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19th April 2012

A Commentary on the February 2012 Jamaica Operational Guidance Note

This commentary identifies what the 'Still Human Still Here' coalition considers to be the main inconsistencies and omissions between the currently available country of origin information (COI) and case law on Jamaica and the conclusions reached in the February 2012 Jamaica Operational Guidance Note (OGN), issued by the UK Border Agency. Where we believe inconsistencies have been identified, the relevant section of the OGN is highlighted in blue.

This commentary is a guide for legal practitioners and decision-makers in respect of the relevant COI, by reference to the sections of the Operational Guidance Note on Jamaica issued in February 2012. To access the complete OGN on Jamaica go to:

<http://www.bia.homeoffice.gov.uk/sitecontent/documents/policyandlaw/countryspecificasylumpolicyogns/>

The document should be used as a tool to help to identify relevant COI and the COI referred to can be considered by decision makers in assessing asylum applications and appeals. This document should not be submitted as evidence to the UK Border Agency, the Tribunal or other decision makers in asylum applications or appeals. However, legal representatives are welcome to submit the COI referred to in this document to decision makers (including judges) to help in the accurate determination of an asylum claim or appeal.

The COI referred to in this document is not exhaustive and should always be complemented by case-specific COI research.

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Main categories of claims

3.6 Criminal gang violence

Witness Protection Programme

Excerpt from the February 2012 Jamaica OGN

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

It is a welcome development that the OGN in its concluding guidance regarding victims of criminal gang violence at paragraph 3.6.11 (highlighted sentence above) expresses caution with regards to the availability of effective protection offered through the Witness Protection Programme. The COI currently included in the OGN on the limitations of the Witness Protection Programme can be found at paragraphs 2.3.10 and 2.3.11 in the section '2.3 Actors of protection' as follows:

Excerpt from the February 2012 Jamaica OGN

2.3.10 Jamaica has an established Witness Protection programme which was introduced in November 2001 to offer protection or assistance to witnesses whose lives come under threat before, during, or after a trial. Witnesses to major crimes are placed in safe locations, sometimes overseas, with fictitious names if police investigators determine that they are at risk of being killed or intimidated by defendants or their associates. Some criminal trials were dismissed because witnesses failed to come forward as a result of threats, intimidation, or murder. Some of those who came forward qualified for the witness protection program, but many either refused protection or violated the conditions of the program. According to the JCF, no participant in the witness protection program who abided by the rules of the program has ever been killed.

2.3.11 In June 2011, the Director of Public Prosecutions, Paula Llewellyn, called for more resources to be channelled into the Witness Protection Programme, due to increases in witness intimidation and the number of key witnesses to major crimes who refuse to enter the programme. Her comments followed those of the Police Commissioner, Owen Ellington, who criticised members of the constabulary for their handling of witnesses under the Programme. He noted that the procedures and guidelines governing the operations of the Witness Protection Programme were not being properly followed, resulting in delays in the processing of witnesses waiting to get on the programme. In April 2010, the Assistant Commissioner of Police, Les Green, referred to the witness protection programme as being "limited".

The following additional sources post-dating the February 2007 Country Guidance case of [AB \(Protection, criminal gangs, internal relocation\) Jamaica CG \[2007\] UKAIT 00018 \(22 February 2007\)](#) are currently available in the public domain reporting on the difficulties faced by the Witness Protection Programme:

- [Jamaica Observer, PSOJ cites biases in Witness Protection Programme, 22/02/2011](#)
[...] CHAIRMAN the Private Sector Organisation of Jamaica's Standing Committee on National Security Lieutenant Commander George Overton says the much-touted Witness Protection Programme has been

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failing some Jamaicans because of biases. "There is a lot of talk about the Witness Protection Programme. I don't think any of us are really privy to the depths of it, but in truth and in fact it seems to have selective functioning," Overton told Observer editors and reporters at the newspaper's weekly Monday Exchange yesterday. "There are matters which are treated with urgency and those persons will be given the protection that they need; there are other matters that are as important that are not given the same treatment," he said when prodded further. [...]

- [Jamaica Observer, 'Cops not observing rules of Witness Protection Programme' 29/01/2011](#)
[...] POLICE Commissioner Owen Ellington yesterday lambasted members of the constabulary for their tardy handling of the Witness Protection Programme. Ellington was harshly critical of the cops under his command in this week's Force Orders, released to the media yesterday. "It has been observed that the procedures and guidelines governing the operations of the Witness Protection Programme, as set out in the previous publication, are not being properly followed. This has resulted in delays in the processing of witnesses waiting to be placed on the programme as well as to the programme itself," Ellington said. [...]
- [Jamaicans for Justice, Reform Matters: Quarterly e-Brief on Justice Reform, July-September 2009](#)
[...] In addition to the difficulties in collecting and preserving admissible evidence and the extremely low prosecution rate for cases of police shootings, there are a number of factors within the court system that have contributed to the near nonexistent conviction rate for lawful police killings. These include problems with juror and witness unavailability. The failure to properly subpoena jurors has historically led to the use of repeat jurors in Coroners' Courts throughout the island who are perceived to have developed a bias in favour of the police. Witness absenteeism, intimidation and weak witness protection system have also contributed to deficiencies in the court system allowing for adjournments and cases prolonging for years. [...]

The lack of potential witnesses who enter the witness protection programme should also be seen in the context of high levels of corruption in the Jamaican police force as stated in the following paragraphs in the current OGN:

Excerpt from the February 2012 Jamaica OGN

2.3 Actors of protection

[...] 2.3.8 The Jamaica Constabulary Force (JCF) issued a press release in October 2011 based on information from its Anti-Corruption Branch, and it revealed the following (for the period January – September, 2011):

62 persons had been denied the opportunity to re-enlist in the JCF

34 members of the JCF were charged with corruption

7 members of the JCF were dismissed for corruption

18 civilians were charged with corrupting JCF staff

The Anti-Corruption Branch of the JCF had indicated they have been making significant strides in sensitising its members and the public on corruption and ethics-related issues (as it relates to the JCF).⁹ Despite these efforts, Freedom House noted in 2011 that corruption "remains a serious problem in Jamaica".

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

The following COI corroborates the high level prevalence of corruption and impunity for human rights abuses committed by the Jamaican police force:

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➤ [U.S. Department of State Bureau of Diplomatic Security \(OSAC\), Jamaica 2012 Crime and Safety Report, 20/03/2012](#)

[...] Political Violence

[...] Regional Terrorism and Organized Crime

Organized crime and other criminal elements are prevalent and extremely active. Most of the criminal activity is gang-related. The police are only able to resolve (make arrests) in 44 percent of homicides annually, and they only convict perpetrators in five percent of the homicide cases. This leads both the public and police to doubt the effectiveness of the criminal justice system, leading to vigilantism, which only exacerbates the cycle of violence. Based on their past experiences, most civilians fear that, at best, the authorities cannot protect them from organized criminal elements and, at worst, are colluding with criminals, all of which leads citizens to avoid giving evidence or witness testimonies.

[...] Police Response

[...] The Jamaica Constabulary Force is considered to be underpaid, poorly trained and corrupt.

[...] But, police corruption and police involvement in criminal activity is not uncommon. Consequently, citizens are often indifferent to police authority, adding to a perceived sense of lawlessness. The general perception is that the majority of crime victims do not report crimes against them due to fear of reprisals by the police, the belief that police are corrupt, or the feeling that nothing would come from such reports.

➤ [Transparency International, Corruption perceptions Index 2011, Undated](#) [Last accessed: 19/04/2012]

Score

Very clean

9 - 10

8 - 8.9

7 - 7.9

6 - 6.9

5 - 5.9

4 - 4.9

3 - 3.9

2 - 2.9

1 - 1.9

0 - 0.9

Highly corrupt

RANK COUNTRY/TERRITORY SCORE

1	New Zealand	9.5
2	Denmark	9.4
2	Finland	9.4
4	Sweden	9.3
5	Singapore	9.2
6	Norway	9.0
7	Netherlands	8.9
8	Australia	8.8
8	Switzerland	8.8
10	Canada	8.7
11	Luxembourg	8.5
12	Hong Kong	8.4
13	Iceland	8.3
14	Germany	8.0
14	Japan	8.0
16	Austria	7.8
16	Barbados	7.8
16	United Kingdom	7.8
19	Belgium	7.5
19	Ireland	7.5

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21	Bahamas	7.3
22	Chile	7.2
22	Qatar	7.2
24	United States	7.1
25	France	7.0
25	Saint Lucia	7.0
25	Uruguay	7.0
28	United Arab Emirates	6.8
29	Estonia	6.4
30	Cyprus	6.3
31	Spain	6.2
32	Botswana	6.1
32	Portugal	6.1
32	Taiwan	6.1
35	Slovenia	5.9
36	Israel	5.8
36	Saint Vincent and the Grenadines	5.8
38	Bhutan	5.7
39	Malta	5.6
39	Puerto Rico	5.6
41	Cape Verde	5.5
41	Poland	5.5
43	Korea (South)	5.4
44	Brunei	5.2
44	Dominica	5.2
46	Bahrain	5.1
46	Macau	5.1
46	Mauritius	5.1
49	Rwanda	5.0
50	Costa Rica	4.8
50	Lithuania	4.8
50	Oman	4.8
50	Seychelles	4.8
54	Hungary	4.6
54	Kuwait	4.6
56	Jordan	4.5
57	Czech Republic	4.4
57	Namibia	4.4
57	Saudi Arabia	4.4
60	Malaysia	4.3
61	Cuba	4.2
61	Latvia	4.2
61	Turkey	4.2
64	Georgia	4.1
64	South Africa	4.1
66	Croatia	4.0
66	Montenegro	4.0
66	Slovakia	4.0
69	Ghana	3.9
69	Italy	3.9
69	FYR Macedonia	3.9
69	Samoa	3.9
73	Brazil	3.8

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73	Tunisia	3.8
75	China	3.6
75	Romania	3.6
77	Gambia	3.5
77	Lesotho	3.5
77	Vanuatu	3.5
80	Colombia	3.4
80	El Salvador	3.4
80	Greece	3.4
80	Morocco	3.4
80	Peru	3.4
80	Thailand	3.4
86	Bulgaria	3.3
86	Jamaica	3.3
86	Panama	3.3
86	Serbia	3.3
86	Sri Lanka	3.3
91	Bosnia and Herzegovina	3.2
91	Liberia	3.2
91	Trinidad and Tobago	3.2
91	Zambia	3.2
95	Albania	3.1
95	India	3.1
95	Kiribati	3.1
95	Swaziland	3.1
95	Tonga	3.1
100	Argentina	3.0
100	Benin	3.0
100	Burkina Faso	3.0
100	Djibouti	3.0
100	Gabon	3.0
100	Indonesia	3.0
100	Madagascar	3.0
100	Malawi	3.0
100	Mexico	3.0
100	Sao Tome and Principe	3.0
100	Suriname	3.0
100	Tanzania	3.0
112	Algeria	2.9
112	Egypt	2.9
112	Kosovo	2.9
112	Moldova	2.9
112	Senegal	2.9
112	Vietnam	2.9
118	Bolivia	2.8
118	Mali	2.8
120	Bangladesh	2.7
120	Ecuador	2.7
120	Ethiopia	2.7
120	Guatemala	2.7
120	Iran	2.7
120	Kazakhstan	2.7
120	Mongolia	2.7

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120	Mozambique	2.7
120	Solomon Islands	2.7
129	Armenia	2.6
129	Dominican Republic	2.6
129	Honduras	2.6
129	Philippines	2.6
129	Syria	2.6
134	Cameroon	2.5
134	Eritrea	2.5
134	Guyana	2.5
134	Lebanon	2.5
134	Maldives	2.5
134	Nicaragua	2.5
134	Niger	2.5
134	Pakistan	2.5
134	Sierra Leone	2.5
143	Azerbaijan	2.4
143	Belarus	2.4
143	Comoros	2.4
143	Mauritania	2.4
143	Nigeria	2.4
143	Russia	2.4
143	Timor-Leste	2.4
143	Togo	2.4
143	Uganda	2.4
152	Tajikistan	2.3
152	Ukraine	2.3
154	Central African Republic	2.2
154	Congo Republic	2.2
154	Côte d'Ivoire	2.2
154	Guinea-Bissau	2.2
154	Kenya	2.2
154	Laos	2.2
154	Nepal	2.2
154	Papua New Guinea	2.2
154	Paraguay	2.2
154	Zimbabwe	2.2
164	Cambodia	2.1
164	Guinea	2.1
164	Kyrgyzstan	2.1
164	Yemen	2.1
168	Angola	2.0
168	Chad	2.0
168	Democratic Republic of the Congo	2.0
168	Libya	2.0
172	Burundi	1.9
172	Equatorial Guinea	1.9
172	Venezuela	1.9
175	Haiti	1.8
175	Iraq	1.8

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177	Sudan	1.6
177	Turkmenistan	1.6
177	Uzbekistan	1.6
180	Afghanistan	1.5
180	Myanmar	1.5
182	Korea (North)	1.0
182	Somalia	1.0

[Emphasis added]

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

[...] RIGHT TO LIFE (ART.6)

[...] 56. Even where INDECOM [Independent Commission of Investigations] is adequately resourced, and investigations effectively carried out the prosecutions of police officers alleged to have used excessive force violating the right to life of persons under Jamaican jurisdiction will remain challenging. Our experience has shown that such prosecutions are fraught with witness intimidation and coercion and have resulted in a poor rate of convictions. In the cases of which we are aware, it has been evident that the current legal system is not adequately equipped to deal justly and sensitively with situations where witnesses are intimidated by State Agents.

[...] 61. [...] JFJ [Jamaicans for Justice] [...] believe that putting further power into the hands of the Jamaica Constabulary Force (JCF) (an organization accused of endemic corruption and of institutional bias against the rights of those Jamaicans of a lower socio-economic status) by removing existing safeguards and constitutional and legislative restraints, runs the demonstrated risk of greater opportunities for corruption and further destruction of the Police’s ability to “govern security...in ways that ensure human rights are protected.”⁴⁴ [...]

- [Amnesty International, Submission to the UN Human Rights Committee, 09/09/2011](#)

[...] STATE OF EMERGENCY (ARTICLE 4)

Amnesty International remains concerned that neither the government nor the individuals allegedly responsible for human rights violations during the state of emergency, imposed more than one year ago in an operation to arrest a suspected gang leader, have yet been held accountable. [...]

- [Amnesty International, A long road to justice? Human rights violations under the state of emergency, 23/05/2011](#)

[...] Although the available evidence indicates that many fatal shootings by police are probably the result of excessive use of force and some may have amounted to extrajudicial executions, flawed investigations, corruption and a failing justice system have provided impunity for the officers responsible. Between 2000 and 2010, more than 2,220 fatal shootings by police have been reported, yet only two police officers have been convicted for their involvement in killings. [...]

- [Jamaicans for Justice and the International Human Rights Clinic of The George Washington University Law School, 25/03/2011](#)

[...] The Crime Bills

[...] c. The Bail (Interim Provisions for Specified Offences) Act

[...] 27. In its Strategic Review of the JCF [Jamaica Constabulary Force], the Review Panel has documented and reported the endemic corrupt practices of the Force to include: contract killings; police engaging in or with criminal organisations; extortion; perjury; alerting criminals of JCF plans for interdiction; failing to attend court as a witness; planting evidence or removing it from crime scenes; tampering with exhibits; trafficking in weapons; theft, including seizures made by police (e.g. narcotics); sale of favourable inspection reports for bars, clubs etc.; dropping of charges, including for serious offences; payoffs for road traffic offences.¹⁷

Abuse of Power & Arbitrary Detention

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[...] Abuse of Power

28. Police abuse of power and use of excessive force, lack of accountability and the corruption within the police force and outright impunity for whatever action the police may take (including the killing of innocent citizens, being billed as —collateral damage||)19 have been recognized by the police authorities themselves in numerous reports and have lead to a public security crisis in Jamaica. This situation has been well-documented and analysed by both the Jamaican government and the national and international NGOs operating in Jamaica, as well as civil society representatives.20 [...]

- [UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Jamaica, 04/01/2011](#)

[...] 44. [...] Canada noted with concern reports of abuse of power and use of excessive force by the police, as well as the lack of accountability, impunity and corruption within the police force. [...]

- [Jamaicans for Justice, State of Jamaica: NGO Report on the implementation of the ICCPR, October 2010](#)

[...] ABUSE OF POWER BY POLICE

54. Police abuse of power and use of excessive force, lack of accountability, corruption within the police force and outright impunity for whatever action the police may take (including killing of innocent citizens being billed as “collateral damage”) have been recognized by the police authorities themselves in numerous reports and have lead to a public security crisis in Jamaica. This situation has been well-documented and analysed by both the government and the national and international NGOs operating in Jamaica, as well as the civil society representatives. [...]

- [UN Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 \(c\) of the annex to Human Rights Council resolution 5/1, 10/08/2010](#)

[...] 3. Administration of justice, including impunity, and the rule of law

22. IACHR [Inter-American Commission on Human Rights] stated that the high number of cases of civilians being shot by the police and the lack of accountability in many of these cases have contributed to a situation of impunity that undermined the credibility of the police and the confidence of the public. This lack of credibility, in turn, seriously limits the capacity of the police to respond to crime, creating a vicious cycle that must be broken if progress was to be made in the restoration of peace and order.38 According to IACHR, the lack of accountability for the abuses of the police has created an environment of fear and intimidation, which caused individuals to refrain from pursuing a legal remedy before the courts. This environment has been identified by the police and judicial authorities as a key challenge in obtaining witness testimony for criminal trials.39 [...]

Specific risks to women arising from gang violence

Excerpt from the February 2012 Jamaica OGN

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

3.6.12 It may be practicable for applicants who may have a well-founded fear of persecution in one area to relocate to other parts of Jamaica where gang violence is less prevalent and where they would not have a well-founded fear and, taking into account their personal circumstances, it would not be

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unduly harsh to expect them to do so. The particular risks and difficulties facing female applicants, as set out at 2.4.4 and 2.4.5, should be considered in this respect.

3.6.13 Criminal gangs are very largely concentrated within their own areas or „turfs“, so internal relocation would, in most cases, be a reasonable option. Only high profile cases are likely to be at real risk of being detected in a new area. However, it is important that case owners refer to the most up to date country information to ascertain whether, in the circumstances prevailing at the time the decision is made and according to the individual profile of the claimant, effective protection is available and whether internal relocation would not be unduly harsh.

3.6.14 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.

3.6.15 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 law enforcement operations.

The concluding guidance for this category of claimants (see paragraphs 3.66-3.615 above) does not address the specific risks to women that are victims of or report gang violence despite COI included in the OGN in paragraphs 3.6.10 and in the section ‘3.8 Victims of domestic violence’ as follows:

Excerpt from the February 2012 Jamaica OGN

3.6.10 Families and sometimes entire communities have been forced to flee their homes and seek refuge as a result of threats and violence from gangs. Sometimes the threats are triggered by conflict between rival political factions; sometimes they are the result of criminal activities. Women and girls in inner-city communities are particularly exposed to gang violence. A number of different sources report women’s fear of being labelled as traitors or police informers and of being subjected to reprisals on that basis.

[...] 3.8 Victims of domestic violence

[...] 3.8.7 Women and girls in inner-city communities are particularly exposed to gang violence. They are often victims of reprisal crimes, including sexual violence, for being perceived as having reported or actually reporting criminal activity to the police, or in relation to a personal or family vendetta. Women and girls often experience sexual coercion by gang members, as refusal could result in punishment against themselves and their families. A study on the relationship between adolescent pregnancy and sexual violence carried out by healthcare researchers in 2009 showed that 49 per cent of the 750 girls, aged between 15 and 17, who were surveyed had experienced sexual coercion or violence.

Additional sources in the public domain reporting on the prevalence of reprisal killings against women as a result of gang violence are as follows:

➤ [The Gleaner, Bloody Reprisals, 15/02/2012](#)

[...] An internal feud in the Clansman Gang has exploded with four persons, including two women being killed in Spanish Town St Catherine in less than 48 hours.

[...] The latest bloodletting started about 10:45 Saturday night when gunmen invaded a house on March Pen Road, Spanish Town and killed 51-year-old Sonia Gocul, and her 31-year-old daughter Indra Gocul. The killing of the two women sparked immediate fears in the area as Sonia Gocul was known to have had a long common-law relationship with the late founder and former leader of the gang, Donovan ‘Bulbie’ Bennett. Her daughter Indra was the mother of the child of one of the top lieutenants in the gang, Renard ‘Roderick’ Harrison.

Tracked down and killed

He was fatally shot by the police last Thursday and it is believed his killing led his cronies to murder the women. Harrison had fled Spanish Town after he was implicated in several murders, shootings, robberies and extortion in St Catherine. With the police hot on his trail, he sought refuge in the upper St Andrew community of Cherry Gardens but was tracked there by the police and fatally shot in a controversial incident. Police sources say Harrison was located through painstaking detective work, but his cronies

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accused the Goculs of providing the police with the information. According to the sources, Harrison's friends claimed that the Goculs led the police to him, and that caused the thugs to shoot the mother and daughter in revenge. [...]

➤ [Small Arms Survey, Confronting the Don: The Political Economy of Gang Violence in Jamaica, September 2010](#)

[...] Instigators of warfare

[...] Gang reprisals, which are fuelled by a thirst for instant revenge—coupled with an inability to resolve conflicts—contribute greatly to murder rates. Reprisal killings constitute the majority of gang-related murders in some communities.⁵¹ When gang members are unsuccessful in pursuing their adversaries, they will often target friends, relatives, acquaintances, or anyone from the adversary's community instead (Jamaica Gleaner, 2008b).⁵² In a departure from historical precedent, victims of this sort of retribution now include women, children, and the elderly (Luton, 2008c). The genesis of the cycle of reprisals may be perceived offences of one community against another, including through rape, robbery, and theft; sometimes, the initial cause of the reprisals can no longer be recalled (Mogensen, 2005).⁵³ [...]

➤ [The Gleaner, 'States' within the state, 09/05/2010](#)

[...] Women are ordered to make their homes available to the criminals, or else. Cellphones are being systematically searched for police contacts and, in at least one of these communities, the gangs have issued a stern order: 'No visitors are allowed unless we gave the permission'. In their twisted minds, these gang members believe that visitors to the community - be it friends or family - are the ones taking the information out to the police.

[...] Residents said while some of the women were allegedly having sexual relations with some of the men, there were those who had no choice but to allow the thugs into their homes. The women were too terrified to come on record with their experiences. And it is no comfort that the police are aware of their activities.

[...] And while women in that community are forced to make room for the criminals, another group of residents must give up its cellphones so that gang members can check to see if the police are on their list of contacts.

[...] One resident went as far as writing a two-page letter outlining her fears to **THE STAR** two weeks ago. She wrote, "Residents of the Lakes Pen community are crying for help, they are all living in fear" She continued: "If we ever walk past the police station, they call you informer. Handbags have been taken away and phones - to check if you are the ones calling the police. We need our community back ... " One other resident told **THE STAR** that she had been labelled as an informer by thugs from the community because she had had an affair with a policeman. She said her cellphone was checked on several occasions and she eventually left the community as the threats were becoming more and more frequent. The notorious Stinger gang has also issued a decree to residents living in communities off Maxfield Avenue, St Andrew, that everyone must get permission to entertain visitors. [...]

➤ [Jamaica Gleaner, Reprisal killings hurting Jamaica, 01/06/2008](#)

[...] Horace Levy, board member of the Peace Management Initiative (PMI), tells The Sunday Gleaner that he has noticed that the scope of reprisals has widened to include women. "The crime wave is like an epidemic," Levy says. The PMI member, who has worked in several war-torn communities trying to broker peace between warring factions, says the desire by gangs to outdo the other during conflicts, leads to massive bloodshed.

recent incident

"Women and children are now victims," Levy says. He cites the recent incident in Allman Town, central Kingston, where 14 persons have been killed in the past three months, six of them women. In years gone by, women and children were spared by gunmen during reprisals, but this has changed. [...]

➤ [Amnesty International, 'Let them kill each other': Public security in Jamaica's inner cities, April 2008](#)

[...] CHAPTER 3: LIVING WITH VIOLENCE IN THE INNERCITY

[...] Most of those who spoke to Amnesty International identified gang warfare and policing methods as the main sources of violence.³⁴ Gangs generate income from a variety of illicit activities³⁵ and gang

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members are invariably well armed, sometimes more so than the police. While many communities say that gang violence is usually targeted, Amnesty International also heard many accounts of widespread destruction of property, robbery, violence against women, children and the elderly, and constant intimidation in some communities.

[...] Women in these communities also experience high levels of violence.³⁶ Many women told Amnesty International that if a gang member wanted to have sex with a woman she had no choice as refusal could result in punishment for herself and her entire family. In many cases, young women are also used as messengers or to send goods from one gang to the other. Many women have to raise their children alone since the fathers are on the run or have been killed in gang violence. If gang members cannot find the person they are looking for, sometimes the closest relative is killed, to teach the rest of the community a lesson. [...]

Moreover, the availability of effective protection for female applicants is further compromised by police inaction towards gender-based violence and sexual harassment:

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

[...] PROHIBITION OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ART. 7)

[...] 92. Comprehensive work will need to take place with the Police and civil society to fully address the needs of women in dealing with domestic violence and gender-based violence issues. In addition to enacting legislation the government of Jamaica must ensure that the state provides adequate training to those service providers, such as the police and the court, required to implement the legislation. Although there are specialist officers within the Police Force specifically mandated to investigate allegations of sexual violence, notwithstanding their training and specialization, we are aware of instances of discrimination and prejudice in the manner in which specific complaints are addressed and/or investigated. There have been instances where women have sought the protection of the police as the first response to these issues, only to be discriminated against, abused, and sent away. [...]

- [Amnesty International, Submission to the UN Human Rights Committee, 09/09/2011](#)

[...] PROHIBITION OF TORTURE AND CRUEL; INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (ARTICLE 7)

[...] Sexual violence against women and girls and domestic violence (Questions 16 and 17)

Amnesty International welcomes the measures indicated by the Jamaican government in the state report and in the written response to the list of issues to combat gender-based violence and support victims of sexual and domestic violence. However, in light of the high incidence of sexual violence against women and girls in the state party Amnesty International considers that the Jamaican government should take further steps to fully implement the recommendations formulated during the Universal Periodic Review and to which Jamaica expressed its support. 11

Amnesty International continues to call on the Jamaican government to:

[...] - ensure satisfactory investigation and prosecution of cases of gender-based violence;
- allocate more consistent resources to the Bureau of Women's Affairs to carry out awareness raising, education and prevention programmes; [...]

- [Office of the United Nations High Commissioner for Human Rights \(OHCHR\), Report of the Working Group on the Universal Periodic Review on Jamaica, 04/01/2011](#)

[...] II. Conclusions and/or recommendations

[...] 99.28. Step up the implementation of legislative, policy and administrative measures aimed at combating gender-based violence and sexual harassment (Malaysia);

99.29 Further adopt and implement policies and measures aimed at preventing and punishing discrimination and violence against women, including sexual violence (Brazil); [...]

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➤ [Office of the United Nations High Commissioner for Human Rights \(OHCHR\), Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, on his mission to Jamaica, 11/10/2010](#)

[...] V. Conclusions and recommendations

A. Conclusions

[...] 75. In recent years, the Government has undertaken several initiatives to address domestic and gender-based violence. However, the effectiveness of the enforcement mechanisms remains unclear. The Special Rapporteur looks forward to the adoption of the necessary amendments to the Domestic Violence Act and the entry into force of the Sexual Offences Act as preventive tools. [...]

➤ [Jamaicans for Justice / Shareholder Coalition, Submission by Shareholder Coalition for the United Nations Universal Periodic Review of Jamaica, 03/09/2010](#)

[...] I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

[...] Women's rights

51. Among the major issues facing women in Jamaica today are:

- a. domestic violence, gender inequality, stereotyped roles for men and women
- b. the slowness of legal reform relating to anti-discriminatory legislation
- c. the high rate of teenage pregnancies
- d. the lack of sexual harassment legislation
- e. economic reliance by women on men, based on female poverty and women's lack of alternative sources of income.
- f. institutional factors such as:
 - i. lack of organized institutional support for women
 - ii. an inefficient justice system
 - iii. religious teachings which continue to oppress women.

[...] 54. Slovenia stated that, despite the commendable efforts of Jamaica, stakeholders had observed that women continued to face discrimination and domestic violence. Slovenia stated that the reports of abuse and harassment of lesbian, gay, bisexual and transgender persons by law enforcement officials were highly worrisome. It made recommendations. [...]

➤ [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](#)

[...] C. Promotion and protection of human rights on the ground

[...] Violence against women and girls

[...] However, the high incidence of violence, combined with the low clear-up rate for sexual crimes and reticence in reporting of sexual crimes, suggests that more vigorous efforts are needed to enforce the law and to bring perpetrators to justice.

[...] D. Recommendations for action by the State under review

Amnesty International calls on Jamaica:

[...] Violence against women and girls

- To widely disseminate the Sexual Offences Act in order to ensure awareness among the rights-holders and effective application of the law by all relevant authorities
- [...] • To ensure satisfactory investigation and prosecution of cases of gender-based violence;
- To allocate more consistent resources to the Bureau of Women's Affairs to carry out awareness raising, education and prevention programmes; [...]

In this context it is also important to take into account the findings of the Country Guidance case [SW \(lesbians - HJ and HT applied\) Jamaica CG \[2011\] UKUT 251 \(IAC\) \(24 June 2011\)](#) when assessing an internal relocation option for female applicants. This case found that single women with no male partner or children risk being perceived as a lesbian, whether or not that is the case, unless they present a heterosexual narrative and behave with discretion. Furthermore the case determined that because the risks arise from perceived as well as actual lesbian sexual orientation, internal relocation

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does not enhance safety. It was also found that perceived lesbians also risk social exclusion such as loss of employment or being driven from their homes.

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2.4 Internal relocation

Discrimination and exclusion faced by women

Excerpt from the February 2012 Jamaica OGN

2.4.4 It may be practicable for applicants who may have a well-founded fear of persecution in one area to relocate to other parts of Jamaica where they would not have a well-founded fear and, taking into account their personal circumstances, it would not be unduly harsh to expect them to do so. **The discrimination and exclusion faced by women in society should be taken account of when assessing whether it would not be unduly harsh to expect female applicants to internally relocate.** A Country of Origin Information request should be submitted to the Country of Origin Information Service if more information is needed.

2.4.5 Internal relocation will not enhance safety where a single woman with no male partner or children is perceived as a lesbian, whether or not that is the case. See *SW (lesbians – HJ and HT applied)* in 2.5 below. There are also likely to be difficulties for men who would be perceived as being homosexual in finding safety through internal relocation. See *DW (Homosexual men; Persecution; Sufficiency of Protection)* in 2.5 below.

The concluding guidance in relation to an internal relocation assessment correctly identifies that discrimination and exclusion against women exists in Jamaica. The following sources exemplify the economic difficulties and discriminatory practices that are prevalent throughout Jamaica that might impact on a woman's internal relocation option:

- [Government of Jamaica, Unemployment Rates By Age Group 2010 – 2011, Last updated: 24/01/2012](#) [Last accessed: 18/04/2012]

AGE GROUP	2010				2011		
	January	April	July	October	January	July	October
			BOTH SEXES				
TOTAL	13.5	12.4	11.6	12.0	12.9	12.3	12.8
14 - 19	47.4	44.8	43.5	53.5	39.0	43.1	45.6
20-24	26.4	29.8	26.1	25.7	28.1	25.2	27.4
25-34	15.6	13.2	13.2	13.0	15.3	13.3	13.6
35-44	11.5	9.8	9.8	9.6	8.4	10.0	9.6
45-54	7.4	6.6	6.6	6.7	7.7	7.6	8.5
55-64	4.4	5.8	5.8	4.7	5.4	4.7	4.9
65 and over	3.5	1.8	1.8	2.4	1.9	3.2	3.4
			MALE				
TOTAL	10.5	9.3	8.1	9.0	9.5	8.9	9.4
14 - 19	41.1	39.6	39.0	43.4	28.5	31.2	39.4
20-24	19.6	24.4	19.7	21.3	21.5	19.8	22.4
25-34	11.6	9.5	8.4	8.3	10.7	9.4	8.3
35-44	8.9	5.4	5.3	6.8	5.7	6.6	5.7
45-54	6.5	5.2	4.5	5.5	6.6	5.5	7.8
55-64	4.3	5.9	4.3	4.9	5.1	4.9	5.7
65 and over	3.2	1.8	1.5	3.4	1.8	3.4	3.8
			FEMALE				
TOTAL	17.1	16.2	15.9	15.7	16.8	16.4	16.9

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14 - 19	56.5	55.4	51.4	67.5	54.3	60.3	55.8
20-24	35.0	36.3	33.7	30.9	35.6	31.8	33.4
25-34	19.9	17.1	19.2	18.5	20.1	17.6	19.3
35-44	14.4	14.8	12.5	12.6	11.2	13.9	14.1
45-54	8.4	8.4	8.1	8.1	9.0	10.2	9.4
55-64	4.5	5.8	6.9	4.4	6.0	4.3	3.6
65 and over	4.3	1.9	2.2	0.0	2.2	2.7	2.4

Note: Data for October 2011 are PRELIMINARY (Data for April, July & October 2010 were adjusted)

- [UN Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant: Concluding observations of the Human Rights Committee: Jamaica, 17/11/2011](#)
 [...] C. Principal matters of concern and recommendations
 [...] 18. The Committee notes with regret the continuing reports of gender discrimination and sexual harassment in the State party. The Committee regrets the lack of comprehensive legislation clearly proscribing gender discrimination and sexual harassment in employment (arts. 2, 3 and 7). The State party should adopt a comprehensive approach to preventing and addressing gender discrimination and sexual harassment in all its forms and manifestations. In this regard, the State party should improve its research and data collection methods to establish the magnitude of the problem, its causes and consequences on women. The State party should also consider adopting comprehensive legislation that clearly prohibits gender discrimination and sexual harassment in employment. [...]
- [Hear the Children's Cry/Independent Jamaican Council of Human Rights/Jamaica Forum of Lesbians, All-Sexuals and Gays \(J-FLAG\)/Jamaican Community of HIV Positive Women/Jamaicans for Justice \(JFJ\)/Mensana/Stand up for Jamaica/Women's Resource and Outreach Centre \(WROC\), Jamaica: Civil Society Report on the Implementation of the ICCPR, 20/09/2011](#)
 [...] CONSTITUTIONAL AND LEGAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED (ART. 2)
 [...] 5. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law, but also prohibits any discrimination under the law. With the flawed provisions in the Charter of Rights and the failings of the current system of justice (well documented elsewhere), the State is failing to provide equal protection of the law to all persons under Jamaican jurisdiction of Jamaica. It is particularly worrying that the most vulnerable elements of society are the least protected (including also, children, women, and individuals from socioeconomically depressed communities).
 [...] NON-DISCRIMINATION, AND EQUALRIGHT OF MEN AND WOMEN (ART. 2(1), 3, AND 26)
 [...] 30. The Government of Jamaica launched the Jamaica National Policy for Gender Equality (NPGE) on March 8, 2011. The policy aims to "reduce all forms of gendered discrimination and promote greater gender equality and social justice." While the implementation of this policy is a step in the right direction, it still remains that women and children are the poorest and most vulnerable section of the population.
 31. Women comprise 43.2% of the labour force and are concentrated in the lowest paying sectors of the economy. Unemployment among women is almost two times that of men. Females in the 14-24 age range have an unemployment rate of 33.6%, as opposed to 19.8% for males in the same age category.¹⁹
 [...] Most of the thousands of female household workers are among the working poor, earning a minimum wage of JA\$4500/week (approximately US\$52/week) and are without any form of social protection such as health insurance or support of labour unions.
 32. Women continue to face more challenges than men in respect to credit, real estate and other property issues. [...]
- [U.S. Department of State, Trafficking in Persons Report 2011: Jamaica, 27/06/2011](#)
 [...] Jamaica is a source, transit, and destination country for adults and children subjected to sex trafficking and forced labor. NGOs report that the most common form of trafficking in Jamaica is sex trafficking, which allegedly occurs in night clubs, bars, and private homes. [...]

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- [Freedom House, Freedom in the World 2011: Jamaica, 05/07/2011](#)
[...] Legal protections for women are poorly enforced, and violence and discrimination remain widespread.
[...]
- [U.S. Department of State, Country Report on Human Rights Practices 2010: Jamaica, 08/04/2011](#)
[...] Although the law accords women full legal equality, including equal pay for equal work, in practice women suffered from discrimination in the workplace and often earned less than their male counterparts. According to the World Economic Forum's *2010 Global Gender Gap Report*, women earned 36 percent less than men for comparable work. The BWA, reporting to the minister of development, oversaw programs to protect the legal rights of women. These programs had limited effect but raised awareness of problems affecting women. Women sought jobs and served in almost every occupation in both the public and private sectors.[...]
- [UN Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 \(c\) of the annex to Human Rights Council resolution 5/1: Summary of stakeholders' information to the Working Group on the Universal Periodic Review on the promotion and protection of human rights, 10/08/2010](#)
[...] 8. The Inter-American Commission on Human Rights (IACHR) stated that although Jamaica has taken important steps in protecting the rights of women in relation to discrimination and violence, these efforts have yet to change the lives of many women who continue to face different forms of discrimination. Jamaica must act to translate its obligations under national and international law into practice.
9. JS2 indicated that the major problems facing women included domestic violence, gender inequality, stereotyped roles for men and women, slow pace of legal reform relating to anti-discrimination legislation and the lack of sexual harassment legislation, and economic reliance of women on men because of female poverty. [...]
- [Inter-American Commission on Human Rights, IACHR ISSUES PRELIMINARY OBSERVATIONS ON VISIT TO JAMAICA, 05/12/2008](#)
[...] Both State and civil society representatives reported that the situation of poverty and exclusion found, for example, in many inner city areas has a disproportionate impact on women. These sources reported that the economic situation of women and their families is affected by greater rates of unemployment and lower salaries than men, and that this produces especially serious consequences for the many single mothers, aunts and grandmothers raising children. [...]
- [World Health Organization, Health in the Americas 2007: Jamaica, October 2007](#)
[...] According to a 2004 Millennium Development Goals (MDG) report prepared by the Planning Institute of Jamaica (5), half of the country's poor were children under age 18 and 10% were elderly. Two-thirds of all female-headed households were living at or below the poverty line. Despite lower poverty rates among the urban population, poverty was extreme in some inner-city areas. The employment rate in 2005 was 63.9%, with a male participation rate of 72.9% and a female participation rate of 55.4%. The average unemployment rate for that year was 11.3%, down from 15.5% in 2000. Disaggregation by gender showed that the female unemployment rate (15.8%) continued to be more than twice that of males (7.6%) (1, 6). [...]
- [UN Committee on the Elimination of Discrimination against Women, Concluding comments of the Committee on the Elimination of Discrimination Against Women: Jamaica, 25/08/2006](#)
[...] 13. The Committee remains deeply concerned about the persistence of strong patriarchal attitudes and deep-rooted stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life, which are discriminatory of women. The persistence of such values underpins discrimination against women in many spheres, and condones gender-based violence and promiscuous behaviour by men. The Committee regrets that no sustained, systematic action has yet been taken by the State party to modify or eliminate stereotypes and negative cultural values and practices that discriminate

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against women and prevent them from enjoying their human rights and continue to constitute a severe obstacle to the full implementation of the Convention.

[...] 27. The Committee is concerned that apparently no temporary special measures have been put in place by the State party to accelerate the achievement of de facto equality of women and men, as provided for in article 4, paragraph 1, of the Convention, and that the Government lacks a clear understanding of the purpose of, and need for, temporary special measures provided for under the Convention.

[...] 33. The Committee is concerned that, despite high educational qualifications, women continue to be underpaid and underemployed, and face horizontal and vertical sex segregation in the labour market. The Committee is also concerned about the lack of legislation prohibiting sexual harassment in the workplace, and the vulnerable situation of domestic workers who are entitled to receive maternity benefits under the National Insurance Scheme.

[...] 37. The Committee is concerned that insufficient attention is being paid to the gender-specific impact on women, particularly rural women, of economic adjustment and trade liberalization programmes as a cause of poverty. It is also concerned with the poor living conditions rural women face, especially in the country's interior. While noting the number of interventions for rural women, it is concerned that these are scattered and welfare oriented rather than aimed at rural women's empowerment, and indicate the absence of a holistic approach to implementation of article 14 of the Convention. While noting that the State party has placed a high priority on its National Poverty Eradication Programme, the Committee regrets the lack of data provided on its impact on women. [...]

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