



OPERATIONAL GUIDANCE NOTE

JAMAICA

CONTENTS

1. Introduction	1.1 – 1.3
2. Country assessment	2.1 – 2.2
3. Main categories of claims	3.1 – 3.4
Criminal gang violence	3.6
Gay men and lesbians	3.7
Victims of domestic violence	3.8
Prison conditions	3.9
4. Discretionary Leave	4.1 – 4.2
Minors claiming in their own right	4.3
Medical treatment	4.4
5. Returns	5.1 – 5.3
6. List of source documents	

1. Introduction

- 1.1** This document provides UKBA caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Jamaica, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseowners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

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

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

- 2.1** Caseowners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

- 2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Jamaica. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).

- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

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

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

3.5 Credibility

- 3.5.1** This guidance is not designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Caseowners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Criminal gang violence

- 3.6.1** Applicants may make an asylum and/or human rights claim based on a fear of ill-treatment amounting to persecution at the hands of criminal gangs in Jamaica and claim that the police are unable to provide sufficient protection
- 3.6.2 *Treatment.*** Jamaica has extremely high rates of violent crime and high rates of gang-related violence fuelled by money from drugs which remains a major challenge to the Jamaican stability, and has direct links to crime in the UK.¹
- 3.6.3** In 2009, 1,680 persons were murdered in Jamaica, the highest ever for Jamaica and the highest murder rate in the world, exceeding the previous record of 1,674 in 2005 – a record high in a country with 2.8 million inhabitants. The Jamaica Constabulary Force (JCF) said that 52% of murders in 2009 were attributed to gang warfare and reprisals. A total of 1,292 persons were killed by guns. The JCF places emphasis on the targeting of gangs and gang members as the major element in reducing murders across the island
- 3.6.4** At least 120 criminal gangs are thought to be active and responsible for 80 per cent of all major crimes in the country. Most victims of violent crime live in deprived and excluded inner-city areas where unemployment rates are high and access to basic services – water, electricity and security of housing tenure – are often poor. Criminal gangs not only control communities through fear and violence, they also control access to what few services are available. Many are “garrison communities” where the ruling gangs have for years flourished under the patronage of one or other of the political parties. Gang violence and shootings are usually concentrated in inner city neighbourhoods, including West Kingston, Grant’s Pen, August Town, Harbour View, Spanish Town and certain parts of Montego Bay. Public order incidents and demonstrations, sometimes violent, can occur in Kingston, Spanish Town and Montego Bay.²
- 3.6.5** Some neighbourhoods have been neglected by the state for years, and many have effectively become the fiefdoms of gang leaders. This was evident in the case of suspected Jamaican drug lord Christopher “Dudus” Coke. According to the US authorities, Coke stepped into his father’s shoes, running the Shower Posse and developing extensive business interests, including an entertainment company and a construction company. Until recently he enjoyed substantial protection from the ruling JLP and Prime Minister Bruce Golding, whose parliamentary constituency is Tivoli Gardens, a West Kingston district that the Shower Posse controls. Coke has many supporters in his West Kingston stronghold. When the Jamaican government bowed to heavy US pressure and announced in May 2010 that it would extradite Coke, the Shower Posse and his supporters attacked police stations in Tivoli Gardens. Despite the military assault on Tivoli Gardens, Coke was able to escape. The assault prompted the declaration of a state of emergency in Kingston and the biggest mobilisation of the security forces in Jamaican history. Hundreds of soldiers were deployed to help the capital’s police force sweep through Tivoli Gardens and surrounding areas in search of Coke. The troops fought pitched battles for several days with heavily-armed gunmen, who barricaded the streets. Thousands of people were trapped in the area and the clashes resulted in the deaths of more than 70 people. Despite the assault, Coke was able to escape and went on the run. He was eventually arrested nearly four weeks later by policemen “acting on intelligence” at a vehicle checkpoint on the outskirts of Kingston.³
- 3.6.6** Operation Kingfish was launched in 2004 as a counter narcotics and major crimes investigation task force. Operation Kingfish is a joint programme including members of the Jamaica Constabulary Force (JCF), the Jamaica Defence Force (JDF) and law

¹ FCO Jamaica country profile

² Jamaica Observer 8 January 2010 – Jamaica Records Highest Ever Murder Rate in 2009, Amnesty International July 2009 – Public Security Reforms and Human Rights in Jamaica, Freedom in the World – Jamaica 2010 and Home Office COI Service (COIS) Jamaica Country of Origin Information Report Jamaica 24 December 2009

³ BBC News-Profile: Christopher ‘Dudus’ Coke – 23 June 2010

enforcement agencies in the United Kingdom and the United States of America. The broad objective of Operation Kingfish is the dismantling of organised criminal groups, their leaders and their associates who are destroying communities with drugs, guns and extortion.⁴

- 3.6.7** The JCF continued a community policing initiative to address the long-standing antipathy between the security forces and many poor inner-city neighbourhoods. Through a recently established Community Safety and Security Branch, the JCF conducted targeted training of 200 officers in 38 communities, trained community safety officers, and assigned JCF officers to targeted schools as resource officers to stop school violence. These officers also served as liaisons between the students, faculty, parents, and police. The government bolstered these efforts through public education and by nominating deputy divisional commanders with responsibility to introduce community policing to all the communities within their division.⁵
- 3.6.8** The JCF's website states that Operation Kingfish is the dismantling of organised crime groups, their leaders and their associates who are destroying communities with drugs, guns and extortion. According to the Minister of National Security, Derrick Smith, Operation Kingfish was praised as being one of the most successful and celebrated national security projects ever introduced in the country. Since its inception they have received more than 2000 actionable calls and have mounted more than 2000 operations leading to the recovery of nearly 300 firearms and in excess of 21,000 rounds of ammunition, 567 arrests, the seizure of thousands of pounds of drugs and some 100 wanted persons have been apprehended. For the period January to September 2009, Operation Kingfish carried out 607 operations and firearms, drugs and ammunition were seized. Mr Smith also commended the task force on its highly successful prosecution rate, noted that the organisation has not lost a single case in court.⁶
- 3.6.9** For the first time since July 2002, the number of recorded murders dropped below 80 in September 2010 according to crime figures released in October 2010 and according to the JCF there has been a decline in murders for the fourth consecutive month. Jamaican police statistics indicate a 43 per cent decline in murders when compared to October 2009 and figures also show 1,065 persons have been murdered since the start of the year which is 45 less than what was recorded over the same period for 2009. All police divisions in the Kingston Metropolitan Region which includes the two St. Catherine divisions all recorded declines in their murder rates with the Kingston Central division leading the way. According to the Head of Operations for the JCF the decline can be attributed to strategies that have been employed which includes going after gang members and their bosses with cordon-and-search operations and co-ordinated raids.⁷
- 3.6.10** According to Amnesty International the JCF has not only failed to protect people from violent crime, it has contributed to the public security problem. A large number of people are killed by the police every year. In many cases the available evidence indicates that fatal shootings were probably the result of excessive use of force and some may have amounted to extrajudicial executions. However, flawed investigations, corruption and a failing justice system have provided impunity for the officers responsible.⁸
- 3.6.11 *Actors of protection.*** Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has

⁴ COIS Jamaica Country Report December 2009 (Human Rights: Security Forces – Operation Kingfish)

⁵ U.S Department of State (USSD) 2009 Human Rights Report: Jamaica

⁶ COIS Jamaica Country Report December 2009 (Human Rights: Security Forces – Operation Kingfish)

⁷ The Jamaica Online Star – Murder rate drops – Lowest since June 2002 12 October 2010 and Go-Jamaica – Murder rate continues to decline in Jamaica – 26 November 2010

⁸ Amnesty International July 2009: Public Security Reforms and Human Rights in Jamaica

sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

3.6.12 The JCF has primary responsibility for internal security and is assisted by the Island Special Constabulary Force (ISCF). The Jamaica Defence Force (JDF) is charged with national defence, marine narcotics interdiction, and support of the JCF. It has no mandate to maintain law and order and no powers of arrest unless so ordered by the Prime Minister. The Jamaica Regiment (JDF infantry forces) was detached as part of a joint internal security operation to assist in the JCF in patrolling certain communities. The Ministry of National Security oversees the JCF and the JDF.⁹

3.6.13 The JCF maintains divisions focusing on community policing, special response, intelligence gathering, and internal affairs. However, the corruption and impunity within the force remained despite a notable increase in the number of arrests of officers for corruption. Human rights groups have identified systematically poor investigative procedures and weak oversight mechanisms as factors contributing to corruption. Another major factor in police corruption was the very low salaries paid to JCF members, in contrast to JDF soldiers, who have the reputation of being incorruptible and earn substantially higher salaries plus room and board for themselves and their families. The Anti-Corruption Branch has responsibility for addressing corruption in the force and some recent improvements have been noted including a toll-free hotline which the public could anonymously report corrupt activities of both police and custom officials and in March 2009 the police commissioner uncovered a major corruption scheme involving officers at the Mount Salem Police Station. As of December 2009, authorities had arrested 60 JCF officers on corruption charges. Of the 56 police officers arrested in 2008, the courts convicted three persons, dismissed 15 cases, and had 38 trials pending. A number of recent news reports noted that the Government has made efforts to combat corruption, particularly regarding corruption within the security forces.¹⁰

3.6.14 Following investigations by the Anti-corruption Branch, 149 police officers were removed from the JCF during the first seven months of 2010 – an indication that they have stepped up its effort to eliminate ‘bad apples’ from the force.¹¹

3.6.14 A Witness Protection Programme is provided for by the Justice Protection Act (Act 23 of 2001). The U.S. Department of State has reported a general lack of public confidence in the programme but the JCF report that no participant in the programme who abided by the rules of the programme has been killed.¹²

3.6.15 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.

3.6.16 *Internal relocation.* Caseowners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a

⁹ COIS Jamaica Country Report December 2009 (Human Rights: Security Forces & Military Service) & U.S. Department of State: 2009 Human Rights Report: Jamaica (USSD 2009) – (The Role of the Police and Security Apparatus)

¹⁰ USSD 2009: Jamaica (The Role of the Police and Security Apparatus)

¹¹ The Jamaican Gleaner – JCF Cleans House – 9 August 2010

¹² COIS Jamaica Country Report August 2008 (Human Rights: Security Forces) & USSD 2008: Jamaica

place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.6.17 Jamaica has an area of 10,991 sq km and an estimated population of 2.8 million. The country is divided into fourteen parishes: Clarendon, Trelawny, Portland, St James, Manchester, St Ann, St Thomas, St Andrew, Kingston, St Catherine, Westmoreland, St Elizabeth, St Mary and Hanover. Jamaica's principal urban areas are the capital Kingston, Spanish Town and Portmore (both in St Catherine parish) and Montego Bay (in St James parish).¹³ Gang violence in Jamaica is generally localised and there are known areas of confrontations in certain areas of Kingston, Montego Bay and Spanish Town.¹⁴

3.6.18 The law provides for freedom of movement within the country¹⁵ 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.

3.6.19 Caselaw.

AB (Jamaica CG) [2007] UKAIT 00018. The Tribunal found that the authorities in general are willing and able to provide effective protection. However, unless reasonably likely to be admitted into the Witness Protection Programme, a person targeted by a criminal gang will not normally receive effective protection in his home area. Whether such a person will be able to achieve protection by relocating will depend on his particular circumstances, but the evidence does not support the view that internal relocation is an unsafe or unreasonable option in Jamaica in general: it is a matter for determination on the facts of each individual case.

3.6.20 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above).

3.6.21 General lawlessness, poverty or a lack of access to resources will not, in themselves, be sufficient to warrant the grant of asylum or humanitarian protection. Claimants who fear a criminal gang would firstly need to demonstrate that the gang poses a real and serious threat. It is not sufficient to show that the gang dislikes an individual or that they have made threats of violence. It has to be shown that the criminal gang has a real intent to inflict the threatened serious harm and to carry out its threats. For those who can demonstrate this real intent, but who are likely to be admitted to the Witness Protection Programme, there is a general sufficiency of protection.

3.6.22 Criminal gangs are very largely concentrated within their own areas or 'turfs', so internal relocation would also, in most cases, be a reasonable option. Only high profile cases are likely to be at real risk of being detected in a new area. Claims, especially those where it is clear that the fear is of a small group of thugs rather than an organised criminal gang, and where it is found that the individual can internally relocate to avoid any threat are likely to be clearly unfounded and as such should be certified.

3.6.23 However, claims by those who fear a serious and specific threat of gang violence on return, particularly where there is evidence that they are an informer or perceived informer, should not be certified as clearly unfounded unless there is evidence that the particular gang feared has been severely disrupted by Operation Kingfish. In AB, the Tribunal noted that a

¹³ COIS Jamaica Country Report December 2009 (Background Information: Geography)

¹⁴ COIS Jamaica Country Report December 2009 (Human Rights: Crime)

¹⁵ COIS Jamaica Country Report December 2009 (Freedom of Movement)

significant number of persons at risk of reprisals have been able to relocate within Jamaica, without being detected or at least subject to reprisal. Certification may therefore be possible on grounds of sufficient state protection (if the applicant is reasonably likely to be admitted into the Witness Protection Programme) and/or internal relocation, which in most cases is an effective and reasonable way of avoiding the threat. In reaching a conclusion on internal relocation, however, caseowners will still need to have established that there is real reason, supported by evidence, to believe that the applicant would not be found by the gang if they relocated internally and that it would not be unduly harsh to expect them to do so. In the case of female applicants, for example, it is unlikely that it could not at least be argued that it would be unduly harsh to expect them to relocate internally and while it may nonetheless be found that internal relocation may be a reasonable option for a woman, claims from women should not be certified on this basis.

3.7 Gay men, lesbians, bisexual and transgender persons

- 3.7.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution as gay men, lesbians, bisexual or transgender persons in Jamaica.
- 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.¹⁶
- 3.7.3** Jamaica has a reputation for having an aggressive homophobic culture on top of its extremely high crime and murder rate. The Jamaican Forum for Lesbians, All Sexuals, and Gays (J-FLAG) continue to report human rights abuses including arbitrary detention, mob attacks, stabbings, and harassment of gay patients by hospital and prison staff and targeted shootings of gay men. According to J-FLAG, the police often do not investigate such incidents and have reported 33 cases of injuries to gay men and lesbians over an 18 month period. Amnesty International has also identified gay men as a marginalized group that are targeted for extreme harassment and violence¹⁷.
- 3.7.4 *Actors of protection.*** Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.7.5** Numerous sources document the fact that a large proportion of the Jamaican police force is homophobic. Reports published in 2008 from Human Rights Watch and Jane’s Sentinel note that police officers have been actively involved in violence against lesbians and gay men¹⁸ Human Rights Watch also noted that “... gay men are targeted for extortion by both police and private individuals. Due to fear that their homosexuality might be publicised, the paucity of available legal assistance, and the possibility of being prosecuted, gay men are

¹⁶ COIS Jamaica County Report December 2009 – Lesbian, Gay, Bisexual and Transgender (LGBT) Persons AND USSD 2009 (Societal Abuses....)

¹⁷ USSD 2009 and Freedom House: Freedom in the World – Jamaica 2010

¹⁸ COIS Jamaica County Report December 2009 – Lesbian, Gay, Bisexual and Transgender (LGBT) Persons AND USSD 2009

unlikely to formally report the extortion. The report also stated that Jamaica's sodomy laws and discrimination by health care workers impede access to health care for gay men and lesbians.¹⁹

3.7.6 In light of the above, the available evidence is therefore that gay men, lesbians or bisexuals cannot in general seek protection from the Jamaican authorities.

3.7.7 *Internal relocation.* Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.7.8 The law provides for freedom of movement within the country and Government generally respects this right in practice.²⁰ However the Supreme Court in the case of HJ & HT (see below) made the point that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location.

3.7.9 Caselaw

QBD Admin Court Determination: R (on the application of Garfield Dawkins) v IAT (18/2/2003) held that the mere fact that Jamaica criminalises homosexual behaviour was not sufficient to require the UK to grant immigration status to all practising homosexuals in Jamaica-the applicant has to either show a breach of Article 3 or show that he would be subject to substantial discrimination and/or violence and abuse.

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

Supreme Court. HJ & HT v SSHD [2010] UKSC 31 7 July 2010 In this case, the Supreme Court established the test which should be applied when assessing a claim based on fear of persecution because of an applicant's sexual orientation which is as follows:

- (i) Is the applicant gay or someone who would be treated as gay by potential persecutors in the country of origin?
- (ii) If yes, would gay people who live openly be liable to persecution in that country of origin?
- (iii) How would the applicant behave on return? If the applicant would live openly and be exposed to a real risk of persecution, he has a well-founded fear of persecution even if he could avoid the risk by living discreetly.
- (iv) If the applicant would live discreetly, why would he live discreetly? If the applicant would live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee.

¹⁹ COIS Jamaica Country Report December 2009 – Lesbian, Gay, Bisexual and Transgender (LGBT) Persons AND USSD 2009

²⁰ COIS Jamaica Country Report December 2009 (Freedom of Movement)

3.7.10 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above) and also refer to the Asylum Instruction on sexual orientation and gender identity in the asylum claim.

3.7.11 In general the Jamaican authorities do not provide homosexual men with a sufficiency of protection and there are also likely to be difficulties in finding safety through internal relocation. If there is a real risk that a gay man, lesbian or bisexual sexual relationship has, or will, become known, the applicant would on return to Jamaica face a real risk of discrimination and violence by members of the public or criminal gangs, to the extent that this would amount to persecution. As gay men, lesbians and bisexuals in Jamaica may be considered to be members of a particular social group, they should be granted asylum.

3.7.12 However, if an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation.

3.7.13 If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well founded fear of persecution due to their sexual orientation.

3.8 Victims of domestic violence

3.8.1 Some female applicants may seek asylum on the grounds that they are the victims of domestic violence and are unable to seek protection from the authorities. Occasionally the applicant may state that the abuser is involved with a criminal gang and that this would also prevent the applicant from gaining protection.

3.8.2 Treatment. Social and cultural traditions perpetuate violence against women, including spousal abuse. Violence against women is reportedly widespread but many women are reluctant to acknowledge or report abusive behaviour, leading to wide variations in estimates of its extent. The law prohibits domestic violence and provides remedies including restraining orders and other non custodial sentencing. Breaching a restraining order is punishable by a fine and six months' imprisonment. There was a general reluctance by the police to become involved in domestic issues, which led to cases not being pursued vigorously when reported.²¹

3.8.3 Actors of protection. Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

²¹ USSD 2009

- 3.8.4** There is comprehensive legislation against domestic violence in Jamaica and threatening, assaulting, injuring, and wounding are all criminal offences. Rape is illegal and carries a penalty of up to 25 years imprisonment.
- 3.8.5** As well as criminal sanctions against abusers, other remedies are available. The Domestic Violence (Amendment) Act 2004 widened the categories of persons who may apply for a protection order, to include any person who resides in the respondent's household or who is in a visiting relationship with the respondent. The Act also provides for applications for protection orders to be made by a constable or a person who is given leave to apply by the Court on behalf of a spouse, or other member of the respondent's household or a person who is in a visiting relationship with the respondent, upon the written consent of that person. The Act also provides for maintenance orders to be made in conjunction with protection and occupation orders. The law provides remedies for domestic violence, including restraining orders and other non-custodial sentencing. Breaching a restraining order is punishable by a fine of up to ten thousand Jamaican dollars and six months' imprisonment.²²
- 3.8.6** The Sexual Offences Act 2009 reforms and incorporates various laws relating to rape, incest and other sexual offences. Although women's organisations welcomed the Act, they also expressed concerns about the restrictive definition of rape. The Act criminalises rape within marriage, but only in certain circumstances. During 2009 victims reported 671 rapes, a decrease of 21% from 2008. Non-governmental organisations believed the actual numbers were much higher, but no detailed statistics were available.²³
- 3.8.7** The JCF rape investigative and juvenile unit, which is headed by a female deputy superintendent, handles sex crimes. Only partial information was available as to the number of prosecutions and conviction obtained. For the period January to July 2009, there were 20 rape prosecutions and six convictions.²⁴
- 3.8.8** The Bureau of Women's Affairs (BWA) is responsible for catalysing government efforts in addressing women's problems faced by women, such as employment, domestic violence, rape and sexual harassment. The Bureau also aims to help women achieve their full potential in Jamaica's social, cultural and economic areas. The BWA also operates a crisis hotline and manages a public education campaign to raise the profile of domestic violence and the NGO Woman Inc. operated a shelter that receives some government funding. There is also an active community of women's rights groups, including Women's Media Watch, the Women's Political Caucus, the St. Peter Claver Women's Housing Cooperative, the Women's Construction Collective, the Sistren Theatre Collective, Woman Inc., and the Centre for Gender and Development Studies at the University of the West Indies. Among the major concerns of these groups were the protection of victims of sexual abuse, participation of women in the political process and legislative reforms affecting women.²⁵
- 3.8.9** The Women's Media Watch (WMW), in collaboration with the BWA is spearheading a comprehensive and innovate project with the long-term vision of reducing gender based violence in Jamaica. The project focuses specifically on domestic violence, sexual violence and sexual harassment. WMW has trained media workers, teachers, counsellors, trainers and community leaders on the relevant national policies, laws, and UN conventions which speak to violence against women, in an effort to reduce the tolerance of violence against women within these communities. WMW has implemented a public education and awareness raising campaign on gender and violence using the media, public forums, magazines, and the internet to disseminate its message. In addition to this, we have created and published innovative training materials on gender based violence.²⁶

²² COIS Jamaica Country Report December 2009 (Human Rights: Women) & USSD 2009: Jamaica

²³ USSD 2009 and Amnesty International – Jamaica: Submission to the UN Universal Periodic Review – December 2010

²⁴ USSD 2009

²⁵ COIS Jamaica Country Report December 2009 (Human Rights: Women) & USSD 2009

²⁶ COIS Jamaica Country Report December 2009 (Human Rights: Women)

- 3.8.10** In light of the above there is a general sufficiency of protection available to victims of domestic violence through enforcement of legislative provisions and availability of governmental and non-governmental shelters, advice, and legal aid and counselling. There is no evidence to suggest that the involvement of the abuser with a criminal gang would prevent the applicant from gaining protection although consideration needs to be given to the individual circumstances of an applicant's claim.
- 3.8.11 *Internal relocation.*** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.8.12** The law provides for freedom of movement within the country and the Government generally respects this right in practice.²⁷ It is therefore practicable for applicants to relocate to other parts of Jamaica to escape domestic violence and except where the circumstances of an individual applicant indicate otherwise, it would not be unduly harsh to expect them to do so.
- 3.8.13 *Conclusion.*** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above).
- 3.8.14** Domestic violence is widespread in Jamaica but there is in general sufficient protection and internal relocation is also an option where in the particular circumstances of the applicant it is not considered unduly harsh for them to relocate. The grant of asylum or Humanitarian Protection is unlikely therefore to be appropriate and unless there are specific reasons why sufficient protection would not be available to the individual applicant and why it would be unduly harsh to expect them to relocate internally, such claims may be certified as clearly unfounded.
- 3.9 Prison conditions**
- 3.9.1** Applicants may claim that they cannot return to Jamaica due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Jamaica are so poor as to amount to torture or inhuman treatment or punishment.
- 3.9.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.9.3 *Consideration.*** 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. Although the law prohibits the incarceration of children in adult prisons, some

²⁷ COIS Jamaica Country Report December 2009 (Human Rights: Freedom of Movement) & USSD 2009: Jamaica

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. Convicted prisoners were held in police custody only if they were in the process of being moved to a prison facility.²⁸

- 3.9.4** 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.²⁹
- 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 was subjective and not regulated by the prison system, although inmates often confirmed their homosexuality for their own safety. There were numerous reports of violence against gay inmates during 2009, perpetrated both by the wardens and by other inmates, but few inmates sought recourse through the prison system. Gay men were hesitant to report incidents against them because of fear for their physical well-being. Lesbian women were subjected to sexual assault as well as other physical attacks. Human rights non-governmental organisations and government entities agreed that brutality against such persons, primarily by private citizens, was widespread in the community.³⁰
- 3.9.6 *Conclusion.*** Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). 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.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Jamaica the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.
- 4.3 **Minors claiming in their own right****
- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. Those who cannot be returned should, if they do not qualify for leave

²⁸ COIS Jamaica Country Report December 2009 (Human Rights: Prison Conditions) & USSD 2009:

²⁹ USSD 2009

³⁰ USSD 2009

on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

- 4.4.1** Applicants may claim they cannot return to Jamaica due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** The Jamaican health system offers primary, secondary and tertiary care. The Government also operates a National Health Insurance Programme (NHIP) which is a contributory health financing plan aimed at covering all residents of Jamaica for necessary medical services. It is designed to assist individuals and families in meeting the costs of health care without suffering financial distress and to provide dedicated resources for enhancing the availability and quality of health services. Treatments for a wide range of conditions including HIV/AIDS, cardiac disease and mental health are generally available in Jamaica.³¹
- 4.4.3** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** There is no policy which precludes the enforced return to Jamaica of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.3** Jamaica nationals may return voluntarily to any region of Jamaica at any time by time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes. The AVR scheme is implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Jamaica. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Jamaica nationals wishing to avail themselves of this opportunity for assisted return to Jamaica should be put in contact with the IOM offices in London 0800 783 2332 or www.iomlondon.org.

³¹ COIS Jamaica Country Report December 2009 (Human Rights: Medical Issues)

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