and a BBC News article.¹²⁹ Current country information shows that Jamaica continues to retain the death penalty, and that no new executions have occurred: the most recent COIS Report of December 2009 cites an Amnesty International Report stating that, while a new death sentence was recently handed down, no new executions were reported.¹³⁰ In addition, an April 2010 report from Amnesty International states also that the last execution to take place in Jamaica was in 1988.¹³¹

Review of Section 3.10.2

133. The relevant section of the OGN states:

3.10.2 A 1992 amendment to the Offences Against the Person Act paved the way for two categories of murder - capital murder, which attracts the death penalty and non-capital murder for which the sentence is life imprisonment. On 7 July 2004, the London-based Privy Council won a reprieve for more than 60 prisoners on death row after finding that the 1992 Offences Against the Persons Act was inconsistent with section 17(1) of Jamaica's Constitution. In November 2008, Jamaica's parliament voted to keep the death penalty. There are reportedly nine male prisoners currently held on death row.

¹²⁶ UK Border Agency, "Country of Origin Information Report: Jamaica," 18/08/2008.

¹²⁷ BBC News, "Jamaica votes for death penalty," 25/11/2008.

¹²⁸ UK Border Agency, "Country of Origin Information Report: Jamaica," 18/08/2008.

¹²⁹ BBC News, "Jamaica votes for death penalty," 25/11/2008.

¹³⁰ UK Border Agency, "Country of Origin Information Report: Jamaica," 24/12/2009.

¹³¹ Amnesty International, "Document - Jamaica: Submission to the UN Universal Periodic Review: Ninth Session of the UPR Working Group of the Human Rights Council, November-December 2010," 19/04/2010.

134. This section cites the August 2008 COIS Report,¹³² in addition to the BBC News article also referenced in section 3.10.1.¹³³ The information in this section which references the 1992 statutory amendment, the 2004 Privy Council activities, and the November 2008 Jamaican parliament's vote is historical and does not need to be updated: current sources report that these rulings have not been overturned or changed.¹³⁴ The number of prisoners currently held on death row, at the present time, differs according to the source consulted: while the December 2009 COIS Report cited an Amnesty International report that nine people were on death row at that time,¹³⁵ Amnesty International reported in April 2010 that at the end of 2009, four prisoners were on death row.¹³⁶ On the other hand, a March 2010 article from the human rights group Jamaicans for Justice reported that 15 men "are now awaiting their fate with the executioner."¹³⁷
135. One important development not covered in the OGN is the very high level of support for the death penalty in Jamaica, among politicians and the public at large, which could point to the possibility that prisoners sentenced to death could actually be executed in the future. In April 2010, Amnesty International stated that "Support for the death penalty is high both among the general public and decision-makers."¹³⁸ As reported in the OGN, the Jamaican parliament voted in November 2008 to retain the death penalty; the OGN does not report, however, that this vote was overwhelmingly in favour of the death penalty: 34 members of parliament voted to retain the death penalty, while 15 voted against the measure and 10 abstained.¹³⁹
136. In addition, there is strong evidence that the murder rate in Jamaica is extremely high, and that the death penalty is popular among voters, who are frustrated at the government's inability to quell the number of murders in Jamaica:¹⁴⁰ There is evidence that the currently ruling Labour party, which was elected in 2007, was able to win votes by promising to resume hangings.¹⁴¹ A poll taken in April 2008 showed that 79% of Jamaicans said "yes" when simply asked whether Jamaica should resume hangings, while 43% said "yes" when asked whether Jamaica should resume hangings even if it meant accidentally sending an innocent person to the gallows.¹⁴²

¹³² UK Border Agency, "Country of Origin Information Report: Jamaica," 18/08/2008.

¹³³ BBC News, "Jamaica votes for death penalty," 25/11/2008.

¹³⁴ See UK Border Agency, "Country of Origin Information Report: Jamaica," 24/12/2009.

¹³⁵ UK Border Agency, "Country of Origin Information Report: Jamaica," 24/12/2009.

¹³⁶ Amnesty International, "Document - Jamaica: Submission to the UN Universal Periodic Review: Ninth Session of the UPR Working Group of the Human Rights Council, November-December 2010," 19/04/2010.

¹³⁷ Jamaicans for Justice, "Prisoners should earn their keep, says Phipps," 30/03/2010.

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¹³⁹ Inter Press Service (IPS), "Rights-Jamaica: Lawmakers Vote to Retain Death Penalty," 26/11/2008.

¹⁴⁰ IPS News, "Nearly half of all Jamaicans would favour a return to hanging; RIGHTS-CARIBBEAN: Many Turn Backs on Wrongly Executed," 01/04/2008.

¹⁴¹ The Mirror (London), "Hanging to Stay on Isle; Jamaica," 27/11/2008. IPS News, "Jamaica: Politicians Say Death Penalty Can Stem Rising Violence," 06/10/2006.

¹⁴² IPS News, "Nearly half of all Jamaicans would favour a return to hanging; RIGHTS-CARIBBEAN: Many Turn Backs on Wrongly Executed," 01/04/2008.

Extrajudicial killings by the police forces in Jamaica

137. There is evidence that, while no legal executions have taken place in Jamaica since 1988, there is a rising tide of killings by police forces in Jamaica; citing an Amnesty International report, Freedom House stated:

*In April 2008, Amnesty International reported that 272 civilians had been killed by the police during the preceding year, but that punishment of negligent officers was rare given the persistent culture of impunity.*¹⁴³

138. In July 2009, Amnesty International reported that, “Police killed more people between January and May 2009 than during the same period in 2008,” and that this went against the trend of the overall number of murders declining in Jamaica during that period.¹⁴⁴ The director of Jamaicans for Justice stated in 2006 that the very high crime rate and number of murders in Jamaica has led to a culture where ordinary citizens are seeking protection, in any form:

*One of our biggest problems is that the crime rate scares people, and when they get scared they ask for protection and they really don't care where it comes from or how it comes," [...] "And that is used to justify illegal action by the police.*¹⁴⁵

139. In a preliminary report of 19/02/2010, the United Nations Special Rapporteur on Cruel, Inhuman or Degrading Treatment or Punishment thought that these killings may actually amount to an effort by the police to replace legal executions with extrajudicial killings; the UN Special Rapporteur stated:

*I am encouraged by the fact that no death sentence has been executed since 1988. On the other hand, the rise in fatal shootings by the police, which are often alleged to amount to extrajudicial killings, as well as the apparent lack of investigation and accountability are of great concern. My interlocutors insinuated that legal executions, which were factually abolished by the judgment of Pratt and Morgan, were replaced by extrajudicial executions carried out by the police taking the law into their own hands.*¹⁴⁶

¹⁴³ Freedom House, “Freedom in the World 2009: Jamaica,” 16/07/2009.

¹⁴⁴ Amnesty International, “Public Security Reforms and Human Rights In Jamaica,” 21/07/2009.

¹⁴⁵ IPS News, “Jamaica: Politicians Say Death Penalty Can Stem Rising Violence,” 06/10/2006.

¹⁴⁶ United Nations Press Release, “UN Special Rapporteur presents preliminary findings on his mission to Jamaica,” 19/02/2010.

Internal Relocation

140. We note that the OGNs are concentrating on only one part of the internal relocation legal test and fail to adequately reflect and consider all the elements necessary to assess whether internal relocation is a viable option for the applicant.
141. The paragraph relating to internal relocation under each category of claimants refers to the case of **Januzi v Secretary of State for the Home Department [2006] UKHL 5** before the UK House of Lord in 2006. The quote in the OGN fails to reflect the complete test required in assessing the viability of the application of the internal flight alternative in asylum or humanitarian protection claims. The quote simply states that IFA should be considered even if the actor of persecution is the State.
142. The legal test established by Courts in the UK as to whether IFA is a viable option is to examine whether relocation would be unduly harsh.¹⁴⁷ Lord Hope stated in **Januzi** that "*The words 'unduly harsh' set the standard that must be met for this to be regarded as unreasonable. If the claimant can live a relatively normal life there judged by the standards that prevail in his country of nationality generally, and if he can reach the less hostile part without undue hardship or undue difficulty, it will not be unreasonable to expect him to move there.*"
143. The guidance offered by the UNHCR suggests a standard to assess the reasonableness of relocation by examining whether the claimant can "lead a relatively normal life without facing undue hardship".¹⁴⁸ The UNHCR Guidelines of 2003 state that: "conditions in the area must be such that a relatively normal life can be led in the context of the country concerned".
144. The Court of Appeal noted that some conditions are unreasonable even if they are widespread in the place of relocation.¹⁴⁹

¹⁴⁷ Paragraph 41. This was re-iterated in *CM (Kenya) v Secretary of State for the Home Department [2007] EWCA Civ 312* (13 February 2007) at paragraph 8.

¹⁴⁸ UNHCR *Guidelines on International Protection* of 23 July 2003, in paragraph 7 II(a).

¹⁴⁹ *AA (Uganda) v. Secretary of State for the Home Department [2008] EWCA Civ 579*, para. 17.

State Protection

145. As a generic point that applies across all OGNs we consider that guidance should refrain from using the language of “sufficiency of protection”. The UK Border Agency accepts that protection must be effective and the applicant must be able to access it,¹⁵⁰ if a claim for international protection is to be refused on these grounds.

¹⁵⁰ See, for example, the attached letter from Amelia Wright, Head of Asylum Policy to Alasdair Mackenzie, Acting Chair of ILPA and Nuala Mole, Director of the AIRE Centre dated 08/02/10 headed Response to ILPA and the AIRE Centre comments to the UK Border Agency on the recast Procedures and Qualification Directives.

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