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Jamaica



Sexual violence against women and girls in Jamaica: “just a little sex”

Introduction - Sexual violence in Jamaica

"The lawyer made me feel like a slut in court. He tried to convince the court that I was guilty for them doing such a terrible thing to me,"¹ recalls one Jamaican woman who was abducted from her workplace and gang-raped at gunpoint.

Violence against women in Jamaica persists because the state is failing to tackle discrimination against women, allowing social and cultural attitudes which encourage discrimination and violence.

This violates the government's most basic treaty obligations under the UN Convention for the Elimination of Violence against Women (CEDAW), among others. Shortcomings in national legislation do not deal adequately with marital rape, incest or sexual harassment, thereby encouraging impunity and leaving women without the protection of the law.

Discrimination is entrenched and often exacerbated in the police and criminal justice system. Women and adolescent girls are rarely believed by the police, so have little confidence in reporting crimes against them. Evidence is often not sought effectively or professionally, and witnesses are rarely protected. In court,

¹ 6 June 2004, Observer.

women's testimony is explicitly given less weight than men's, thereby depriving women of the right to equality before the law.

In Jamaica, entrenched discrimination against women means many individuals fail to appreciate that forced sex carried out by an acquaintance or family member is a serious crime.

The rate of sexual violence against women in Jamaica is very high,² and is accompanied by spiralling levels of community violence and homicide throughout the island. In 2005, the number of homicides in Jamaica, already high, increased to 1,669³. At 0.55 - 0.62 per thousand people, this is one of the highest rates in the world.

² Jones, M. (2003). From the footnotes into the text. In *Understanding crime in Jamaica*. UWI Press: Mona. See also Bailey, B. (1999), National Report on the situation of gendered violence against women and girls. UNDP: Jamaica, utilizing data from 1997; also Economic and Social Surveys which find that rates of sexual assault, incest and domestic violence increased by 114% between 1980 and 1998. Some academics consider that the rise in sexual violence may reflect an artificial inflation due to increased rate of reporting of sexual assault.

³ Jamaica Constabulary Force, Police Statistics Department. The rate fluctuated between 2000 and 2003, with a sharp increase in 2004.

Sexual assault is the second-most-common cause of injury for women, after fights. Five per cent of all violent injuries seen in hospitals are caused by sexual assaults⁴.

Research methodology

The research for this report was carried out in Kingston, Jamaica, in May 2005 and November 2005, as well as prior and subsequent research in 2004, 2005 and 2006. It collates research and interviews by AI with a broad section of Jamaican society - female victims of violence in the family and women's organizations, police officers, judges, social workers, lawyers, human rights activists and journalists.

There are significant difficulties when researching sexual violence against women. These are particularly severe when accounts by women of the violence they face cannot be independently verified by judicial investigations. The number of reports from women spoken to by the organization, however, and the independent verification from women's rights organizations and activists, leads Amnesty International to believe these reports are credible and accurate.

A global problem

Just a Little Sex is part of Amnesty International's worldwide campaign to Stop Violence against Women and takes Jamaica as its focus. Although the levels of sexual violence and discrimination in Jamaica are extreme, the Caribbean island is by no means the only country with such problems.

The report focuses specifically on sexual violence, but it should be noted that most of those who spoke to AI representatives had also

⁴ [Jamaica Injury Surveillance System](http://www.moh.gov.jm/VPA/tables_by_gender_april_20.pdf), (2004) (http://www.moh.gov.jm/VPA/tables_by_gender_april_20.pdf) .Violence related injury 2004 – gender-related data, preliminary analysis. This increased from 4% of the total in 2003, with an overall increase in violence-related injury.

experienced other forms of gender-based violence, including physical, psychological or emotional violence and economic dependency or deprivation.

Gender-based violence is that which is directed against a woman because she is a woman and because it affects women disproportionately⁵. It is not confined to any particular political or economic system, but is prevalent in every society in the world and cuts across boundaries of wealth, race and culture.

The UN Special Rapporteur on Violence Against Women, its causes and consequences, points out that:

“As a manifestation of violence against women, rape and sexual violence, including sexual harassment, are universal, cutting across State borders and cultures, used in all countries and in all cultures as weapons of degradation and terror against women. All forms of sexual violence against women serve as methods of subjugating women by controlling their sexuality through violence, fear and intimidation.”⁶

All the victims cited in this report are women and girls, but it should be noted that boys are also often subjected to abuse by friends, acquaintances, strangers or parents, and men, too, are victims of sexual violence. This report touches on this in its sections on children and the high levels of violence in Jamaican society, painting a picture of a country that is overrun by violence. Until the authorities take steps to implement effective laws and policies to control the violence, the likelihood that all members of Jamaican society, in particular women and girls, will be protected, is small.

⁵ General Recommendation No.19 of the UN Committee on the Elimination of All Forms of Discrimination (CEDAW).

⁶ [E/CN.4/1997/47](http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/043c76f98a706362802566b1005e9219?Opendocument), (<http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/043c76f98a706362802566b1005e9219?Opendocument>) 12 February 1997, para 18



Low reporting rates

One of the main problems in Jamaica, as elsewhere in the world, is that no-one wants to report sexual assault.⁷ For reasons that are researched in depth elsewhere, most of the women spoken to by Amnesty International had not reported the sexual assaults or harassment that they experienced to the authorities. They also reported witnessing high levels of unreported sexual assaults in the community.

Officially reported rates of violence are high enough – suggesting that 0.18 per cent of women are sexually assaulted each year⁸. But the sexual assault investigation units in Jamaica estimate that only 25 per cent of sexual violence is reported. Health facilities report slightly higher rates of rape and sexual assault than the police, suggesting that women are reluctant to approach the police.

This under-reporting is directly related to discrimination against women, and the trivialisation of sexual violence perpetrated by an acquaintance as “just a little sex”.

Girls

If women’s rights are not respected, girls are even more vulnerable; 70 per cent of all reported sexual assaults in 2004 were recorded against girls rather than women.⁹

⁷ World Health Organization (2002). World Report on violence and health. Geneva: WHO.

⁸ Economic and Social Survey Jamaica, 2004. In 2005, the Constabulary Communication Network reported that there had been 735 reported rapes in Jamaica: this may not include rapes or sexual assaults of individuals under the age of 18 and hence is quite unrepresentative. There were 916 rapes reported in 2004, and 409 reports of “carnal abuse” (sexual assault of a girl under the age of 16).

⁹ [Unicef](http://www.unicef.org/jamaica/violence.html) (<http://www.unicef.org/jamaica/violence.html>) There are thought to be even greater disincentives for boys and men to report sexual assault, hence reports in these categories are negligible. Site consulted 11 October 2005.

According to self-report and population-based surveys, 17 per cent of 13 and 14 year olds in Kingston, Jamaica had experienced rape or attempted rape; the majority by adult casual acquaintances.¹⁰

Approximately 33 per cent of girls in this age group experience either verbal enticements to have sex or unwanted physical contact.¹¹ A Caribbean study found that 47% of adolescent girls’ sexual initiation was “forced” or “somewhat forced”.¹² “Forced” was the term used by many Jamaican men, women and girls spoken to by Amnesty International to refer to rape.

One study found that 20 per cent of 15 to 19 year olds had been forced to engage in sexual activity, and that this was more prevalent in rural areas.¹³ These forced experiences occurred within relationships as well as outside them.

In 2002, a women’s organization providing shelter for victims of violence reported an increase in the number of girls under the age of 12 who had been kidnapped and raped.¹⁴

Guns, gangs and rising levels of violence

All members of Jamaican society, including politicians, acknowledge the levels of violence in the country are terrifying, unpredictable and extremely dangerous. Even schools are reportedly unsafe as corporal punishment is

¹⁰ Walker et al. (1994). Nutritional and health determinants of school failure and dropout in adolescent girls in Kingston, Jamaica. International Centre for Research on Women: Washington DC.

¹¹ Ibid.

¹² Halcon, L., Beuhring, T. & Blum, R. (2000). [A portrait of adolescent health in the Caribbean, 2000. Minneapolis, University of Minnesota and PAHO.](http://www.paho.org/English/HPP/HPF/ADOL/monogra.pdf) (<http://www.paho.org/English/HPP/HPF/ADOL/monogra.pdf>). The study was carried out in Jamaica and 8 other countries between 1997 and 1998. The figure refers only to girls who had experienced sexual intercourse.

¹³ Reproductive Health Survey (2002). National Family Planning Board.

¹⁴ Woman Inc, cited in Carr (2002).

tacitly accepted,¹⁵ many children carry weapons¹⁶ and criminals enter schools to carry out attacks – most girls have witnessed violence at school¹⁷ and many have been victims.¹⁸



Women’s activists stand alongside a scroll with the names of the women and children murdered in 2004. © Women’s Media Watch

Against this backdrop of rising violence in Jamaica, the widespread availability of guns is related to high levels of sexual violence and homicide. In the first 10 months of 2005, 16 per cent of reported rapes were at gunpoint.¹⁹

One commentator concludes: “It would appear that violence against women in Jamaica is not decreasing, but rather that it has taken a more sinister and criminal form, institutionalised in gang culture which uses women and children as part of [its] reprisal system.”²⁰

Reprisal crime, including sexual violence, is a growing phenomenon connected to perceived or actual informing of criminal activity to the police, a personal or familial vendetta, or a form of political tribalism. By its very nature it hampers reporting.

Approximately 32 per cent of all homicides in Jamaica are now reprisal based, and women are increasingly targeted as informers.²¹

The reprisals operate in a culture of increased random violence as well, where a sense of security or the ability to hide from violence is non-existent. When one woman and her two sons were shot dead in their beds in October 2005, a neighbour stated: “*Everybody inna fright because she an har pickney dem nuh trouble people*”²² [Everybody’s frightened now, because she and her children didn’t bother anyone].

¹⁵ Seventy-five percent of children report being beaten with an object at home or at school, Ministry of Health (2002). Violence prevention intervention. The Education Code does not ban corporal punishment, except in early childhood institutions: although the Ministry report that “we do not actively encourage it”

¹⁶ Fifteen percent of children carry a weapon, usually a knife, to school at all times, Caribbean Youth Health Survey.

¹⁷ Walker et al. (1994).

(http://catalog.icrw.org/docs/1994_report_jamaica.pdf) The study consisted of 452 randomly selected 13 and 14 year old girls in the Kingston area.

¹⁸ Meeks-Gardner et al (2003). Perceptions and experiences of violence amongst secondary school students in urban Jamaica. American Journal of Public Health, 14 (2).

Sexual violence in the home

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

¹⁹ Interview with Deputy Commissioner Jevene Bent, 11 November 2005.

²⁰ Royes et al., (2005). Evaluation of gender-based violence.

²¹ Op.cit. p.33

²² Jamaica Observer, 10 October 2005.



injury and the perpetrator is usually someone they know²³.

Marital rape is not a statutory crime in Jamaica, although there are conditions under common law for which it is recognized as an offence, and hence its prevalence is difficult to establish. However, women who spoke with Amnesty International discussed openly situations in which they had agreed to sexual activity in order to avoid violence, or to ensure that their boyfriends or partners provided economic support to the household.

One woman who continues to experience marital rape told AI:

“If you’re in your home and your husband come and he touch, and some type of husband use her, and she not in the mood, him start tell you from a to z and when him angry for it you must respond. And when you respond everything good and nice. But at the same time you may be responding to him and in the end it is killing you.”²⁴

Almost a third of total murders were attributed to domestic violence between 1997 and 2002. Yet it is estimated that only 10 per cent of women who are battered report the abuse.²⁵

Incest

Children require protection from sexual violence in the home. The Jamaica Injury Surveillance system has shown that 86 per cent of sexual assault cases reported in 2002 and 2003 were committed by a relative, a friend, an acquaintance or an intimate partner. Considering the high number of 15-19 year olds who have

experienced forced sex, these figures suggest incest is far more common than is reported.

It is not possible to access more precise data, partly due to the outdated definition of incest in Jamaican legislation, which holds that:

“Any male person who has carnal knowledge of a female person, who is to his knowledge his grand-daughter, daughter, sister or mother, shall be guilty of a misdemeanour and on conviction thereof before a Circuit Court shall be liable to imprisonment with hard labour for any term not exceeding five years, or if it is alleged in the indictment for such offence and proved that the female person is under the age of twelve years to imprisonment with hard labour for any term not exceeding ten years.”²⁶

The law needs to be updated to reflect the high number of live-in, serial common-law relationships that women may experience during their lifetimes. As the Special Rapporteur on women’s rights for the Inter-American Commission on Human Rights has pointed out:

“The classic case of incest involves a girl child and her father, step-father or father figure. Incest does not necessarily imply a biological relationship but a social one between a child and a parental figure. The vast majority of countries throughout the world legislate against incest and make it a criminal offence ...However, the essential question is not whether such acts are criminal but whether sanctions are effectively applied in any given society.”²⁷

The relationship between violence against women in the home and violence against children

²³ Jamaican Ministry of Health (2004). [Violence related injury 2004. Preliminary data – gender analysis](http://www.moh.gov.jm/VPA/tables_by_gender_april_20.pdf). (http://www.moh.gov.jm/VPA/tables_by_gender_april_20.pdf). Conversely, only 4.3% of violence perpetrated against men was by intimate partners.

²⁴ Amnesty International interview, 11 November 2005.

²⁵ Bailey, B. (1999), National Report on the situation of gendered violence against women and girls. UNDP: Jamaica.

²⁶ The Incest (Punishment) Act, 1948, updated 1980, section 2 (1). In the Offences Against the Person Act (1995), for proof of carnal knowledge it is deemed “not necessary to prove the actual emission of seed in order to constitute carnal knowledge, but the carnal knowledge shall be deemed complete upon proof of penetration only.”

²⁷ Special Rapporteur on violence against women, its causes and consequences, para 66, E/CN.4/1996/53, 6 February 1996

has also been highlighted by the UN Special Rapporteur on violence against women, who pointed out that:

“Violence against women is a problem that affects men, women and children; it distorts family life and the fabric of society, with consequences that cross generations. Studies have documented that having been exposed to violence within the family during youth is a risk factor for perpetrating such violence as an adult. It is a human security problem, a social problem and a public health problem.”²⁸

Silent witness

Women’s voices are silenced – not only by the discrimination and violence they face, but also by the failure of the state to protect them, investigate abuses and punish perpetrators.

The women who gave their testimonies to AI did so to help others, and in the hope of establishing effective mechanisms for combating violence against women in Jamaica.

Through this report, Amnesty International supports women fighting to get back their voice.

²⁸ Special Rapporteur on women’s rights of the Inter-American Commission on Human Rights, “The Situation of the Rights of Women in Ciudad Juárez, Mexico: the Right to be Free from Violence and Discrimination,” OEA/Ser.L/V/II.117, Doc. 44, 7 March 2003, para. 122.

1. Gendered discrimination and violence

*“Gender-based violence is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.”*²⁹

The Inter-American Court of Human Rights recently noted that the principle of equality - including between men and women - is a basic foundational principle of general international law, known as *jus cogens*.³⁰ This means the principle is absolutely binding on all states, regardless of their treaty obligations.³¹

This new ruling assists women’s rights advocates in emphasizing the absolute prohibition of any form of discrimination, including violence against women. It also builds on a history of international law and conventions that state violence against women is a form of discrimination.

The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN General Assembly and other authoritative bodies have all identified violence against women as a form of sex discrimination. Non-discrimination on grounds of sex is a norm of international law, and therefore binding on all states, even those that have not ratified the relevant conventions.

Article 2 of the UN Declaration on the Elimination of Violence against Women identifies three types of violence against women, although it is not limited to them:

- Physical, sexual and psychological violence that occurs in the family,

²⁹ General Recommendation 19 of the Committee on the Elimination of all forms of discrimination against women.

³⁰ Treaty provisions cannot be inconsistent with *jus cogens* prohibitions.

³¹ Inter-American Court of Human Rights, Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18 of 17 September, 2003.

including battering; sexual abuse of female children in the household; dowry-related violence; marital rape; female genital mutilation and other traditional practices harmful to women; non-spousal violence; and violence related to exploitation;

- Physical, sexual and psychological violence that occurs within the general community, including rape; sexual abuse; sexual harassment and intimidation at work, in educational institutions and elsewhere; trafficking in women; and forced prostitution;
- Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

The World Health Organization, in its 2005 multi-country study, defines sexual violence as situations where [a woman] is physically forced to have sexual intercourse when she did not want to; had sexual intercourse when she did not want to because she was afraid of what her partner might do; or was forced to do something sexual that she found degrading and humiliating.³²

Physical sexual assaults against women are merely one aspect of a spectrum of sexual coercion which encompasses the sex trade, poverty-fuelled transactional sex, and familial pressure to marry against one’s will. Some aspects of this spectrum are criminal, although they may not always be recognized in law. Others relate to restrictions on women’s rights which prevent them from making informed choices about their lives.

In addition to ensuring an end to impunity for perpetrators of sexual violence and the prevention of further violence, an important means of protecting women against sexual violence is helping them realise their economic and social rights.

³² *supra* at 1.

Women living in rural communities or in areas which are either unsafe or have unsafe roads, for example, may not have the money to travel to school. Amnesty International was told of cases of girls being coerced to provide sexual favours to older men who “mind” them in return for protection, for example bus conductors who take girls to school for no fee, or provide them with money to buy school books. Children have to make “choices” between pursuing an education and rescuing themselves – and potentially their families – from poverty, and being free from sexual violence and exploitation.

Coercion – as opposed to physical force – is increasingly recognized as an element of sexual violence, following developments in international criminal law. Such an approach has been approved by the European Court of Human Rights.³³ In a 2003 ruling about a case where there was insufficient proof a 14-year old girl had been ‘compelled’ to have sex, the court said:

"In international criminal law, it has recently been recognized that force is not an element of rape and that taking advantage of coercive circumstances to proceed with sexual acts is also punishable. The ICTY [International Criminal Tribunal for the former Yugoslavia] has found that in international criminal law any sexual penetration without the victim's consent constitutes rape, and that consent must be given voluntarily, as a result of a person's free will, assessed in the context of the surrounding circumstances. While the above definition was formulated in the particular context of rapes committed against the population in the conditions of an armed conflict, it also reflects a universal trend towards regarding a lack of consent as the essential element of rape and sexual abuse... the evolving understanding of the manner in which rape is experienced by the victim has shown that victims of sexual abuse - in particular girls below the age of majority - often provide no physical resistance because of a

³³ M.C. v Bulgaria, application no. 39272/98, judgment, 4 December 2003.

variety of psychological factors or because they fear violence on the part of the perpetrator."³⁴

a) Sexual harassment

Sexual harassment of women leads directly and indirectly to violence and is a form of gender-based discrimination. Women in Jamaica face sexual discrimination on a daily basis. The discrimination is fuelled by stereotypical beliefs and attitudes about women.

The CEDAW Committee, in its concluding observations on Jamaica in 2001, expressed concern that stereotypical attitudes and behavioural patterns about the role of women and men in the family and society persist.

Numerous other studies throughout this report show women are routinely sexually harassed: in their homes, walking down the street, in their workplaces, and in government institutions.

One of the most enduring misperceptions, commonly expressed, is that sexual violence is the fault of the victim, due to her behaviour or her clothing. Sixty-six percent of men and 49 per cent of women in a survey agreed with the statement “Women and girls sometimes bring rape on themselves.” Forty-one percent agreed with the statement, “If a woman does not resist when a man tries to force her into a sexual act then it is not rape”.³⁵

One woman told Amnesty International about her experience of walking down her street each day:

“They talk some words they no nice. Abusive words, right, just because I wear a short skirt, doesn’t say that you must be interested in somebody, [if you] walk along a street in a short skirt...you have people disrespect you. And some of the songs.... I know that music is a good thing

³⁴ *ibid.* paras 163-166

³⁵ Royes, H. (2005). Knowledge, attitudes and practice survey. USAID.



*but some of the music, that disrespect us as ladies. We must speak out about dance.*³⁶

Derogatory attitudes towards women – and the ensuing harassment – are pervasive and visible on many levels in Jamaica, even in the most accessible popular culture. For example, dancehall music often contains lyrics that are demeaning to and insulting of women. The government has done little so far to curb the misogynistic or homophobic lyrics of Jamaican musicians. However, in September 2004 a coalition of businesses in Jamaica acted by refusing to sponsor “acts or events whose live performances endorse or incite violence...or ...demean or discriminate against any person or group of persons.”³⁷

On November 8 1998, twenty-five year old Suzanne Ferguson³⁸ was walking home with her aunt and her male cousins when she was accosted by two men in a car. One of them was dancehall musician Jah Cure. After robbing her cousins at gunpoint and threatening to kill them, then ordering them to flee, the two men abducted the two women and raped them. Jah Cure raped his victim at gunpoint. He was found guilty by a jury in the face of “overwhelming” evidence, and sentenced to 13 years’ imprisonment. However, his victim’s ordeal did not end there. She has been subjected to a sustained campaign by his friends, other entertainers and musical fans. She and her relatives have been threatened and offered money. The campaign is known as the “Free Jah Cure” campaign, and has widespread public support. Despite having written a song whilst in prison with the help of his rehabilitation officer that admits his remorse, Jah Cure continues to protest his innocence. Due to her alarm at widespread public perception that he

³⁶ Amnesty International interview, 11 November 2005

³⁷ Jamaica Gleaner, 17 January 2006

³⁸ Name changed.

was innocent, his victim decided to go public. She says:

“Every time there is a lot of publicity about Jah Cure, I have even more flashbacks. Sometimes I am so afraid to leave my house. When I go out in the public and hear people say, ‘Free Jah Cure’, I have serious flashbacks and it becomes very difficult. It seems to me that entertainers are more valued than everybody else in Jamaica and as a woman, I feel seriously undervalued.”³⁹

A prominent church figure told young women in 2004 that scanty outfits were an invitation for rapists.⁴⁰ The religious leader’s comments are similar to many comments heard by Amnesty International, made by both men and women, such as that it is women’s responsibility to rebuff her rapists, or that rapists don’t attack girls who dress modestly, or that women sexually harassed in the workplace “really wanted it”.

Such attitudes also increase the likelihood that perpetrators do not have to face the consequences of their crimes, and that women will be disbelieved when reporting the crime if it ever comes to court.

Bemoaning the “woefully low” rate of rape convictions, one judge said: “I am here to tell you that any good defence attorney who wants to destroy a woman’s credibility (in rape cases) tries to bring out how she was dressed. Was she dressed in a tight pants or a tight skirt, and believe it or not things like those affect the jury”.⁴¹

Men and women sometimes believe violence against women to be justified if women are suspected of being unfaithful.⁴² When powerful community figures and the media perpetuate such

³⁹ 28 August 2005, Jamaica Gleaner, name changed to protect identity.

⁴⁰ Jamaica Observer, 9 August 2004

⁴¹ Jamaica Observer, 16 December 2005

⁴² Cited in Royes et al., 2005. Evaluation of Gender-based violence.

attitudes, it makes it harder for women to fight discrimination.

In a society where sanctions for violent behaviour are ineffective or non-existent, excuses for men's violence against women abound. The results of one discussion group, whilst finding that the vast majority of men agree with the statement that, "It is wrong for a man to beat a woman", followed up with comments such as, "it no right, but if you no do that, you[r] relationship [break down]. Man have several things [that] make him feel like a man. For some finances and other things are out. This is the only thing that he has to make him measure up."⁴³

b) The double bind – being a woman and gay

Homosexual women are at increased risk of discrimination. Gay men in Jamaica are treated as criminals by the legal system⁴⁴ thus promoting a climate of prejudice, discrimination, physical attacks and other abuses against people who are or are believed to be gay.

The UN Special Rapporteur on violence against women, its causes and consequences has observed:

*"Gender-based violence is also related to the social construct of what it means to be either male or female. When a person deviates from what is considered 'normal' behaviour they are targeted for violence. This is particularly acute when combined with discrimination on the basis of sexual orientation or gender identity."*⁴⁵

Several international human rights bodies have condemned persecution and violence that is inflicted on grounds of sexual orientation or

⁴³ Cited in Royes et al., 2005. Evaluation of Gender-based violence.

⁴⁴ Sections 76, 77 and 79 of the Jamaican Offences Against the Person Act criminalize sex between consenting adult men.

⁴⁵ UN Special Rapporteur on violence against women, Statement to the 58th session of the UN Commission on Human Rights, 10 April 2002.

gender identity. As the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health recently stated: "Sexual rights include the right of all persons to express their sexual orientation, with due regard for the well-being and rights of others, without fear of persecution, denial of liberty or social interference."⁴⁶

Gay women in Jamaica have told Amnesty International that they do not disclose their sexuality to people they do not know, and are not openly affectionate in public. Many lesbian women report being beaten, and they also endure threatened and actual sexual violence, "to be taught a lesson".

Amnesty International has also received reports of women fleeing the Caribbean due to attacks against them which they believed to be based on their sexuality.⁴⁷

"As a gay woman, my fear is not so much about anybody murdering me, but it is about somebody raping me ... so I am really, really careful ... people don't ever ask me."⁴⁸

Again, popular culture and some Jamaican music perpetuates this mindset:

"When yuh hear a Sodomite get raped/But a fi wi fault/It's wrong/Two women gonna hock up inna bed/That's two Sodomites dat fi dead." (When you hear of a lesbian getting raped/It's not our fault/It's wrong/Two women in bed/That's two Sodomites who should be dead.)⁴⁹

⁴⁶ Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Report to the 60th session of the UN Commission on Human Rights. E/CN.4/2004/49, 16 February 2004, para 54

⁴⁷ See, for example, Human rights and sexual orientation and gender identity, AI Index ACT 79/001/2004.

⁴⁸ Interview with Amnesty International, 3 November 2005.

⁴⁹ From a song by Elephant Man. Sodomite is a derogatory term for lesbian.

c) Women in power

Discrimination and harassment tend to be exacerbated in a society where women have no power. And women are less likely to have power in a community that discriminates against them.

Jamaica's women's rights activists, in a shadow report to CEDAW in 2001, drew attention to the lack of female representation in government.

They also noted the tendency for the government to focus on "male marginalisation",⁵⁰ leaving aside the vast domain in which women remain significantly under-represented, such as employment and politics.

In 2005, for example, women made up only 7 per cent of mayors, only 17.6 per cent of cabinet ministers, and only 11.7 per cent of members of parliament – that is only seven of the 60 MPs.⁵¹

Despite the proportional lack of representation of women in politics, on 30 March 2006 Portia Simpson Miller, was sworn in as Prime Minister after being elected President by the ruling party. She told a rally for International Women's Day 2006, "As your leader and Prime Minister I want you to understand that I am going to be demanding justice and gender justice too."

Universities have a high percentage of women enrolled – they made up 73 per cent of the higher education student body in 1997⁵². In Jamaica this means that despite a high number of female graduates, women hold only 10 per cent of senior

positions in the public and private sectors.⁵³ This means that "women's higher levels of educational achievement have not translated in the short run into commensurate levels of income, responsibility or status in the economy or broadly in that society".⁵⁴

Discrimination starts early in a girl's life. Girls in poor families are often expected to eat less in comparison to their male siblings, and to give up school – or to find the money for their own fees - if families are unable to provide for them.⁵⁵

Where the entire family or community lives in impoverished circumstances, there may be implicit or explicit pressure on girls to earn for the family by providing sexual favours for older men. School leaving due to a family's financial situation is also a time when most adolescent girls may enter the sex trade.

Amnesty International was told of girls at home without their parents who had been sexually assaulted. The children were allegedly at home as their parents may have been working abroad, or were unable to provide school fees, or they had been denied access to school as a result of a family member's HIV-positive status.

⁵⁰ i.e. the under-representation of men in tertiary schooling.

⁵¹ Jamaica Information Service, site consulted January 2006, and Vassell, L. & S. (2004). [UNIFEM: Women in power and decision making in the Caribbean](http://www.unifemcar.org/documents/Vassell%20paper.pdf). (<http://www.unifemcar.org/documents/Vassell%20paper.pdf>). These figures have shown a reversal in trend since 1998, when there was a higher proportion of women in the House of Representatives and the Senate.

⁵² Jamaica Economic and Social survey 1997.

⁵³ Cited in Vassall, p. 85 from the Financial Gleaner, 6 November 1998, Breaking the Glass Ceiling. Richard Coe.

⁵⁴ Linnette Vassall. Power, governance and the structure of opportunity for women in decision-making in Jamaica. p.84 The Construction of Gender Development Indicators in Jamaica (2000). Planning Institute of Jamaica: Kingston.

⁵⁵ Eg. Barbara Bailey (1999). National Report on the situation of gendered violence against women and girls. UNDP: Jamaica.

2. A culture of guns and sexual violence

“On the one hand he doesn’t really need [a gun], as most men are much stronger than women. But with a gun you don’t even have to be physically strong. You don’t even have to say anything, they don’t need to ask whether or not It’s loaded they don’t need to ask themselves whether or not you can hit them, because I’ve just seen the gun that’s enough excuse to be scared. And there is a wealth of guns in Jamaica.”⁵⁶

a) Guns control lives

Large quantities of guns were brought into Jamaica during the 1970s and 1980s in order to arm opposing political parties and their voters, to defend the territory perceived to belong to one or other political party, and to deprive competing political forces of campaigning ability. This created a deeply divided society with political “dons” (leaders of organized crime gangs) retaining control of drugs and arms stockpiles.

Formal politics is still at least partly hostage to gangs, although the majority of politicians appear to be attempting to dissociate themselves from criminal networks⁵⁷.

Paradoxically, gangs are sometimes perceived to bring peace and order and some degree of prosperity to the areas they control, as their revenue from organized crime, extortion and corruption is perceived to protect small local areas⁵⁸. This is partially because the climate of

⁵⁶ Lawyer, interview with Amnesty International, 9 November 2005.

⁵⁷ See, for example, the Minister of Security’s speech expressing regret for attending the funeral of a notorious “don” whilst he was Transport and Works Minister three years earlier, Jamaica Observer, May 21 2004. Minister Phillips called on politicians “to distance themselves from connections with criminality, particularly the trade in illegal narcotics, which...had the capacity to corrupt critical institutions, including the security forces, the financial sector, the judiciary and legal profession”.

⁵⁸ For example, when notorious gang leader Donovan “Bulbie” Bennett was killed by police on October 31

violence and intimidation does not only originate from gangs. Community fear of the police, police corruption, and the ability of the police to act with impunity, creates a vacuum in which gangs can operate as an alternative set of “law-makers” that give communities a false sense of security.

In 1974 Jamaica criminalized the ownership of guns without a license. Many proponents of the right to bear arms cite Jamaica, with its high gun-related homicide rate, as an example of why banning illegal guns does not work. However, it is not the banning of guns per se that causes the increase in gun crime, but the combination of communities in conflict and weak or ineffective sanctions to prevent the illegal trade in arms.

The Fire Arms Act was passed by parliament on 22 July 2005. The act introduced harsher penalties for the misuse of firearms, and an independent body for the issuing of firearms.

Despite these important developments, the Jamaican government has not adequately addressed arms control. Only a minority of arms used to commit violence are estimated to be registered. The majority of guns enter the country illegally from North, Central and South America, often as partial payment for drug shipments.⁵⁹ The guns are allegedly brought in with legitimate and illegitimate shipments of goods. Once inside the country, guns are harder to retrieve. Although 683 weapons were seized in 2005⁶⁰, this figure is

2005, the residents of Spanish Town rioted for several days. A resident told the Jamaica Observer, ““Him (Bulbie) was a good man to both PNP and JLP (Jamaica Labour Party) [voters]. Now the youth them naw go eat no food and them angry.” Gangsters rule, 1 November 2005, Jamaica Observer.

⁵⁹ Statement by Jamaica’s representative to the First Biennial Meeting of States on the Implementation of the Program of Action of the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects. New York, July 7 2003. There have also been recent reports of fisherman trading guns from Haiti for Jamaican marijuana.

⁶⁰ Janice Miller, Jamaica’s representative to the UN Preparatory Committee for Review Conference

thought to represent merely the tip of the iceberg. In 1990 approximately 50 per cent of homicides were committed with guns, but by 2000 this had risen to 61 per cent⁶¹ and in 2005 around 75 per cent⁶².

Arms control, particularly in a country such as Jamaica which does not manufacture or produce its own guns, is not only the responsibility of individual states: it is a global problem. At the UN Small Arms conference in January 2006 the Jamaican representative made this point when she urged the international community to adopt a legally binding instrument on the marking and tracing of illicit small arms and weapons.⁶³

In some circles, masculinity is achieved through so-called “badness-honour”⁶⁴ – the carrying out of aggressive acts to achieve “heartlessness” status. This behaviour is allegedly particularly prized in the impoverished communities controlled by gangs and gang leaders (or “dons”) in Jamaica.

Again this has a direct impact on women – where dons control communities, the practice of demanding adolescent girls from within their territory is commonplace. Dons and their accomplices demand that families hand over adolescent girls, who are then sexually assaulted with impunity.

on Illicit Small Arms Trade, 11 January 2006.

⁶¹ Harriott, A. (2002). Crime trends in the Caribbean and responses. United Nations Office on Drugs and Crime.

⁶² Office of the Police Commissioner, information provided to Amnesty International.

⁶³ Statement of Janice Miller, 11 January 2006, at the Meeting of the Preparatory Committee of the 2006 UN Conference to review progress made in the implementation of the programme of action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects. New York.

⁶⁴ The concept of “badness-honour” is “the practice in Jamaica that allows claimants, usually from disadvantaged groups, to secure by means of intimidation ... power and respect.”p. 18, Gray, O. Badness-Honour. In Harriott, A. (2003). Understanding crime in Jamaica: new challenges for public policy

One 15-year old girl targeted for rape by the local don told the local newspaper: “Every day mi pray seh police kill him or him friend dem. Him woulda kill me wid beaten. Him have mi like a sex slave and when him go do him evil works, a mi him a come home to,” she said as tears streamed down her cheek. “When me hear say him dead nobody nuh glad like me.”⁶⁵

While gang-controlled territories used to be restricted to parts of Kingston, many reports received by Amnesty International suggest these networks have spread to other parts of the island.

In such communities, women’s freedom of movement, and therefore their freedom to work, to study and to access health care, can be severely restricted. Women are also more vulnerable to “protectors” who may ensure safe passage in return for sexual favours.

One woman who lives in an inner-city community explained to Amnesty International how the community locks down at four o’clock every afternoon, because young men firing guns make it too dangerous to be out on the street:

“They fire shots ... they don’t care when they fire shot they don’t care about nobody, because they are not people who is thinking they are just people who are pickney [children], the gun is like a toy gun, so they are just shooting ...”

A woman who spoke with Amnesty International spoke about her attitude to the violence tearing apart her inner city community: “Then I think bout dem mother, what it is with she, how she made them bring up why them shoot, and I think bout tomorrow what might be the end of me tomorrow when [they] keep doing all dese tings. Thinking so whenever they shoot I think of somebody who is shipping gun to them. We don’t know who. But somebody.”⁶⁶

⁶⁵ *Behind every 'successful' gunman is a woman - Feminine wiles cause dilemma for crime-fighters*, Jamaica Observer, 29 June 2003.

⁶⁶ Interview with Amnesty International, 11 November 2005

Although states may attempt to evade their obligations to protect women from violence by alluding to a generalized climate of violence or blaming criminal elements within society, it is the responsibility of the Jamaican government to protect the rights of its citizens. Ensuring that women are free from violence is a fundamental obligation.



3. The consequences of sexual violence on health

A Jamaican woman who was sexually assaulted termed it “the lifetime imprisonment of rape”.⁶⁷

This report relays many testimonies from women and girls affected by sexual violence, and also testimony on how such violence offends against the rule of law, respect for human rights and fundamental freedoms.

Sexual violence permeates the lives of Jamaican women. Entrenched gender-based discrimination undermines women’s right to life, to the highest attainable standard of mental and physical health, equal access to education, work, privacy and non-discrimination.⁶⁸

Sexual assault may cause acute and long-term health problems such as HIV infection, other sexually transmitted disease, unintended pregnancy, pelvic disease, irritable bowel syndrome and mental health problems such as post-traumatic stress disorder, anxiety and depression.

When sexual violence is incestuous, other factors come into play. Although victims of incest face the same health concerns as other victims of sexual assault, they can experience the destruction of trust within the family and related long-term psychological and behavioural problems, and chronic disorders.

The Caribbean region is experiencing an HIV/AIDS epidemic second only to that in sub-Saharan Africa, with a prevalence rate of 2.5%. The young are by no means exempt, with a 1.21% prevalence among 15-24 year olds in Jamaica.

⁶⁷ Jamaica Gleaner, 21 May 2001.

⁶⁸ Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2005/72.

Unprotected heterosexual sex is driving the Jamaican HIV/AIDS epidemic.⁶⁹ Unprotected sex comes about, at least in part, by the pandemic of sexual violence, coercion and assault against women and girls which continues unchecked.

Although men suffer from HIV/AIDS too, studies show that the gender ratio of newly reported HIV/AIDS cases among women in the 20-29 year age group outnumber those of men in the same age group by a factor of two.⁷⁰ Adolescent girls are nearly three times more likely than boys of the same age to become infected: the HIV-infection rate in this group has doubled every year from 1995 to 2004.⁷¹ There is also a huge increase of HIV among 14-19 year-old Jamaican young women, which is thought to be linked both to their exploitative relationships with older men, and to the greater number of sexual assaults reported by women in this age group.⁷²

The increased number of sexual assaults against women and girls reported in the last few years – although academics caution that these figures may represent increased reporting, not necessarily increased numbers of assaults – may also be linked to men attempting to retain their HIV negative status, and therefore assaulting younger women who are less at risk of being HIV positive due to their perceived lack of sexual experience.

Sexual violence is a cause and a consequence of HIV/AIDS. When young children and adolescents are abused or forced to have sex, not only are they at direct risk of contracting HIV

⁶⁹ UNAIDS & World Health Organization (2005), [AIDS epidemic update](http://www.who.int/hiv/FS_Caribbean_Nov05_en.pdf), (http://www.who.int/hiv/FS_Caribbean_Nov05_en.pdf). Geneva.

⁷⁰ Caribbean Red Cross (2004).

⁷¹ Monitoring the AIDS Pandemic (2003). HIV infection and AIDS in the Americas. MAP. Havana.

⁷² Unicef. Situational analysis on excluded children in Jamaica. March 2006.

during the sexual assault, but evidence has shown this leads them to behave subsequently in a manner more likely to contract HIV/AIDS.⁷³ This means that an initial experience of sexual abuse can place a victim at high risk of repeated and multiple abusive experiences.

Other forms of violence against women also contribute. Tentative evidence suggests that women find it more difficult to negotiate condom use and to use condoms consistently with a violent partner⁷⁴: “Women’s susceptibility to HIV is exacerbated by unequal power between women and men and the use of violence to sustain that power, which limits women’s ability to negotiate safe sex.”⁷⁵



NGO placards encouraging safer sexual practices. © AI

Other research demonstrates that men with a record of violence are more likely to engage in extra marital sex, are at higher risk of sexually transmitted infections, and are more likely to

⁷³ World Health Organization, (2004) [Intimate Partner Violence and HIV/AIDS](http://www.who.int/gender/violence/en/vawinformat ionbrief.pdf);

(<http://www.who.int/gender/violence/en/vawinformat ionbrief.pdf>) increased HIV risk-taking behaviour is defined as having multiple partners, having a non-primary partner, and engaging in transactional sex (exchange of sex with men for material gains and basic survival needs).

⁷⁴ Pettifor, A.E., Measham, D., Rees, H. & Padian, NS. (2004). Sexual power and HIV risk. *Emerging infectious diseases*, 10(11): 1996-2004.

⁷⁵ UN Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2005/72, para 20.

place their partners at risk, possibly through sexually transmitted infections.⁷⁶

Brenda⁷⁷ is 34. She was in a physically abusive relationship during which she suspected that her husband was having affairs. She wanted to use a condom as a protection against contracting HIV/AIDS, but he refused. Despite knowing that he was HIV positive, he regularly beat her to have unprotected sex with him. Brenda nursed him until he died. She is now HIV positive. She attends church regularly, but dares not disclose her status, as she witnessed how members of the church community treated another woman who was known to be HIV positive. Even her family do not know her status: Brenda is worried that her children will be thrown out of school. “I don’t want to have to keep a secret: I want to feel good again. I want to feel strong again. I feel very weak and low inside like this.”

Stigma is fuelling the HIV/AIDS epidemic. Fear of the stigma of a possible positive diagnosis prevents many people from negotiating safer sex,⁷⁸ taking an HIV test, disclosing their status to their partners or even seeking treatment.⁷⁹ Many die in silence – unsupported and undiagnosed.

The discrimination HIV-positive women face is multi-layered. They are often regarded as either promiscuous or as sex workers, which adds to the struggle they face to access health care and other appropriate services. A man doctor explained:

⁷⁶ Martin, S. Kilgallen, B. Tsui, AO, et al. (1999). *JAMA*. Sexual behaviours and reproductive health outcomes associated with wife abuse in India. 282(20): 1967-1972

⁷⁷ Not her real name.

⁷⁸ Some individuals believe that if they ask their partner to wear a condom it may be assumed that they have HIV.

⁷⁹ World Health Organization & UN AIDS (2005). [Prevention](http://www.who.int/hiv/FS_Prevention_N ov05_en.pdf). (http://www.who.int/hiv/FS_Prevention_N ov05_en.pdf) Geneva: WHO.

“People look at the female as the bad person and have sympathy towards the male.”⁸⁰ Women whose HIV status has been disclosed have sometimes been thrown out of their communities, their houses have been burned down, and they have been disowned by their families and partners. They have been ostracised, made homeless, and lost employment. In the face of such discrimination, other women have not dared to tell neighbours, friends, church communities – or even their own children – of their HIV status. The fear a child might innocently disclose their status and thus cause them to lose their job or otherwise be marginalized, is too great.



Tonya Clarke, HIV community health worker for Jamaica Aids Support.© AI

Tonya Clarke is determined to change the discrimination that she sees as the most insidious aspect of the human rights violations perpetrated against women as a result of their HIV status.

⁸⁰ Cited in White, R. & Carr, R. (2005). [Homosexuality and HIV/AIDs stigma in Jamaica](http://www.nacjamaica.com/aids_hiv/tests.htm). (http://www.nacjamaica.com/aids_hiv/tests.htm) Culture, health and sexuality, 7, 1-13.

Martha⁸¹ is HIV positive. Her boyfriend refused to live with her when he discovered her status, but comes regularly at night to demand money and sex. From Martha, despite her illness, has a job. When Martha refuses to answer the door he tries to break it down. Sometimes he succeeds. Martha’s house was burned down by the people in her community who found out that she was HIV positive.

“There was a footprint on her door for a few weeks where he tried to break the door down. Eventually she got tired of it and washed it off.”⁸²

The government has made some efforts to combat discrimination, with initiatives from the Ministry of Education, and particularly the Ministry of Health, which has incorporated training initiatives for its staff, and there are plans for the development of a national policy in 2006 to combat discrimination.

The Health Ministry has also provided support for HIV-positive people. Approximately 500 Jamaicans now have government-subsidized or free access to anti-retroviral drugs. In August 2005 a radio, television and newspaper campaign to combat HIV-related discrimination was launched. However, anti-discrimination legislation remains a pressing unmet obligation.

Girls who have experienced forced sexual initiation are less likely to view their sex life as something they have control over, and are therefore less likely to use condoms, and more likely to contract HIV.⁸³ Some studies show that

⁸¹ Not her real name.

⁸² Amnesty International interview, 13 May 2005.

⁸³ WHO (2002). World report on violence and health: sexual violence.

condom use is generally low and reportedly inconsistent.⁸⁴

Some Jamaican men seek to sexually exploit adolescent girls because of their age, lack of 'bargaining power' in a relationship, and the smaller likelihood that they are HIV-positive or infected with other sexually transmitted diseases. Conversely, younger women in sexual relationships, many of them forced, with older men are more likely to be exposed to HIV/AIDS.⁸⁵

HIV/AIDS condemns individuals and their families to anguish, isolation, marginalization and poverty. Isolation can put women at further risk of sexual violence. According to one commentator: "a woman without a man can be the target of both community disrespect and rape".⁸⁶ HIV-positive women are also at risk of further sexual violence if they are made homeless as a result of their illness, either by having to sleep on the streets, or having to engage in unwanted transactional sex.⁸⁷

While both the Jamaican government and international donor communities have acknowledged the extent and severity of the HIV/AIDS crisis, one of Jamaica's major international donors – the US government – applies funding conditions which affect the availability of comprehensive sexual and reproductive health services and do not help meet the most urgent local needs.

⁸⁴ Reproductive Health Survey (2002), National Family Planning Board. Twenty to twenty-five percent of sexually active persons do not use condoms with non-regular partners. The Jamaica Observer. Health Ministry Steps up Educational Campaign on HIV/AIDS, 31 December 2004.

⁸⁵ Jamaica National Aids Committee website; World Bank (2002), Report 21866-LAC. A review of gender issues in the Dominican Republic, Haiti and Jamaica.

⁸⁶ Levy, H. (2001). They Cry Respect! Urban poverty and violence in Jamaica. p.37 Kingston, Jamaica: Centre for Community, Population and Change.

⁸⁷ WHO (2002). World Report on violence and health.

As elsewhere, US agencies use the "ABC" [Abstain, Be safe, be faithful- Correct and Consistent use of Condoms] strategy in the partnership with the Jamaican government to combat HIV/AIDS. In a context such as Jamaica, in which large numbers of girls are experiencing forced sex and sexual coercion, the US Guidance Note to ABC (2005), states that the only school programs to be funded are those teaching A and B – abstain and be safe. Correct and consistent condom use is not advocated as it is seen to be "a conflicting message with regard to abstinence by confusing abstinence messages with condom marketing campaigns that appear to encourage sexual activity or appear to present abstinence and condom use as equally viable, alternative choices."⁸⁸ Although the policy acknowledges that adult women are at high risk of HIV contracted through violence and coercion, and therefore may need to use the C in ABC approach, it fails to account for the fact that adolescent girls, rather than adult women, are at the greatest risk of HIV infection, and therefore that every girl in school in Jamaica is part of a high risk population.

In addition, the US Global Aids Act requires that at least 33 per cent of US HIV prevention funding goes to abstinence until marriage programmes.⁸⁹ Evidence shows that programmes that reduce harmful or risky health practices are more effective than abstinence programmes.⁹⁰

⁸⁸ [Guidance to United States Government In-Country Staff and Implementing Partners Applying the ABC Approach to Preventing Sexually-Transmitted HIV Infection Within the President's Emergency Plan for AIDS Relief.](#), p.5

⁸⁹ US Global Aids Act, 22 USC 7672b (3) Pub. L. 108-25, title IV, *Sec.* 402, May 27, 2003, 117 Stat. 745.

⁹⁰ Abstinence programmes typically promote fear-based messages, including exaggerations of condom failure rate and make unsubstantiated claims about the psychological effects of pre-marital sex. See Human Rights Watch (2006).



[Preventing the further spread of HIV/AIDS: the essential role of human rights.](http://www.hrw.org/wr2k6/hiv/aids/index.htm)

(<http://www.hrw.org/wr2k6/hiv/aids/index.htm>) Joseph Amon. Many programs omit material on safe sex practices altogether, believing them to be “sending the wrong message”. For example, the US guidelines on funding for domestic abstinence programmes (Title V, Section 510 (b)(2)(A-H) of the Social Security Act) specify, amongst other criteria, that programs must teach: abstinence from sexual activity outside marriage as the expected standard for all school-age children; that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems; that a mutually faithful, monogamous relationship in the context of marriage is the expected standard of sexual activity, and that sexual activity outside the context of marriage is likely to have harmful psychological and physical effects. These criteria avoid the reality of sexual abuse and forced sexual activity, and evidence shows that not only do children on abstinence programs continue to engage in sexual activity, they are less likely to engage in safe sexual behaviours when they do. Programmes implemented in the US, UK, other European countries, Africa and Asia demonstrate that comprehensive sex education programmes (that include, but are not limited to, information about reducing risky sexual practices, the use of condoms, and delaying sexual activity) can reduce behaviours that put young people at risk of sexually transmitted infections and unintended pregnancy. Eg. Dennison, C. (2004) *Teenage Pregnancy: An overview of the research evidence*. London: Health Development Agency; Dicenso A, Guyatt G, Willan A et al. (2002) *Interventions to reduce unintended pregnancies among adolescents: systematic review of randomised controlled trials*. *British Medical Journal*, 324 1426-1435; Dickson, R., Fullerton, D., Eastwood, A., Sheldon, T., Sharp, F et al. (1997) *Effective Health Care: Preventing and reducing the adverse effects of unintended teenage pregnancies*, National Health Service Centre for Reviews and Dissemination University of York; Kirby, D., Short, L., Collins, J., Rugg, D., Kolbe, L., Howard M et al. (1994) *School-based programmes to decrease sexual risk behaviours: a review of effectiveness*, *Public Health Report* 109 pp.336-360; Oakley, A., Fullerton, d., Holland, J, et al. (1995) *Sexual health education interventions for young people: a methodological review*, *British Medical Journal*, 310: 158-162; Swann, C., McCormick, G. and Kosmin, M. (2003) *Teenage*

Organizations receiving US AIDS prevention funding are also required to have a policy “explicitly opposing prostitution”, and barring the use of funds to “promote or advocate the legalization of the practice of prostitution.”⁹¹ This can mean that women who engage in, or have engaged in, sex work are further marginalized, and may be less likely to seek sexual health care services.

Restrictions on the levels of available information and reproductive and sexual health care can hinder women’s ability to discuss sexual matters with partners and to be assertive in negotiating condom use, putting them at increased risk of HIV. “In today’s Jamaica, so-called ‘good women’ never bring up condom use in the bedroom,” says a Jamaican Ministry of Health representative. “There is a culture of silence where women ... just go with the flow”.⁹²

Reproductive health - unintended pregnancies and unsafe abortions

In an environment where impunity exists for sexual violence and women are often prevented from making informed choices about their sexual activities, 70 per cent of pregnancies are reportedly unintended. For adolescents, this figure increases to 87 per cent. Women who experience violence are significantly more likely to have more children than non-abused women. Unsafe abortions were the fifth highest cause of maternal death in Jamaica between 2001 and 2003. Sixteen per cent of maternal deaths in adolescents are abortion-related. The Caribbean

Pregnancy and Parenthood: A Review of Reviews. London: Health Development Agency; Cheesborough, S., Ingham, R. and Massey, D. (2002) *Reducing the rate of teenage conceptions: A review of the international evidence on preventing and reducing teenage conceptions: The United States, Canada, Australia and New Zealand*, London: Health Development Agency

⁹¹ US Global Aids Act 22 USC 7631 (2003)

⁹² Cited in the *Jamaica Gleaner*, December 1 2004.

Youth Survey, conducted in 1997, found that 10 per cent of adolescent girls 10-19 years old reported having had an abortion. Another study found that thirty percent of pregnant women “did not have [complete] their pregnancy”.

Although in Jamaica abortion appears to be allowed in cases of sexual assault or where the mother is at physical or mental risk, this is not the situation in practice, the situation has never been clarified legally. The Offences Against the Persons Act still criminalizes abortion despite the existence of a policy on abortion that would provide for the situations cited above. The reality is that safe abortion is unavailable. There are no known clinics that provide legal termination services for women. A policy on abortion (a precursor to legislation in Jamaica) from the 1970s never developed into legislation.

Global research suggests that pregnant women who have experienced physical or sexual partner violence, or both, were significantly more likely to report abortions and induced miscarriages than women who had never experienced violence.

Jamaica is one of many poorer countries that receive funding from the US government. Under the United States’ Mexico City Policy (the so-called “Global Gag Rule”), foreign NGOs who receive USAID funding for family planning are prohibited from using their own money to “provide information on request to pregnant women about legal abortion or where to obtain abortion services; provide legal abortion services; or, advocate in support of legal abortion in their own country or participate in public information campaigns on the availability of legal abortion”.⁹³ This policy, known as the “global gag rule”, curtails freedom of information on reproductive health and rights issues, impeding

⁹³ AI, *It’s in our hands – Stop violence against women*, AI Index ACT 77/001/2004, pp. 26/7; Alan Guttmacher Institute, *The Guttmacher Report on Public Policy*, Volume 4, No. 3, June 2001, <http://www.agi-usa.org/pubs/journals/gr040301.html>.

individuals’ access to information and services. The Center for Reproductive Rights, an organization that uses the law to promote reproductive rights, has said: “NGOs receiving US family planning funding, that might otherwise have come forward to offer desperately needed abortion services, are prevented from doing so.”⁹⁴ Local activists and community workers are concerned about the effect of denial of information and services on high maternal mortality rates in their communities.

The UN Special Rapporteur on the Right to Health has warned that: “The right to health includes an entitlement to a system of health protection, including health care and the underlying determinants of health, which provides equality of opportunity for people to enjoy the highest attainable level of health. For example, women should have equal access, in law and fact, to information on sexual and reproductive health issues.”

⁹⁴ Center for Reproductive Rights, ‘The Global Gag Rule’s Effect of NGOs in 56 Countries’, http://www.crlp.org/pub_fac_ggrefeffects.html

4. Police investigations - “a little rape down the road”

“I have counselled four persons who have been raped in the last month. I think most of them won't report it – most of them refuse to do so.”⁹⁵

a) Reporting rape and sexual assault

Women face many barriers to reporting sexual violence. As one sexual assault survivor, raped when she was 13 years old, said: “I didn't tell anyone for six months then I told my parents. My [father] wanted to press charges. I told him no. I asked dad not to do anything about it; that's one thing I insisted on. I didn't want anyone to know because even at that age I knew they would say it was my fault [and] I thought no one would believe me. But in future if I was somewhere and the rapist was there, I would leave. I was petrified of him for years. I blamed myself and I thought I was foolish and so naive.”⁹⁶

Women have good reason to think that they will not be believed – the evidence is all around them, in their societies and communities. Juries, the police, families, and sometimes women themselves, often believe that they are partially responsible for their attacks.

As someone close to a sexual assault survivor said: “I mean, my experience of that ... the judge was male, the prosecutor was male, the defence counsel was a male, and at the time of the application, it was a closed hearing, but the police could sit in, and other attorneys could sit in, and there was an abundance of males in the courtroom, and in the ordinary course of things, I think that wouldn't bother me, but the accused said that the parties were in a relationship, but that wasn't true. Of course that is something to be determined by a jury at a later date, but we know that's not true and so as you hear that consensual

⁹⁵ Jamaican health worker, interview with Amnesty International 13 May 2005.

⁹⁶ Anonymous survivor, cited in the Jamaica Gleaner, 16 January 2006.

sex is an issue, everyone sits back and says, “ohh ... sour grapes, she just said that because the relationship is over”, and so the system can be a little tipped against you, ... and you just see that the chips kind of stack up against you, I don't know ... there have been convictions in the past, but its easy to feel that you're ... that you don't have a chance”.⁹⁷

Respondents in a survey on the subject stated that the police would not be sympathetic, and would only visit them as a last resort. In the succinct words of one interviewee: “Police nah come.. Police nah come”.⁹⁸ Although roughly two-thirds of respondents said women *should* go to the police if they were beaten by their partners.⁹⁹ In cases of marital rape, where police have little legal authority to intervene, women have little chance of achieving prevention of further acts of sexual violence, access to justice or redress. In another case reported to Amnesty International, a woman was raped in her own home. She reported the rape to the police. The police were uninterested in her story, saying that she was partially to blame as she was wearing a skimpy top and shorts.¹⁰⁰

Human rights concerns about policing in Jamaica have been well documented by Amnesty International.¹⁰¹ Corrupt and inefficient policing practices and human rights violations committed against members of the community by members of the police lead to a public lack of confidence in the public security system, creating a circle of mutual distrust. Police and members of the public are unlikely to then co-operate to bring perpetrators to justice.

⁹⁷ Interview with Amnesty International, 9 November 2005.

⁹⁸ Amnesty International interview, 8 November 2005.

⁹⁹ Royes et al., 2005.

¹⁰⁰ NGO worker, interview with Amnesty International, 13 November 2005.

¹⁰¹ See, for example, the reports, Jamaica: Killings and violence by police: How many more victims?, AMR 38/003/2001, or The killing of the Braeton Seven: a justice system on trial. AMR 38/004/2003.

While many police officers do not condone violence against women, they may be unlikely to obtain the co-operation of their colleagues to investigate and prosecute sexual offences. They may also display discriminatory attitudes and behaviours in response to certain types of victims of sexual crimes. Members of the judiciary told Amnesty International that police were more likely to thoroughly investigate crimes of sexual abuse which involved children, and least likely to investigate cases when the adult suspect and victim were acquaintances.

b) The Centre for Sexual Offences and Child Abuse

In 1989, in response to the prevalence of sexual violence in Jamaican society, the Jamaican Constabulary Force set up the Centre for Sexual Offences and Child Abuse (CISOCA). These centres have now been established across the island, and are located in the central police station for each parish.¹⁰² Staff members have received special training in working with survivors of sexual assault. If a woman in Jamaica is sexually assaulted, she can go to a referral centre across the island during business hours, and report the assault. An officer will take her statement, offer support, and arrange for a medical examination. Evidence is collected, and she is treated, offered HIV testing and emergency contraception. The CISOCA team collect DNA evidence from the victim, and store the information on a computer database. If the perpetrator is known to the victim, he is arrested immediately. If there is sufficient evidence, the case is referred directly to the circuit court, and in cases where there is less evidence, cases are referred to a preliminary court.

The response to Amnesty International about the CISOCA service was generally positive, although reports of its effectiveness were mixed. The centres are acknowledged to be an improvement on local police stations. However, most sexual

¹⁰² Spanish Town, Portmore, Morant Bay, St James, May Pen, St Ann's, Clarendon and Manchester.

assaults occur in the evenings, and the service only operates during business hours.¹⁰³ CISOCA's role, consistent with international policing standards, is to provide a "sterile corridor", i.e. ensure there is no contact between evidence collected from the victim and that collected from the suspect. Hence these specially trained police officers are not the investigators of the crime. Unless a senior police officer takes a special interest in a case, the investigating officer is usually a police officer from the region in which the crime was committed, who may not have received any training in sexual assault investigations. Amnesty International heard that sexual assault investigations are deficient in many respects. Not all parishes [administrative regions] experience the same problems, which demonstrates that a committed and competent investigative team can make a difference in supporting the route to justice for survivors of rape.

According to a magistrate interviewed by AI: "I've seen a remarkable difference in the rape unit in St Ann's ... it is easier in that parish to get the accused to plead guilty, because the evidence is there."¹⁰⁴

The low clear-up rate for sexual assaults suggests that the sexual assault investigative process is inadequate. The "clearing up" of a sexual assault case means that it gets to the stage of a preliminary hearing, where it is either referred to a district magistrate's court and jury, or the prosecutor or preliminary magistrate takes a decision not to proceed. In 2000, for example, there were 895 rapes reported, and 299 cleared up. In 2004 there were 777 rapes reported, and 296 cases cleared up, with 634 cases of *carnal abuse* [an outdated term for sexual assault which

¹⁰³ The unit offers no service at all between the hours of 11pm and 7am, and only limited services outside these hours.

¹⁰⁴ Magistrate, interview with Amnesty International, 15 November 2005.

is set out for reform in proposed legislation] and 287 cleared up.¹⁰⁵

c) Investigating evidence

There are also difficulties with the collection of evidence. At the moment, an individual suspected of sexual assault is not legally required to provide a DNA sample, leaving no chance for this type of evidence to be pursued.¹⁰⁶

A defence attorney speaking to AI, said that rapes are not a high priority for either the police officers investigating the perpetrators, or for the forensic investigative teams:

“I suspect the cost is prohibitive,” she said. “And I suspect that with the workload faced by the forensic lab, you deal with quote unquote “high priority” matters, as opposed to a little rape down the road, you know?.”¹⁰⁷

Another issue of concern to lawyers and members of the judiciary is the process of investigating alibis.

According to one prosecutor: “Let’s just say an accused is confronted, and he chooses to say something to the police, like, ‘I was with my girl when you say this thing happened’ ... I’ve never come across any situation where the police say ... ‘I interviewed X or Y whose name was called as being with the accused’. So the alibi is not explored by the police. It could easily determine the case one way or the other, and ... it would [help to] reduce the burden and the backlog.”¹⁰⁸

However, although the special investigation team works with the victim, the investigating officer usually does not have specialist training. Similarly, forensic investigators do not have

¹⁰⁵ Including indecent assault, incest and buggery, there were a total of 1787 cases of sexual assault reported in 2004.

¹⁰⁶ Interview with Amnesty International, 15 November 2005.

¹⁰⁷ Interview with Amnesty International, 17 November 2005.

¹⁰⁸ Interview with prosecutor, Amnesty International, 17 November 2005.

specialist sexual assault training. Medical officers are often called upon to undertake sexual assault examinations, and they usually do not have the skills or resources to undertake a thorough investigation. Forensic investigations are not rigorously carried out, and forensic samples are frequently not taken from the suspect, or are not subjected to analysis. Lack of experience in sexual investigative techniques is usually detrimental to the interests of the victim, as it is easier to demonstrate that evidence is compromised. For example, medical officers observe for bruising immediately after the assault: if bruising is not present, it is recorded as absent in the medical examination. In the absence of other evidence, this can be interpreted against the victim. External injuries are viewed as a form of corroborating evidence which support the victim’s allegations: in cases of rape by an acquaintance or forms of coerced sexual violence, where extreme physical violence is not used, a victim can be very disadvantaged in court.

d) The judicial response

When cases come to court, women are faced with a new set of challenges. They must prove that they experienced the sexual assault in question.

“I believe victims don’t report it a lot of times because it’s too hard to prove,” according to one rape survivor. “The [justice system in Jamaica] makes it too hard on the victims to prove that they were an outstanding citizen. The victim is put on trial. There is not enough sensitivity and responsibility as a society, we should be more supportive.”¹⁰⁹

The court experiences for women who make allegations of sexual assault are reported to be overwhelmingly negative. For example, the experience of court for a woman who was taken from her workplace and gang-raped by a large group of men at gunpoint further added to her ordeal.

¹⁰⁹ Rape survivor, quoted in the Jamaica Gleaner, 23 January 2006.

"The lawyer made me feel like a slut in court. He tried to convince the court that I was guilty for them doing such a terrible thing to me,"¹¹⁰ she said.

A member of the police sexual assault team told an investigator that the strategies of defence lawyers for the accused could be "callous" and that cross-examination of victims could be "brutal".¹¹¹ In practice, it appears that women who have the means, information and support to pursue an allegation of sexual assault will do so, but the vast majority of women, usually from poorest sectors, are unable to take on these challenges.

One of the most serious problems in the criminal justice system, is the "warning" judges are required to issue in cases of uncorroborated sexual assault, a compulsory practice derived from common or case-law. This warning states:

*"Madam foreman and members of the jury as this is a case of rape (sexual violence) the law requires me to give you a warning in such cases. The law says that in these types of cases it is desirable that there should be corroboration... This warning is necessary because experience has shown that women and young girls often tell lies and for that reason the law requires this independent evidence. However, if there is no corroboration and you believe that the complainant is telling the truth and bearing the warning in mind you can proceed to act on her evidence even if there is no corroboration."*¹¹²

¹¹⁰ 6 June 2004, Jamaica Observer.

¹¹¹ Royes, H.(2005).

¹¹² In interviews with Amnesty International, member of the judiciary and legal counsel explained that the warning is part of common or case law. There is a second warning in the case of young children, wherein it is required to warn juries that children have "fanciful imaginations": the case must also be stopped if there is no corroboration of the evidence of an unsworn child victim.

Killings, threatening and extortion of witnesses by gang members is common. This, combined with low levels of awareness of the workings of the criminal justice system, means that witnesses are often reluctant to testify in criminal cases. One NGO worker told Amnesty International that the justice system even has difficulties getting character witnesses to testify as to the good character of the accused, because witnesses were so terrified that "word would get out", that that person had been a witness in court. Even being seen at a police station may give rise to fears that someone is an "informer". Most sexual violence in communities in Jamaica goes unreported because women are fearful of the retaliation of gang members.¹¹³

Lengthy case proceedings and failure to protect witnesses are significant failings in the criminal justice system. Evidence of the victim's sexual history and the character of the accused and [his] standing in the community can be admitted to give "context" to a sexual assault trial.

One judge expressed concern that the interests of the victim were not of sufficient importance;

"In the criminal justice system no one consults the victim. The prosecutor can get up in court and unilaterally dispose of the case; he can make decisions about what to do with the case without the witness's knowledge and consent"¹¹⁴.

One women's rights activist noted with concern the lack of sentencing guidelines for sexual assault crimes. The Department of Corrections report that in 2004, sentences for sexual offences range between less than three months and 25 years' imprisonment.¹¹⁵ In practice, this means a wide margin of discretion for individual judges.

Concerns were also expressed by some members of the judiciary that when cases were returned on

¹¹³ Moser & Holland, (1997). Urban violence and poverty in Jamaica.

¹¹⁴ Amnesty International interview, 15 November 2005.

¹¹⁵ Department of Corrections, reported in Economic and Social Survey Jamaica 2004.



appeal, judges were more likely to reduce the sentence in rape cases than in murder cases.

Who killed Enid Gordon?

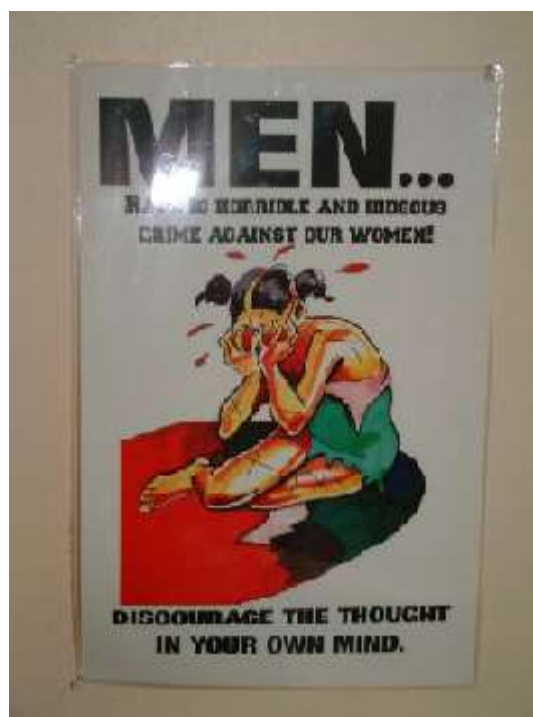
When Enid Gordon was 15 years of age, she was raped by two men. She and her family took the decision to name the accused men, and the men were arrested, charged, and released on bail. On 12 October 2005, one week before she was due to testify against the two men in court, Enid was found dead in the same place that she had been raped a year earlier. She had been strangled with her school tie. Two men arrested for the crime were later released, as the police reportedly believed that they had no case to answer. Despite the widespread publicity following the murder, at the time of publication no-one had been charged for her death. Amnesty International requested information from the authorities in January 2006, and received a reply in March 2006 which informed the organization that two suspects were taken back into custody and forensic evidence had been taken from them. Results of the investigation are pending.

Conviction rates for rape vary across the island. Amnesty International was not able to meet with the Director for Public Prosecutions, despite requesting an interview, and so was unable to ascertain conviction rates for sexual offences. In 2004, according to Jamaica Constabulary Force statistics, there were 208 individuals arrested for rape, of a total of 1787 reports of sexual offences.¹¹⁶ Of these, 45 per cent were cleared up,¹¹⁷ and 50 cases, or 3 per cent, were disposed of in court.¹¹⁸

¹¹⁶ 777 for rape, 634 for carnal abuse, 270 for indecent assault, 50 for incest, and 56 for buggery

¹¹⁷ Brought to the preliminary hearing stage or the file was closed

¹¹⁸ Economic and social survey, Jamaica, 2004; although presumably some cases were carried over to the following year. The Department of Corrections



Jamaican Ministry of Justice poster warns against rape. © AI

Low levels of public confidence in the criminal justice system tend to polarise communities, and this polarisation can include attitudes to sexual violence. Further reinforcing the misconception that rapists are not men known to their victims, in situations where rapists are strangers, communities may take justice into their own hands. One columnist expressed the view that it would be unfair to send someone who shot a rapist to prison.¹¹⁹ In another case, rioting broke out when police attempted to take a rape suspect into custody¹²⁰. When public confidence in the authorities' ability to maintain order is damaged, there is an increasing tendency for more violent and authoritarian solutions, such as those

reported 147 prison admissions for sexual offences in 2004.

¹¹⁹ Melville Cooke, Jamaica Gleaner, 27 March 2003.

¹²⁰ Maypen, reported in the Jamaica Observer, 29 January 2004.

advocated above, to be given prominence and credibility. This tendency can be assuaged by the authorities demonstrating that they are able to employ fair, independent and effective sanctions against individuals who use violence.



5. The inadequacy of national legislation

States undertake their treaty obligations freely, and give their consent to be legally bound to fulfil their obligations. Treaties are agreements which direct the behaviour of states: they must be fulfilled in practice and in spirit. Treaties must be fulfilled even when they are not completely aligned to domestic law: states which ratify or accede to a new treaty are obliged to change their laws if needed.

Jamaica is a state party to CEDAW (the Women's Convention). The Jamaican government last presented its report on the implementation of the Convention to the CEDAW Committee in 2001, and is due to present again in August 2006. At that time, the Committee drew the Jamaican government's attention to its concern about the slow pace of legal reform for anti-discriminatory legislation¹²¹. It also expressed concern about the levels of gender-based violence, including marital rape, and the high incidence of incest and rape in general.

The law and the administration of the law are crucial to the formation of social attitudes. The Jamaican Constitution affords some protection for non-discrimination on the basis of sex, stating that the rights and freedoms of individuals outlined in the Constitution are guaranteed to every individual, "whatever his race, place of origin, political opinions, colour, creed or sex."¹²² However, section 24, which prohibits certain types of discrimination against an individual by a law, person in public office, or public authority, does not define or specify "discriminatory" on the basis of sex or sexual orientation¹²³ (despite proposals before Parliament to do so).

¹²¹ Para 211

¹²² Jamaican Constitution. Order in Council (1962), Chapter 3, section 13.

¹²³ Jamaican Constitution. Order in Council (1962). Chapter 3, section 24 (1), (2), (3).

The Constitution also fails to grant redress for acts of gender-based discrimination. In addition, the non-discrimination provision specifically states that its terms shall not apply to any law which relates to 'adoption, marriage, divorce, burial, devolution of property on death, or other matters of personal law'.¹²⁴ Local activists argue that the absence of a prohibition on gender discrimination in Jamaica discourages the reform of other discriminatory employment legislation.

The Charter of Rights and Freedoms Bill was to be enacted by Constitutional amendment in 2003 (No. 16).¹²⁵ However, discrimination on the basis of sexual orientation was not included. The Charter's provisions continued to be debated at the time of writing.

In Jamaica, rape is a criminal offence punishable with a prison sentence. However, women are not protected from rape within marriage. There is a common law precedent for protection in some circumstances which is "persuasive but not binding", and prosecutors may decide not to prosecute. At present, prosecution for marital rape is "difficult if not impossible".¹²⁶ Recommendations to make marital rape a crime were incorporated into the draft Offences Against the Person Act in 1995, which is still awaiting passage through parliament. The Committee at Jamaica's presentation to CEDAW expressed

¹²⁴ Jamaican Constitution (1962), Order in Council, additions 1979, 1992, 2003.

¹²⁵ Official Gazette, 2003-04-29, Vol. 126, No. 16, pp. 1-26. The protected rights and freedoms are: life, liberty and security of the person; freedom of thought, conscience, belief and observance or religious and political doctrines; freedom of expression; right to seek, distribute or disseminate to any other person, information, opinions and ideas through any media; freedom of peaceful assembly and association; freedom of movement; due process of law; equality before the law; freedom from discrimination on the grounds of race, social class, colour, religion, sex, place of origin or political preference, as well as a number of other basic rights.

¹²⁶ Margarette Macaulay, women's rights activist and lawyer.

concern about the lack of legislation in 2001, and the Women's Manifesto, created by a platform of Jamaican women's rights activists (see Appendix 1), urged the Jamaican government to act with all possible speed in 2002. In 2006, the legislation is still pending.

According to one police officer interviewed by Amnesty International, the police attempt to overcome the absence of specific legislation for marital rape by charging the perpetrator with assault, if he lives in a separate house. Otherwise, they refer the perpetrator for counselling and mediation.

The UN Special Rapporteur on violence against women, its causes and consequences, has noted that, "Police efforts to counsel victims in such cases, which often involves efforts to mediate between victims and perpetrators, may serve to undermine the seriousness of crimes of violence against women, and, in many instances, may heighten the risk against the victim."¹²⁷

There is no definition of rape or any of the sexual offences in the Offences Against the Person Act, but legal rules and regulations apply in common law that obstruct the prosecution of sexual crimes. For example, the available definition of rape requires vaginal penetration. This is gender specific and excludes other types of sexual violence that constitute rape in other jurisdictions. Amnesty International has recommended that, in line with a global trend in domestic legislation to define rape more comprehensively, national legislation comply with the definition of rape in the Rome Statute, currently perceived to constitute best practice.¹²⁸

¹²⁷ E/CN.4/1999/68, 10 March 1999, para 34. Violence Against women in the family.

¹²⁸ The definition of sexual violence outlined in the Rome Statute of the International Criminal Court: "Elements of Crimes" ICC-ASP/1/3, Article 7(1)(g) -1: "(1) The perpetrator invaded the body of a person by conduct resulting in penetration however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. (2) The invasion was committed by force, or by

In December 2003, after the Prime Minister had drawn attention to the 'very worrying level of domestic violence in Jamaica,'¹²⁹ the Jamaican parliament passed a new Domestic Violence Act (2004). Amongst its provisions are rules covering "visiting relationships", where single mothers are often the heads of households, but may be visited from time to time by children's fathers, or have relationships with other men who may contribute to the household economically. The amended legislation now covers abused partners in these type of relationships, and enables children in the household (whether or not they are the children of the abusive partner) to be protected and maintained in such relationships, including provisions to ensure that economic support is not withdrawn (out of spite, for example) when protection orders are enforced.

The Family Property (Rights of Spouses) Act was also passed in February 2004. Women's rights activists have welcomed its advent. One important ramification of the Act is that women now have a greater degree of autonomy in

threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent. (It is understood that a person may be incapable of giving genuine consent if affected by natural, induced, or age-related incapacity)."Article 7(1)(g) – 6: "The perpetrators committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give consent."

¹²⁹ The Prime Minister stated that this '*accounts for four out of ten crimes committed in Jamaica against partners, parents against children, brothers, sisters, aunts, uncles and cousins – all resorting to violence to settle family problems.*' Radio broadcast on 30 November 2003, cited in Jamaica Gleaner 2 December 2003.

choosing to end violent relationships. The law now holds that the family home as the result of a marriage or common law relationship does not belong merely to the registered owner of the property, but is the property of both spouses/partners. It also provides that where only one spouse is the registered owner of the family home, the permission of the other is required for completing any property based transactions¹³⁰.

Other laws are still required. For example, sexual harassment is not currently prohibited under Jamaican law, although a draft proposal is being circulated.

Although Jamaican law prohibits incest, the victim's rights may be sacrificed as a result of secrecy on the part of the family, a lack of corroborated evidence, or the absence of forensic evidence, so that many cases are dropped or not brought to court. It is, therefore, imperative that mechanisms be set up to identify incest and prosecute perpetrators, so that the law does not remain theoretical.

According to the Offences Against the Persons Act and the Incest (Punishment) Act, incest is punishable with a lesser prison sentence than rape¹³¹. This sets up a duality in the law which suggests that sexual assault committed by a member of the victim's family is less serious than sexual assault perpetrated by a stranger. Although changes were drafted in 1995, the legislation has been stagnating in the

¹³⁰ Criticisms of the 2004 Act remain: for example, women in 'visiting unions' do not benefit from equal property rights.

¹³¹ The Incest Punishment Act, Article 1 (3) "If any male person attempts to commit any offence to which subsection (1) relates, he shall be guilty of a misdemeanour, and upon conviction thereof shall be liable to imprisonment with hard labour for any term not exceeding two years". In practice, law enforcement officials may also charge a family member with rape.

parliamentary process, and changes are due immediately.¹³²

The "more and less" serious approach to sexual assault has resulted in some members of society believing that incest is acceptable. Recent focus groups found that, although the vast majority of individuals interviewed exhibited emotional and extreme reactions against incest, two per cent agreed with the statement that it was sometimes acceptable for a father to have sex with a daughter.

a) When is the duty of due diligence breached?

States are obliged not only to respect rights by refraining from violating human rights themselves - through their state agents and apparatus, - but also to protect rights from being abused by others and to promote enjoyment of human rights in a wider sense.

States have a duty to demonstrate *due diligence* in their dealings with non-state actors, such as women. The obligation to exercise due diligence is included in various instruments and documents relating to human rights protection.¹³³ In general, it refers to the degree of effort a state must make to comply with its duty to protect people from abuse. As far as the prohibition of discrimination against women is concerned, the duty to exercise due diligence requires the state to implement,

¹³² Incest Punishment Act (1948), revised 1973 and 1980. The Act also only acknowledges incest as originating from biological male relatives, rather than the more inclusive definition of individuals in positions of trust and authority over a child, such as step-parents and guardians.

¹³³ One of the most compelling precedents can be found in the Inter-American System. In its judgment in the case of Velásquez-Rodríguez, the Inter-American Court of Human Rights said that state parties have an obligation to guarantee the free and full exercise of the rights recognized by the American Convention on Human Rights to all persons subject to their jurisdiction and that, as a consequence of that obligation, states must prevent, investigate and punish any violation of the rights recognized by the Convention.

immediately and without delay, a policy to combat violence that has its roots in the lack of equality between men and women.

The legal concept of due diligence has led to the development of the theory of state responsibility to make rights a reality in cases where the perpetrator as well as the victim is not an agent of the state. The general principle of state responsibility holds that when states know or ought to know about violations of human rights, and fail to take appropriate steps to prevent the violations, then they bear responsibility for the action. This does not detract from the individual civil or criminal liability of the person who commits the violation. The individual who rapes or murders a woman is the person liable under criminal law for this act and should still be brought to justice. However, the state also bears a responsibility for failing to prevent or investigate and address the act appropriately and should make reparation to the victim or her family.

The meaning of due diligence was elaborated on in a General Comment on the Right to Health by the UN Committee on Economic, Social and Cultural Rights:

“[A]ll human rights [impose] three types or levels of obligations on States parties: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil contains obligations to facilitate, provide, and promote.

“The obligation to respect requires States to refrain from interfering directly or indirectly with the right...

“The obligation to protect requires states to take measures that prevent third parties from interfering with ... guarantees.

“Finally, the obligation to fulfil requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right ...”¹³⁴

¹³⁴ Committee on Economic, Social and Cultural Rights [General Comment 14: The right to the highest](#)

The duty to promote, which is also frequently mentioned, means to take measures to educate all citizens about rights through a variety of means, including through education at school, public information broadcasting, and information to service users.

The UN Special Rapporteur on violence against women, its causes and consequences explains: “Unlike for direct State action, the standard for establishing state complicity in violations committed by private actors is more relative ... Where States do not actively engage in act of domestic violence or routinely disregard evidence of murder, rape or assault of women by their intimate partners, States generally fail to take the minimum steps necessary to protect their female citizen's rights to physical integrity and in extreme cases, to life. This sends a message that such attacks are justified and will not be punished. To avoid such complicity, states must demonstrate due diligence by taking active measures to prevent, prosecute and punish private actors who commit abuses.”¹³⁵

There are no excuses for violence against women. International human rights law and international treaties do not accept lack of resources, or social or cultural considerations as a justification for the failure of states to act. General Comment on Article 2 of the International Covenant on Civil and Political Rights states:

“A failure to comply with this obligation cannot be justified by reference to social, cultural or economic considerations within a state.”

The UN Committee on the Rights of the Child, when considering the same issue, the availability of resources to address rights, said:

“States need to be able to demonstrate that they have implemented ‘to the maximum extent of available resources’.”

[attainable standard of health \(article 12\)](#) UN Doc. E/CN.12/2000/4.

¹³⁵ Report of the UN Special Rapporteur on violence against women, its causes and consequences, E/CN.4/1996/53, 6 February 1996, para. 33.



Commitment and political will can be shown concretely through providing a reasonable proportion of available resources, even if the resources available are small.

The Convention of Belém do Pará was ratified by the Jamaican government on 14 December 2005. The Convention is a specific set of obligations with which Jamaica is required to comply. The Jamaican government's ratification of this treaty indicates their willingness to treat violence and discrimination against women as a serious public concern, and an important first step. Importantly they have agreed to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate violence against women, and to apply due diligence to prevent, investigate and impose penalties for violence against women. Further, they have agreed to adopt legal measures that require the perpetrator to refrain from harassing, intimidating or threatening women, or using any method that harms or endangers her life or integrity, or damages her property. They have also agreed to take all appropriate measures, including legislative measures, to amend or repeal existing laws and regulations or to modify legal or customary practices that sustain the persistence and tolerance of violence against women.

The Jamaican government also has a clear responsibility to act to protect girls. The UN Convention on the Rights of the Child, where a child is defined as any individual having not yet attained 18 years, holds that State Parties must undertake to protect the child from all forms of sexual abuse, which, in particular, means that they shall take all appropriate national, bilateral and multi-lateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.¹³⁶

¹³⁶ UN Convention on the Rights of the Child, Article 34

They are also required to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.¹³⁷

¹³⁷ *op. cit.* Art 35

6. Jamaican women demand action

Women's rights activists in Jamaica have chosen to focus on transforming attitudes as a first step. They have taken up the cause of a sexual harassment bill, first mooted in 1995, and have suggested that it be drafted utilising CARICOM (Caribbean Community) model legislation. They have also engaged with women and men across society: the enactment of sexual harassment legislation has wide-spread support across the business, government, and non-government sectors.¹³⁸

a) The 2002 Women's Manifesto for the prevention of sexual injustice

In 2002 Jamaican women's rights activists issued a manifesto to eliminate sexual violence against women. The Manifesto was signed by non-government organizations (NGOs), academics, activists and faith-based groups.¹³⁹ Despite strong community support for the principles of the manifesto, and an urgent call for action, only one of the 15 recommendations of the Manifesto has been fully implemented.

¹³⁸ Tindigarukayo, J. K. A study on sexual harassment in Jamaica, January 2005, prepared for the Bureau of Women's Affairs, Office of the Prime Minister.

¹³⁹ Signatories to the Manifesto are: Women's Media Watch, Women's Resource and Outreach Centre, Caribbean Association for Feminist Research and Action, Centre for Gender and Development Studies, Church Women United, Jamaican Baptist Women's Association, Jamaica Coalition on the Rights of the Child, Jamaica Household Workers Association, Jamaican Women's Political Caucus, Methodist Women's League, Renewal, Sistren Theatre Collective, Woman Inc, Women working for Transformation (People working for Transformation), Women working for progress in 2001 and beyond, Women's Centre of Jamaica Foundation, Women's Construction Collective, YWCA, Youth Opportunities Unlimited, Hope for Children Development Company, Coalition for Community Participation in Governance, Jamaicans for Justice, Families against State terrorism, Farquharson Institute, Amnesty International Jamaica Chapter

Amnesty International supports the Manifesto signatories in calling for the recommendations of the Manifesto to be implemented as a matter of urgency.



Women at the S-Corner in inner-city Kingston, Jamaica. The centre and its services are a focal point for the community. © AI

b) Action on the ground

In the face of government inaction, it has fallen to a number of NGOs to address violence against women. Women's Media Watch has been working tirelessly for a number of years to combat societal perceptions endorsing gendered violence and discrimination. In addition to challenging the media on stereotypical, inaccurate and sexist language and reporting, they also conduct workshops, seminars and training to confront men and women with the consequences of their behaviours and beliefs.

Women's Media Watch challenges the press on their sometimes superficial analysis of the phenomenon of sexual violence, whilst encouraging and training reporters to portray accurately the realities of life for women in a non-discriminatory way. Suggesting that the media examine closely the causes of gender-based violence, they write:

“What boys and young men feel make them 'man' - sexual power, control, ability to fight etc are identified [in our workshops]. We also discuss the circumstances under which young men and women, boys and girls, feel that forced sex [it is not seen as rape] is 'acceptable' or 'inevitable'. Financial obligation and other circumstances are

seen to automatically entitle the male to sex, which must then be demanded, or forced.”¹⁴⁰

Other groups, have focussed on addressing male attitudes to violence. They work with men who abuse women, examine the causes of violence, and attempt to raise men’s awareness of gender-based violence.

In March 2005, a 14-person Gender Advisory Committee consisting of academics, government officials and representatives of NGOs, was convened by the government, with the support of the international community, to develop a gender policy. Their objectives are: to identify obstacles to gender equality; to propose key initiatives to overcome these; to make recommendations for the ongoing review of national mechanisms to promote gender equity; and to advise the Bureau for Women’s Affairs on strategic direction to promote gender policy coherence.

Amnesty International hopes that the Gender Advisory Committee recommends that action be taken urgently to amend gender-discriminatory legislation, address judicial and investigative reform in relation to gender-based violence, and provide services for women at risk of violence.

Sistren

A pioneering women’s group founded in 1977, Sistren Theatre Collective use popular theatre to express Jamaican women’s experiences of discrimination and abuse. Sistren is an all-woman grassroots activist movement which empowers women to struggle against violence and discrimination by taking action to improve their lives. Issues which Sistren have brought to public attention include teenage pregnancy, domestic violence, incest, child abuse and rape. Using drama, song, and dance, Sistren confronts the problems facing women and asks society to change attitudes. In *Bellywoman Bangarang*, for example, Sistren created a human bridge with the

audience, suggesting that education was the bridge to ensure that the next generation did not have to endure the teenage pregnancies that caused so many women to feel isolated and were often the result of violence or coercion.

¹⁴⁰ Hilary Nicholson, Women’s Media Watch, 28 August 2002, Jamaica Gleaner.

Conclusion

Amnesty International has found that sexual violence and discrimination against women and girls is unacceptably high. Girls, particularly adolescent girls, are at high risk of sexual violence, and urgent targeted measures are needed to protect them.

The extent of sexual discrimination against women and impunity for sexual violence means that sexual assault is often not treated as a serious matter by society, the criminal justice system, or the offenders, but instead is perceived as “just a little sex”. Investigations by the police are often inadequate, lengthy and cursory. Investigators are insufficiently trained. Women face the prospect of lengthy delays before cases reach a conclusion, and testifying in court often adds to their ordeal. Legislation relating to sexual offences is inadequate and discriminatory. High levels of community violence and the proliferation of small arms exacerbates the climate of lawlessness in which offenders can sexually assault women and girls with impunity.

Adolescent Jamaican girls are especially vulnerable to sexual violence due to general levels of discrimination against women but also because adolescent girls are less likely to carry sexually transmitted diseases and are therefore more likely to be sought or sexually exploited by men. While some measures have been taken Amnesty International found effective policy in this area inadequate to address the magnitude and complexity of the problems facing adolescent girls suffering sexual violence and its consequences.

Despite comprehensive campaigning and recommendations by women’s groups in Jamaica and intergovernmental organizations, Amnesty International is concerned that levels of discrimination against women and girls in

Jamaica remain deeply entrenched and that there is insufficient political will to address gender-based discrimination.

The eradication of violence against women, community violence and the control of arms need to be cross-party priorities. Most urgently, reforms to the Offences against the Person Act, the Sexual Harassment Bill, and the Incest (Punishment) Act are important steps to ensure that violence against women is eradicated. If the government needs to develop draft policy before it enacts the legislation, this should be carried out as quickly as possible.

The international community has an important role to play in supporting the Jamaican government to overcome proliferation of small arms and community violence, and in supporting projects to combat discrimination and sexual violence against women and girls that uphold and are consistent with the international human rights standards and obligations of both donor and recipient countries.

Recommendations

Amnesty International calls on the Jamaican government to demonstrate its commitment to the universal and indivisible nature of human rights, which uphold the dignity of all persons, by implementing the following recommendations:

- Fully and speedily implement the recommendations of the Women's Manifesto (2002);

Investigations

- Carry out regular detailed investigations and analysis of police investigations into sexual violence against women, and identify and redress systematic failings in police practice;
- Train police, in particular police forensic medical investigators, in all aspects of investigation of sexual offences;
- Make police area commanders answerable to community consultative committees on community policing;
- Create a mechanism for investigating and responding to complaints against members of the police;

Public policy

- Support public awareness and education programs challenging the acceptability of violence against women;
- Create an inter-ministerial national plan of action to stop violence against women in line with the recommendations of the Gender Advisory Committee;
- Initiate a national campaign addressing sexual violence and discrimination

against women in consultation with women's organizations;

- Support and promote the training of women lawyers and judges;
- Institute a program to ensure that all police officers receive gender sensitive training;
- Ensure sufficient points of access for women to report violence;
- Ensure that forensic medical officers are sufficiently trained in the thorough collection of evidence in cases of sexual assault;
- Provide programs and services to women who have been victims of sexual violence:
 - access to physical and mental health care;
 - where the perpetrator is a family member or partner, access to shelter as needed;
- Provide up-to-date information and material about the support measures available to abused women and their children;

Legislative and judicial reform

- Reform the Offences against the Persons Act;
 - Define crimes in the Act in line with international standards, utilising contemporary language that eliminates terms such as misdemeanour, carnal abuse and carnal knowledge;
 - Eliminate gender discriminatory aspects of legislation and in the Constitution;

- Ensure that the definition of rape is comprehensive. In particular, define rape in line with the elements of the crime as outlined in the Rome Statute;
- Legislate against marital rape;
- Eliminate the distinction between children over and under the age of twelve;
- Reform the Incest (Punishment) Act:
 - Reform the definition and sentencing status of incest, currently classified as a misdemeanour, to a level commensurate with the seriousness of the offence, and define provisions to encompass perpetrators such as persons in step-relationships with a child and those in loco-parentis relationships such as a guardian or person who has care and custody of a child;
 - Ensure that the sentencing of offenders found guilty of incest is equivalent to the sentencing of sexual offenders under the Offences Against the Persons Act
- Legislate against sexual harassment;
- Abolish laws that criminalize consensual sexual relations between adults in private, such as Articles 76 and 79 of the Offences Against the Persons Act;
- Carry out regular detailed investigations into the workings of the legal system, and identify and eliminate factors that result in low reporting and conviction rates for sexual violence against women;
- Provide and train specialist rape prosecutors;

- Provide gender sensitivity training for all court officials;
- Create and implement court procedures that protect the rights of the victim including mediating the impact of traumatizing the victim through court proceedings;
- Immediately implement the provisions of the Child Care and Protection Act 2004 by providing resources for the establishment of the Children's Registry for reporting child abuse;

International human rights standards

- Ratify the Rome Statute of the International Criminal Court without delay;
- Fully and speedily implement all international and regional treaties, declarations, resolutions and recommendations aimed at condemning, prohibiting and preventing acts of violence against women, investigating all cases of violence and bringing perpetrators to justice in accordance with international standards of fair trial, and providing reparations for victims;
- Fulfil reporting requirements under the CEDAW [and in particular report to the CEDAW Committee on steps they are taking to meet the Committee's recommendations on the removal of reservations]
- Ratify the Optional Protocol to CEDAW without reservations, enabling individual women and groups to petition the CEDAW Committee directly about violations of their rights under the Convention;
- Issue a standing open invitation to all thematic special procedures of the UN

human rights mechanisms, such as the Special Rapporteur on Violence against Women and the Special Rapporteur on Extra Judicial Executions, and facilitate their access to all government facilities, institutions and officials;

- Ratify without reservation the following core international human rights treaties and implement them fully in domestic law and practice:
 - Protocol to the International Covenant on Civil and Political Rights;
 - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
 - UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Protocol
 - ILO Conventions, including the ILO Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers

Arms control

Support an [Arms Trade Treaty](#), a new and legally binding instrument for international arms transfers that would be based firmly on states' existing responsibilities under international law.

- The Central Firearm Licensing Authority must prohibit the granting of gun licences to anyone with a history of family violence;
- Remove all small arms immediately from homes where incidents of family violence have been reported, even if the suspect is a law enforcement official;

- Reduce the quantity of surplus and illegal arms in circulation – through the establishment of gun-free zones, removal of illegal arms, and destruction of surplus weapons;

To the international community:

Bi-lateral and institutional donors, including agencies of the United Nations, must encourage national governments to adhere to the [UN Programme of Action to Prevent, Combat and Eradicate the illicit manufacture and Trade in small arms and light weapons](#)

Appendix I – The 2002 Women’s Manifesto

Healing the Nation: 15 recommendations

1. Immediately introduce a state-funded public education programme aimed at preventing rape and sexual crimes;

2. Immediately establish an emergency phone line direct to the police where persons confidentially report threats and crimes of sexual violence against themselves and others

This crisis-line has been opened, but only between the hours of 8 and 5.

3. Within two years, establish a network of 16 shelters (one in each parish and two in KMA) to provide for victims and persons threatened with crimes of sexual violence

In September 2005, there was one shelter for the entire island. This shelter had a twelve bed capacity. The government promised to build a shelter for each parish in 1988, in line with its obligations in the Women’s Convention.

4. Give urgent attention to the implementation of the new Broadcasting Code and take other measures to protect citizens including children from harmful media portrayals of violence, sex and gender stereotypes

An amendment to the Broadcasting Code was enacted in early 2003, but widespread public education and monitoring to ensure that women are portrayed responsibly and appropriately by the media is required.

The Broadcasting Commission in late 2004 and early 2005 carried out a series of seminars with Media Heads and others which were important, but failed to institute the necessary follow-up measures and evaluation of outcomes. Other measures to protect citizens from harmful media portrayals of violence, sex and gender stereotypes are required urgently.

5. Introduce within one year a long-term national campaign to improve values and attitudes, and eliminate commonly believed and negative gender stereotypes.

Women’s Media Watch point out that no long-term national campaign to improve values and attitudes, and eliminate commonly believed and negative gender stereotypes has been implemented.

6. As of the next financial year, establish clear budgetary allocations for programmes geared to end gender-based violence, implemented by state and civil society

7. Appoint a minister with sole responsibility for women’s affairs; allocate resources adequate to the effective discharge of its mandate and appoint a broad-based National Commission on Women to advise the Minister.

8. Conclude the work to establish the Gender and Social Equity Commission

A Gender Advisory Committee to develop government gender policy was established in March 2005.

9. Employ and train more community development officers, social workers and counsellors to work in the communities

10. Take affirmative action to increase the level of women’s participation in politics and decision-making to 40%. This should be reflected in the next Senate and the fielding of female candidates in the local Government elections as well as on the Boards of State-owned enterprises.

11 Given that female unemployment continues to be twice that of males, take concrete steps to increase women’s gainful employment thus reducing their vulnerability

12. In order to enhance the dignity of living of the Jamaican family accelerate the implementation of a feasible plan that allows for access to water and sanitation for all within the next five years

Little data has been collected since the last major study of 2002, which found that piped water was available to 40% of rural Jamaica, whilst three percent of the population continue to access water from natural sources. 59 percent of the population had access to flushing sanitation



services. In August 2005 State Minister in the Ministry of Water and Housing, Harry Douglas, cited the 2002 figures himself. If no further data has been collected, presumably this means that no further action has been taken.

13. Pass with wide consultation the following legislation which has been stagnating in the parliamentary process:

The Offences against the Person Act;

The Incest Punishment Act;

The Sexual Harassment Bill.

A policy, or precursor to the Sexual Harassment Bill, was extant as at January 2005;

14. Ratify the Convention of Belem do Para

The Jamaican government ratified the Convention in December 2005.

15. Sign the Optional Protocol to CEDAW and implement all demands submitted to the Government of Jamaica by the CEDAW Committee January 2001.