

Recommendations for the Revision of the Sexual Offences Act

Submission to: The Joint Select Committee of Parliament
Responsible for reviewing the:

1. Sexual Offences Act,
2. Child Care and Protection Act,
3. Offences against the Person Act, and the
4. Domestic Violence Act

Submission by: Jamaica Family Planning Association
Pioneer in sexual and reproductive health, including
family planning services in Jamaica

Contact: St. Rachel Ustanny (Mrs.)
Contact Position: Chief Executive Officer
Contact Email: famplanja@gmail.com
Contact Telephone: 876-809-1696, 948-9168, 972-
2259, 972-2515
Company Website: www.famplanjamaica.com

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Table of Contents

Introduction	1
Organizational Overview	1
Profiles of Organizational Leaders	2
Biography of the Chief Executive Officer (CEO)	2
Profiles of Board Directors	3
Situational Analysis	5
The Problem	5
The People Affected by the Problem	5
The Environmental Context of the Problem	6
Justification for Sexual Offences Act Submission	6
Executive Summary of Recommended Amendments	8
Part 1 Preliminary	8
Part II Rape, Grievous Sexual Assault and Marital Rape	8
Part III Incest	9
Part IV Sexual Offences Against Children and Indecent Assault	9
Part V Other Offences	10
Part VIII Miscellaneous	12
Executive Summary of Recommended Additions	13
Justification for the Core Recommendations	14
Definition of Child	14
Definition of Adult	14
Definition of Grievous Sexual Assault	14
Definition of Mental Disorder and Mental Retardation	14
Definition of Prostitution and Prostitute	14
Definition of Rape	15
Definition of Sexual Intercourse	15
Removal of Section 4	16
Removal of the Conditions of Marital Rape	16
Use of Gender Neutral Language in the Section on Marital Rape	16
Extension of Relatives Vulnerable to Incest	16
Retention of 16 years as the Legal Age of Majority	17

Removal of Section 23	17
Addition of Adolescent Access to SRH Services	17
Addition of Access to Safe Abortion Services	18
Addition of Adolescent Assent	18
Addition of Adolescent Access to Comprehensive Sexuality Education	18
Alternate Language for Specific Recommendations	20
Part II Rape and Marital Rape	20
Part III Incest	21
Part IV. Sexual Offences Against Minors and Indecent Assault	21
Part V Other Offences	23
Part VIII Miscellaneous	27
References	28

Introduction

Organizational Overview

Vision: Every Jamaican has access to comprehensive sexual and reproductive healthcare, education, and support services in an environment that is rights-based.

Mission: JFPA responds to the need for family planning and reproductive health services for adolescents, men, women, and the underserved in rural and urban areas. JFPA works in partnership with the Government of Jamaica and all interested non-governmental agencies to achieve a better quality of life for all.

Values: Transparency, Accountability and Sound Financial Management, Quality of Care and Competency, Equality, Rule of Law, Sustainability and Innovation, Efficiency and Effectiveness, and Responsiveness

Jamaica Family Planning Association (JFPA) is a registered Jamaican charitable organization founded in 1957 by Mrs. Beth Jacobs and Dr. Lenworth Jacobs, Gynaecologist and Obstetrician. JFPA responded to the overwhelming need for family planning services by the poor and vulnerable in low-income rural and urban communities across Jamaica at a time when family planning services were not available as part of the government's primary health care program. The early advocacy efforts of JFPA's founders led to the establishment of the Family Planning Unit in the Ministry of Health in 1962 and later the establishment of the National Family Planning Board (NFPB) in 1967. Dr. Lenworth Jacobs was the first executive director of the NFPB.

JFPA's members and staff are committed to continuing the tradition of sexual and reproductive healthcare service delivery; and advocacy for the right to access quality, comprehensive, and integrated sexual and reproductive health (SRH) and education services by poor and vulnerable Jamaicans. Advocacy for sexual and reproductive health and rights (SRHR) is premised on JFPA's mandate to be a key medium for addressing related developmental issues: extremely high rates of adolescent pregnancy, gender-based violence (GBV), and maternal mortality; extremely early age of first sex; increasing rates of HIV infection among children and adolescents, 10 to 19 years; and extremely low rates of HIV testing among sexually active adolescents 15 to 19 years.

JFPA delivers services to the public through two main clinics located in St. Ann's Bay and

Kingston, as well as through community health fairs in several parishes across the island. JFPA operates the Adolescent Resource Centre (ARC), a sexual and reproductive health (SRH) clinic serving adolescent mothers, in conjunction with the Women's Centre Jamaica Foundation (WCJF). The services that JFPA provides to the public include reproductive cancer screening for men and women, pre- and post-natal care, child health services, contraceptive services and products, HIV/STI testing and treatment, paternity testing, gender-based violence screening, counselling, and immunizations. The organization currently generates 50% of its annual programme budget. The other half is sourced from international donors.

JFPA is a member association of the International Planned Parenthood Federation (IPPF), member of the Caribbean Coalition on Sexual and Reproductive Health and Rights (CCSRHR), member of the Caribbean Right Here Right Now Platform, member of the Jamaica Country Coordinating Mechanism (JCCM) of the Global Fund (GF), member of the Population Thematic Working Group (PTWG) of the Planning Institute of Jamaica (PIOJ), member of the Jamaica Monitoring and Evaluation Reference Group (J-MERG) of the NFPB, member of the Environmental Foundation of Jamaica (EFJ), member of the Council of Voluntary Social Services (CVSS), and member of the Association of Women's Organizations of Jamaica (AWOJA). JFPA maintains active relations with more than 15 Jamaican and more than 22 Caribbean non-profits working to improve SRHR.

Profiles of Organizational Leaders

Biography of the Chief Executive Officer (CEO)

St. Rachel Ustanny is the CEO of JFPA. She manages the organization's diverse portfolio of work including ensuring its sustainability; advocating on SRHR issues nationally and regionally through many different platforms such as conferences, in the media, policy drafting, and high level meetings; establishing partnerships with organizations such as WCJF to re-establish their ARC, which delivers clinical services to teen mothers; and designing strategies to expand access to quality, comprehensive, and integrated SRH services to men and women in low income rural and urban communities.

St. Rachel is a highly successful, goal-oriented individual with a passion for human and national development. Her ultimate dream is to establish a global non-profit organization that builds the confidence of Afro-descendent children through mastery in Mathematics and Science. She is currently completing her doctorate of management degree in leadership at the University of Phoenix, and is preparing her doctoral dissertation research on the Jamaican manufacturing sector. Through this research, she aims to provide possible solutions to address longstanding

low productivity in the sector. St. Rachel has a double major Bachelor of Science honours degree in International Relations and Political Science, and a Master of Science degree in Gender and Development Studies from the University of the West Indies (UWI), Mona.

Throughout St. Rachel's professional career, human rights advocacy has been a constant factor. She was a national HIV/AIDS advocate, economic and social rights advocate and educator, and sexual and reproductive rights advocate. Flow and Rotary International recognized her as a national youth leader in 2009, and she achieved several academic awards at the primary, secondary, and tertiary education levels. St. Rachel is a representative on several government committees. She is passionate about the fulfillment of sexual rights and its recognition in the Jamaican society.

As a survivor of incest and rape, she believes that if every Jamaican can realize all human rights committed to in the Universal Declaration of Human Rights we will be able to live in dignity, grow with confidence, and avoid a life that is dehumanizing. Each and every individual has the inalienable and indivisible right to equality and equal protection of the law; participation; life, liberty, security of person, and bodily integrity; privacy; personal autonomy and recognition before the law; freedom of thought, opinion, expression, and association; health and the benefits of scientific progress; education and information; choosing whether or not marry and to found and plan a family, and to decide whether or not, how and when to have children; and accountability and redress.

Profiles of Board Directors

President: Mrs. Joyce Hewett

Mrs. Hewett is an experienced women's and human rights activist and human resource specialist. She is the Executive Director of one of Jamaica's foremost women's rights and anti-gender based violence non-government organizations (NGOs). Mrs. Hewett has represented Jamaica at several international and regional level government delegations over many years, lobbying for greater protection and promotion of the advancement of women, with a specific focus on violence against women and girls, GBV, and human trafficking. Her organization, Woman Inc., runs the country's sole domestic violence women's shelter and helpline.

Treasurer: Mr. Klent Elson

Mr. Elson has a diploma in Business Administration and a certificate in paralegal studies. He has experience in the areas of payroll/accounting, office administration, human resources, and general management.

Youth Director: Ms. Jherane Patmore

Ms. Patmore is a recent graduate of the UWI, Mona with a double major Bachelor of Science degree in International Relations and Statistics. She has an extensive experience in program management, advocacy on SRHR, and using social media for Information, Education, and Communication (IEC) activities.

Youth director: Mr. Aldane Walters

Mr. Walters recently graduated from Wolmer's Boys' School. During his high school career, he was the head boy, and president of numerous clubs and teams. He has also served as the Chairman of the Office of the Children's Advocate Child Advisory Panel. Aldane previously worked as an intern at the Joint United Nations Programme for HIV/AIDS (UNAIDS) in Jamaica, outreach volunteer for Jamaica Youth Advocacy Network (JYAN), and writer and vice president of the teenAGE writer's club for the Jamaica Observer. He is currently a production assistant with Television Jamaica.

Director: Mr. Dervin Patrick

Mr. Patrick is a maternal and reproductive health specialist. As the managing director of Patrick Commodities Ltd., he adds business development to his public health background. He is a former maternal and reproductive health advisor at the United Nations Population Fund (UNFPA).

Director: Mrs. Shakira Maxwell

Mrs. Maxwell is a part-time lecturer in Gender, Sexual and Reproductive Health, and HIV/AIDS at the Institute of Gender and Development Studies, UWI, Mona. She is at UWI. Mrs. Maxwell has experience as a SRH researcher.

Director: Mrs. Cynthia Pitter

Mrs. Pitter has an extensive background in the field of nursing. She served as director and educator at the University Hospital. She is currently a lecturer at the UWI, School of Nursing and Midwifery, Mona. She contributed to the development of the midwifery profession in Jamaica through the development of curriculum and standards. She worked with international organizations such as the Pan-American Health Organization (PAHO) and JHPEIGO. She is a doctoral candidate at the Institute of Gender and Development Studies, UWI, Mona; and a maternity health and GBV researcher.

Director: Dr. Abigail Creighton

Dr. Creighton is an Obstetrician and Gynaecologist with a professional interest in adolescent

sexual and reproductive health (ASRH). She established and operated adolescent antenatal clinics at Cornwall Regional Hospital and the Falmouth Hospital.

Director: Dr. Zoe Simpson

Dr. Simpson is the executive director of the WCJF, a government agency providing education, counselling, and support services to teen mothers. The WCJF is a partner of JFPA and under the leadership of Dr. Simpson, JFPA and the WCJF re-established the ARC, a facility delivering SRH services to adolescent mothers.

Director: Mrs. Toni-Shae Freckleton

Mrs. Freckleton is a manager in the Population and Health Department at the Government of Jamaica's planning and development strategy agency, the PIOJ.

Director: Ms. Elizabeth Phillips, J.P.

Ms. Phillips has an extensive experience in rural and community development. Recently she was the Country Program Manager for Jamaica at AIDS Healthcare Foundation (AHF) based in Los Angeles, USA. Ms. Phillips led AHF in partnerships with Jamaica AIDS Support for Life (JASL) and the Ministry of Health (MOH) Western region to carry out projects to improve access to SRH on the island.

Situational Analysis

The Problem

The current Sexual Offences Act (SOA) fails to provide many Jamaicans with adequate protection against to sexual violation, especially the protection of particularly vulnerable groups including women, children, and adolescents from sexual violence and abuse.

The People Affected by the Problem

The current limitations in the Jamaican Sexual Offences Act negatively impacts all Jamaicans in various capacities, however statistics demonstrate that women and children, especially adolescent girls, are the most severely impacted by infringements to the laws in the Act. This submission, to the Joint Select Committee of Parliament appointed to review the Sexual Offences Act, will present objective, data-driven justifications for revisions and additions to the Act to ensure all Jamaicans are equally protected and given equal opportunity to seek redress for crimes committed against them.

The Environmental Context of the Problem

The birth rate of 72 per 1000 girls in the 15 to 19 age cohort compares highly unfavourably with the birth rate of 16 per 1000 women in the general Jamaican population (CARICOM, 2014). In addition to their high risk of pregnancy, only 30% of sexually active girls (15-19 years) were tested for HIV; and even worse, 16% of sexually active boys in the same age cohort were tested in the last 12 months (Curatio International, n.d). Intergenerational sex is a major factor influencing adolescent pregnancy and growing HIV infection rates among adolescent girls, 15 to 19 years (CARICOM, 2014). Another factor is the average age of first sex, with boys and girls averaging at 14 years (CARICOM, 2014). The average age of sexual debut is two years earlier than the age of consent for medical services without parental consent, consequently sexually active adolescents have limited capacity to prevent unplanned pregnancy, and sexually transmitted infections (STIs), including HIV; and test routinely for STIs and HIV.

Significant numbers of women and girls experience gender-based violence (GBV). The Jamaican Ministry of Health (MOH, 2015) reported that 48.8% of females and 16% of males in the 15 to 24 age-cohort said the first sexual encounter was forced. Maternal mortality in Jamaica is among the highest in the Caribbean with an estimate of 80 maternal deaths per 100,000 live births in 2010/11 (MOH, PROMAC, 2016). It is estimated that 10% of maternal deaths are due to unsafe abortions (Ortega, 2016). The illegality of abortion makes it impossible to know the number of abortions undertaken in Jamaica annually, but public health reports provide a basis for estimates based on cases presenting with abortion complications. In Jamaica over 1,200 unsafe abortions are conducted annually (UNFPA & IPPF, 2006).

JFPA recognizes the importance of an enabling legal and policy environment to improve SRH outcomes, especially among adolescents, but successfully addressing the problems will also require capacity strengthening of adolescents with the life skills, knowledge and competencies to think critically, make decisions in their best interest, and participate actively in protecting their rights and advancing their developmental capacities. Comprehensive sexuality education (CSE) is a proven solution to the SRH challenges of adolescents and youth (Haberland & Rogow, 2015).

Justification for Sexual Offences Act Submission

The cost to the government to provide healthcare services to each adolescent mother is estimated at \$255,520 JMD per year (CARICOM, 2014). This figure cumulates to \$1.07 billion JMD annually to provide healthcare services to over 6,000 adolescent births each year. Increasing adolescent access to sexual and reproductive health services will significantly reduce

national expenses on adolescent pregnancy. It will also increase opportunities to influence a decline in the HIV infection rate and growth pattern among adolescents 10 to 19 years. Reports indicate that the 10 to 19 cohort is the only age category that has an upward trend in HIV infection (MOH & UNICEF, 2015).

The extreme vulnerability of Jamaican children, adolescents, and women to sexual violence and violation also justifies amendments to existing clauses and the addition of new clauses to the Sexual Offences Act. The alarmingly high statistics of different forms of GBV indicate the dire need for change that can start with the Sexual Offences Act revision. With the law in place to provide full protection and justice for victims, and the penalization of offenders; Jamaica will likely benefit from, reduced spending on adolescent pregnancy, gains from the demographic dividend of girls completing their education and averting pregnancy at an early age, and reduced HIV infections among adolescents.

Evidence of the pervasiveness of the sexual violation and exploitation of children, adolescents, and women can be sourced from the Office of the Children's Registry (OCR), Centre for the Investigation of Sexual Offences (CISOCA), Ministry of Health (MOH), National Family Planning Board (NFPB), Bureau of Women's Affairs (BWA), Office of the Children's Advocate (OCA), United Nations Children's Fund (UNICEF), and United Nations Population Fund (UNFPA). Important data and indicators to review that points to extent of the problem include: adolescent fertility rate (compared to the general population), sexual violation/violence rate, rape cases, average age of sexual debut, HIV infection rate (age group comparison), adolescent knowledge of HIV, adolescent HIV testing rate, couple years protection rate (compare adolescents and the general population), and adolescent sources of information on SRH issues.

Executive Summary of Recommended Amendments

Part 1 Preliminary

2. Adult (Page 5)- Replace 'adult' with 'individual with majority status' throughout the Sexual Offences Act.
Define 'individual with majority status' as the, 'legal capacity of an individual 16 years and older to consent to sex and medical services without parental consent'.
2. Child (Page 5)- Replace 'child' with 'minor' throughout the Sexual Offences Act.
Retain the definition of 'child' in the Sexual Offences Act as the definition of the term 'minor'.
2. Grievous sexual assault (Page 5)- Remove 'grievous sexual assault' entirely from the Sexual Offences Act.
2. House of prostitution (Page 5)- Replace 'prostitution' with 'sex work' throughout the Sexual Offences Act.
2. Mental disorder (Page 5)- Replace 'mental disorder' with 'mental incapacity'.
2. Mental retardation (Page 6)- Replace 'mental retardation' with 'mental disability'.
1. Sexual intercourse (Page 6)- Remove 'sexual intercourse' entirely from the Sexual Offences Act.

Part II Rape, Grievous Sexual Assault and Marital Rape

- 3.—(1) Rape (Page 6)- Replace the term 'sexual intercourse' with alternate language adopted in 2012 by the US Department of Justice.
- 3.—(2) Conditions of consent (Page 6)- Expand the conditions under which consent cannot be given to include minors, individuals under the influence of drugs and alcohol, and individuals with mental incapacity.
- 4.—(1) Grievous sexual assault (Page 7)- Remove 'grievous sexual assault' entirely from the Sexual Offences Act.
- 4.—(2) Exemptions to grievous sexual assault (Page 7)- Remove this section entirely from the Sexual Offences Act.
- 4.—(3) Conditions of consent (Pages 7 and 8)- Remove this section entirely from the Sexual Offences Act.
- 4.—(4) Other conditions of consent (Page 8)- Remove this section entirely from the Sexual Offences Act.
- 5.—(1) Marital rape (Page 8)- Change the definition of rape to the one adopted in 2012 by the United States Department of Justice.

Marital rape (Page 8)- Update to ensure the use of gender neutral and inclusive language.

- 5.—(3) Conditions for marital rape (Pages 8 and 9)- Remove entirely from the Sexual Offences Act.
- 6.—(1) Penalty for rape and grievous sexual assault (Pages 9 and 10)- Remove references to and penalties for grievous sexual assault entirely from the Sexual Offences Act.

Part III Incest

- 7.—(1) Incest by males (Page 10)- Update to ensure the use of gender neutral and inclusive language.
- 7.—(2) Incest by females (Pages 10 and 11)- Remove this section entirely from the Sexual Offences Act.
- 7.—(3) Relationship between victim and offender (Page 11)- Expand the nature of relationships to include relatives by legal measures, such as adopted relatives.

Part IV Sexual Offences Against Children and Indecent Assault

- 8.—(1) Sexual touching or interference (Page 12)- Replace 'child' with the term 'minor'.
- 8.—(2) Offence (Page 12)- Replace 'adult' with 'individual of majority status'.
- 9.—(1) Sexual grooming of child (Page 13)- Replace 'adult' with 'individual of majority status'.
- 9.—(1) (b) Condition of offence (Page 13)- Replace sentence with, 'the individual is a minor'.
- 9.—(2) Condition of offence (Page 13)- Replace 'adult' with 'individual of majority status'.
- 9.—(3) Communication with victim (Page 13)- Replace 'adult' with 'individual of majority status'.
- 10.—(1) Sexual intercourse with person under 16 (Page 13)- Remove the term 'sexual intercourse' and replace with alternate language adopted in 2012 by the US Department of Justice.
- 10.—(4) Charge for the offence (Page 14)- Replace 'adult' with 'individual of majority status'.
- 10.—(6) Adult in authority definition (Page 14)- Replace 'adult in authority means an adult who' with 'individual of majority status in authority means a person who'. Replace 'child' with 'minor'.
11. Householder etc. inducing or encouraging violation of children under sixteen (Pages 14 and 15)- Replace 'child' with 'minor'.

- 11. (a) Householder etc. inducing or encouraging violation of children under sixteen (Page 15)- Replace 'sexual intercourse' with alternate language adopted in 2012 by the US Department of Justice.
- 11. (b) Householder etc. inducing or encouraging violation of children under sixteen (Page 15)- Replace 'engaging in any act with any man or woman that constitutes grievous sexual assault upon the child' with 'engaging in any sexual act with any man or woman'.

Part V Other Offences

- 16.—(1) Violation of person suffering from mental disorder or physical disability (Page 16)- Replace 'sexual intercourse' with alternate language adopted in 2012 by the US Department of Justice.
- 16.—(2) Violation of person suffering from mental disorder or physical disability (Page 16)- Update to ensure use of non-discriminatory, respectful language that acknowledges the agency of persons with disabilities.
- 17(a) Forcible abduction (Page 16)- Replace 'sexual intercourse' with alternate language adopted in 2012 by the US Department of Justice.
Remove 'grievous sexual assault' entirely from the Sexual Offences Act.
- 17(b) Forcible abduction (Page 16)- Replace 'sexual intercourse' with alternate language adopted in 2012 by the US Department of Justice.
Replace 'grievous sexual assault' with 'sexual violation'.
- 18.—(1) (a) Procuration (Page 16)- Replace the term 'child' with 'minor'.
Replace 'sexual intercourse' with alternate language adopted in 2012 by the US Department of Justice.
Replace 'grievous sexual assault' with 'sex'.
- 18.—(1) (b) Procuration (Page 16)- Replace the term 'prostitute' with 'sex worker'.
- 18.—(1) (c) Procuration (Page 17)- Replace the term 'prostitute' with 'sex worker'.
Replace 'prostitution' with 'sex work'.
- 18.—(1) (d) Replace 'prostitution' with 'sex work'.
- 19.(a) Procuring violation of person by threats or fraud or administering drugs (Page 17)- Replace 'sexual intercourse' with alternate language adopted in 2012 by the US Department of Justice.
Replace 'grievous sexual assault' with 'sexual violation'.
- 19.(b) Procuring violation of person by threats or fraud or administering drugs (Page 17)- Replace 'sexual intercourse' with alternate language adopted in 2012 by the US Department of Justice.

- Replace 'grievous sexual assault' with 'sexual violation'.
- 19.(c) Procuring violation of person by threats or fraud or administering drugs (Page 17)-
Replace 'sexual intercourse' with alternate language adopted in 2012 by the US
Department of Justice.
Replace 'grievous sexual assault' with 'sexual violation'.
- 19.(d) Procuring violation of person by threats or fraud or administering drugs (Page 17)-
Replace 'sexual intercourse' with alternate language adopted in 2012 by the US
Department of Justice.
Replace 'grievous sexual assault' with 'sexual violation'.
- 20.—(1) Abduction of child with intent to have sexual intercourse, etc. (Page 18)- Replace
'unmarried child' with 'minor'.
Replace 'child' with 'minor'.
Replace 'sexual intercourse' with alternate language adopted in 2012 by the US
Department of Justice.
Replace 'grievous sexual assault' with 'sexual violation'.
- 21.—(1) (a) (i) Unlawful detention with intent to have sexual intercourse (Page 18)-
Replace 'sexual intercourse' with alternate language adopted in 2012 by
the US Department of Justice.
Replace 'grievous sexual assault' with 'sexual violation'.
- 21.—(1) (a) (ii) Unlawful detention with intent to have sexual intercourse (Page 18)-
Replace 'grievous sexual assault' with 'sexual violation'.
- 21.—(2) (a) Unlawful detention with intent to have sexual intercourse (Page 18)-
Replace 'sexual intercourse' with alternate language adopted in 2012 by
the US Department of Justice.
- 21.—(2) (b) Unlawful detention with intent to have sexual intercourse (Page 18)-
Replace 'prostitution' with 'sex work'.
- 21.—(3) Unlawful detention with intent to have sexual intercourse (Page 19)-
Replace 'prostitution' with 'sex work'.
- 22.—(3) Power of search (Page 19)- Replace 'child' with 'minor'.
Replace 'adult' with 'individual of majority status'.
- 22.—(4) Power of search (Page 19)- Replace 'prostitution' with 'sex work'.
Replace 'sexual intercourse' with alternate language adopted in 2012 by
the US Department of Justice.
Replace 'grievous sexual assault' with 'sexual violation'.
- 22.—(4) (a) (i) Power of search (Page 20)- Replace 'child' with 'minor'.

- 22.—(4) (b) Power of search (Page 20)- Replace 'adult' with 'individual of majority status'.
- 23.—(1) Living on earnings of prostitution (Page 20)- Remove this sub-section from the Sexual Offences Act.
- 23.—(2) Living on earnings of prostitution (Page 20)- Remove this sub-section from the Sexual Offences Act.
- 23.—(3) Living on earnings of prostitution (Page 20)- Remove this sub-section from the Sexual Offences Act.
- 23.—(4) Living on earnings of prostitution (Page 20)- Remove this sub-section from the Sexual Offences Act.
- 23.—(5) Living on earnings of prostitution (Page 20)- Remove this sub-section from the Sexual Offences Act.

Part VIII Miscellaneous

- 37. Power on indictment for rape to find the defendant guilty of a lesser offence (Page 30)- Replace 'grievous sexual assault' with 'sexual violation'.

Executive Summary of Recommended Additions

1. Make provision for minors to access sexual and reproductive health services without parental consent as a protective strategy.
2. Make provision for adolescent assent to medical services, regardless of the attainment of parental consent as a protective strategy.
3. Make provision for minors and women who were impregnated because of sexual violation to access safe and legal abortion services as a restorative strategy.
4. Make provision for the delivery of comprehensive sexuality education, in schools, to all minors as a protective strategy.

Justification for the Core Recommendations

Definition of Child

Remove the term 'child' from the Sexual Offence Act. The term child has multiple meanings in the Sexual Offences Act. One of the definitions conflict with the United Nations accepted definition of the child. The term 'minor' is a more accurate and unambiguous term. The term minor does not conflict with any definition and leaves room for different ages of minority. In the case of the Jamaican Sexual Offences Act the minor should be defined as any person under 16 years.

Definition of Adult

Remove the term 'adult' from the Sexual Offences Act. The use of the term adult in the Sexual Offences Act excludes individuals aged 16 and 17 years from penalization, protection, and redress as they are neither adult or child. Replace 'adult' with 'individual of majority status', which is defined as any person 16 years and older.

Definition of Grievous Sexual Assault

Remove the term 'grievous sexual assault' from the Sexual Offences Act. The definition of grievous sexual assault is invalidated by the recommended definition of rape, which was adopted by the US Department of Justice in 2012. The recommended definition of rape encapsulates the sexual activities described as grievous sexual assault.

Definition of Mental Disorder and Mental Retardation

Remove the use of the terms 'disorder' and 'retardation', in referencing individuals' mental abilities, from the Sexual Offences Act. The terms disorder and retardation are socially inappropriate, discriminatory, disrespectful, and minimizes the agency of individuals with mental disabilities. The terms 'disability' and 'incapacity' are more accurate and appropriate terms.

Definition of Prostitution and Prostitute

Remove the use of the terms 'prostitution' and 'prostitute' from the Sexual Offences Act. The terms prostitution and prostitute are socially inappropriate and misaligned with internationally accepted language. The terms 'sex work' and 'sex worker' are the alternative language accepted and used by the United Nations.

Definition of Rape

Change the definition of 'rape' in the Sexual Offences Act. The new definition of rape should read,

"the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another, without the consent of the victim" (Bierie & Davis-Siegal, 2016).

The current definition of rape in the Sexual Offences Act is premised on sexual intercourse, which suggests that a woman is raped by a man to fulfill the reproductive function. The current definition also suggests that sexual penetration only serves a reproductive function, therefore penetrative sexual activities that are done for pleasure, revenge, control, indignity, etc. cannot be regarded as rape. If the reproductive function is the basis of the act of rape, then it is no longer about the sexual violation of an individual; rather the intention of the offender when he penetrated the victim. As the law is an instrument to protect human rights, the Sexual Offences Act should focus on the sexual violation, which is the nonconsensual penetration of both the vagina and the anus, a breach of an individual's right to bodily autonomy.

Changing the definition to the one adopted in 2012 by the US Department of Justice will foster gender neutrality in the law, and an expansion of the sexual offences that are classified as rape. The recommended definition of rape is premised on the act of one/ more individuals penetrating other individuals in the vagina and or anus against their will. Under the new definition both males and females can be victims of rape. This will enable similarities in the penalization of offenders, and impartiality in the treatment of sexual crimes against men and women.

Definition of Sexual Intercourse

Remove the term 'sexual intercourse' because it is used incorrectly in the Sexual Offences Act. Sexual intercourse is specifically linked to the reproductive function of sexual penetration hence its Latin roots: coire, which means go together; and copulatio, which means binding together, uniting, joining, coupling, connecting. The term sexual intercourse suggests a situation of agreement between a man and a woman to procreate.

In the Sexual Offences Act, the use of the term sexual intercourse emphasizes the penetration of the vagina and ignores the underlying intent of penetration, which is to procreate. Since penetration is what the law intends to communicate when it refers to sexual intercourse, it is recommended that sexual intercourse be removed throughout and replaced with language that

more accurately communicates the true intent of the Sexual Offences Act, which is the penetration of the vagina of one person by the penis of another person.

Emphasis on the vagina as the sole organ that can be raped fosters injustice between males and females, and denies the similarity in heinousness of nonconsensual penetration of the vagina, and anus of any individual. Removing sexual intercourse from the definition of rape fosters gender equality in the Sexual Offences Act, and the addition of other bodily organs that can also be penetrated and which are equally dehumanizing when there is no consent.

Removal of Section 4

Remove the entire section on 'grievous sexual assault'. The offence of grievous sexual assault is encapsulated in the offence of rape based on the 2012 US Department of Justice definition. The adoption of the recommended definition of rape therefore invalidates the need for the use of the term grievous sexual assault throughout the Sexual Offences Act.

Removal of the Conditions of Marital Rape

Remove the conditions of marital rape articulated in Section 5.—(3) from the Sexual Offences Act. This section fails to acknowledge women's agency and autonomy in marriage. The conditions of marital rape suggest that a married woman is the property of her husband, therefore she must engage in sexual activities whenever he desires it. The conditions of marital rape inherently inhibit the married woman from making autonomous decisions about her body. Removing the conditions of marital rape acknowledges women's agency and autonomy within the marital relationship and underscores the importance of willingness and consent within the relationship.

Use of Gender Neutral Language in the Section on Marital Rape

Revise the language used in the section on marital rape in the Sexual Offences Act. The language used fails to acknowledge that wives can rape their husband. This situation creates gender bias in the law, as it suggests that marital rape offenders are only male.

Extension of Relatives Vulnerable to Incest

The offence of incest should be extended to individuals who are legal relatives such as the case of adoptive children. Currently, the Sexual Offences Act makes provision for the protection of blood relatives, but not for the protection of legal relatives.

Retention of 16 years as the Legal Age of Majority

The age of majority should remain at 16 years. Statistics reveal that many adolescents initiate sexual activity before age 16 (CARICOM, 2014), therefore changing the age of majority to 18 years will leave a larger number of adolescents unable to access medical services without parental consent. Increasing the age of consent will increase adolescent vulnerability to pregnancy, and HIV and other sexually transmitted infections because the average age of sexual debut in Jamaica is 13 years for Jamaican boys and 15 years for Jamaican girls (CARICOM, 2014). Although the age of consent is 16 years, it is reported that only 30% of sexually active girls and 18% of sexually active boys 15 to 19 years tested for HIV in the last 12 months (Curatio International, n.d.). This compares unfavourably with the national target of 75%. Key influencers of low testing among adolescents are limited knowledge of sexual and reproductive health and legislative barriers.

Removal of Section 23

Remove this section entirely from the Sexual Offences Act. Removal of this section is recommended because it criminalizes consensual sexual activities between adults. The section should also be removed because it leaves the dependents of sex workers at risk of social stigma, penalization, and incapable of improving their lives because of the occupation of their breadwinner. The section criminalizes the individual sex worker and their dependents, rather than sex industry and the businesses serving in that industry, which are key demand drivers of sex work.

Addition of Adolescent Access to SRH Services

Mindful of the vulnerability of adolescents to sexual violation, the early age of initial sex, the high rate of adolescent pregnancy, the high rate of adolescent HIV infection, the disproportionately high adolescent fertility rate compared to the general fertility rate of Jamaican women, high maternal mortality rate and its link to unsafe abortions including by adolescents, and high rate of gender-based violence; it is necessary for the Sexual Offences Act to not only recommend penalties for offenders, but preventive, restorative, and redress strategies must be addressed to ensure the victims of sexual violations get justice.

Provision should be made for minors to access sexual and reproductive health services to prevent pregnancy, and HIV and STIs without parental consent. The Committee on the Rights of the Child (CRC) in its general comments in December 2016 argued that state parties should consider the “presumptive capacity for adolescents seeking preventative and time-sensitive

SRH commodities and services”. In considering the best interest of the minor, the Sexual Offences Act should extend responsibility for care and protection of minors to healthcare practitioners, guidance counsellors, school nurses, and psychologists. Extending responsibility for minors to individuals other than parents and guardians will help to increase access to medical services and will increase protection of minors from unplanned and unwanted pregnancy, and HIV/STIs.

Addition of Access to Safe Abortion Services

Mindful of the fact that pregnancy can be an extremely difficult and traumatizing period in a woman’s life, the fact that the uterus of minors are generally small and underdeveloped resulting in their classification as high-risk, the fact that pregnancy affects a woman psychologically, financially, and physically, and the fact that pregnancy resulting from sexual violation was forced rather than chosen; it is necessary for the Sexual Offences Act to make provision for women and girls who become pregnant due to sexual violation to choose whether or not to keep the pregnancy.

Offering the victims of sexual violation, the right to choose whether to keep a pregnancy is a key restorative and redress strategy for victims as they may not be financially, psychologically, or physically capable, prepared, or desirous of being pregnant or having a child. Compelling a girl or woman to retain a pregnancy that she did not choose perpetuates the denial of her right to bodily autonomy, which was initially denied by the sexual offender. Granting her the right to choose whether to retain the pregnancy restores her right to bodily autonomy.

Addition of Adolescent Assent

Mindful of the developing capacities of adolescents and the recognition of the agency of adolescents as rights bearers, the Sexual Offences Act should make provision for adolescents to give assent to healthcare services directed at them. Provision of parental consent alone fails to take into consideration the rights, and needs of adolescents (CRC, 2016). The law must recognize that parental consent may conflict with adolescents’ needs and wants as autonomous individuals.

Addition of Adolescent Access to Comprehensive Sexuality Education

Mindful of the need for adequate guidance on sexuality issues, the high cost of adolescent pregnancy to Jamaica (CARICOM, 2014), the demographic dividend of girls completing their education and delaying pregnancy (UNFPA, 2016), the early age of initial sex (CARICOM, 2014), declining knowledge among adolescents about HIV/AIDS (Curatio International, 2017), and the

large number of adolescents who have same sex relations, and who sell sex [9,608 individuals] (MOH & UNICEF, 2015); it is necessary for the Sexual Offences Act to recommend that minors receive comprehensive sexuality education (CSE) through the Health and Family Life Education curriculum as a key preventive strategy. CSE is scientifically proven to increase the age of sexual debut, reduce adolescent STI/HIV infection rate, reduce intergenerational sex, and reduce experiences of GBV. (Haberland & Rogow, 2014).

Alternate Language for Specific Recommendations

Part II Rape and Marital Rape

- Rape** 3.—(1) An individual commits the offence of rape if there is penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person,
- (a) without the consent of the victim, and
 - (b) knowing there is no consent or recklessly not caring whether there is consent or not
- 3.—(2) For the purposes of subsection (1), consent shall not be treated as existing where the apparent agreement to penetrate, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person is---
- (a) extorted by physical assault or threats or fear of physical assault to the complainant or to a third person;
 - (b) obtained by false and fraudulent representation as to the nature of the act or the identity of the offender;
 - (c) obtained from a minor;
 - (d) obtained from an individual who is mentally incapable of giving consent; or
 - (e) obtained from an individual who is incapacitated due to the influence of drugs or alcohol.
- Marital Rape** 5.—(1) An individual commits the offence of marital rape against his/her spouse if he/she penetrates, no matter how slight, the vagina or anus with any body part or object, or oral penetration by a sex organ of the partner or another person,
- (a) without the consent of the victim, and
 - (b) knowing there is no consent or recklessly not caring whether there is consent or not
- 5.—(2) For the purposes of subsection (1), consent shall not be treated as existing where the apparent agreement to penetrate, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person is---
- (a) extorted by physical assault or threats or fear of physical assault to

- the complainant or to a third person; or
- (b) obtained by false and fraudulent representation as to the nature of the act or the identity of the offender.

Part III Incest

Incest 7.—(1) The offence of incest is committed by an individual who willingly penetrates no matter how slight, the vagina or anus, with any body part or object, or anal penetration by a sex organ of another person, knowing that the other person is a relative by blood or law.

Part IV. Sexual Offences Against Minors and Indecent Assault

Sexual touching and interference 8.—(1) In this Act, “minor” means a person under the age of sixteen years.

8.—(2) An individual of majority status commits an offence where he or she, for a sexual purpose, does any act specified in subsection (3).

8.—(3) The acts referred to in subsection (2) are-

(a) touching directly or indirectly, with a part of his or her body or with an object, any part of the body of the minor; or

(b) inviting counselling or inciting a child to touch, directly or indirectly, with a part of the body or with an object, the body of ---

- (i) any person, including the body of the adult who so invites, counsels or incites; or
- (ii) the minor.

Sexual grooming of minor 9.—(1) An individual of majority status commits an offence if—

(a) having met or communicated with a minor on at least two earlier occasions, he or she-

(i) intentionally meets the minor; or

(ii) travels with the intention of meeting the minor in any part of the world;

(b) the minor is under the age of sixteen years; and

(c) at the time of the meeting or travel, he or she---

(i) intends to do anything to or in respect of the minor, during or after the meeting, in any part of the world, which, if the act were done in Jamaica, would amount to the commission by any person of a sexual offence under this Act; and

(ii) does not reasonably believe that the minor is of or over the age of sixteen years.

9.—(2) An individual of majority status commits an offence if he or she causes another person to carry out any offence specified in subsection (1).

9.—(3) In subsection (1), the reference to the individual of majority status having met or communicated with the minor is a reference to the individual of majority status having met the minor in any part of the world or having communicated with the minor by any means from, to or in any part of the world.

Statutory rape

10.—(1) Subject to subsection (3), a person who penetrates, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person who is under the age of sixteen years commits an offence.

10.—(2) Any person who attempts to penetrate, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person under the age of sixteen years commits an offence.

10.—(4) Where the person charged with an offence under subsection (1) is an individual of majority status in authority, then, he or she is liable upon conviction in a Circuit Court to imprisonment for life, or such other term as the Court considers appropriate, not being less than fifteen years, and the Court may, where the person so convicted has authority or guardianship over the minor concerned, exercise its like powers as under section 7(7).

10.—(6) In this section, "individual of majority status in authority" means an individual of majority status who--

(a) is in a position of trust or authority in relation to a minor;

(b) is a pawn with whom a minor is in a relationship of

- dependency; or
- (c) stands in *loco parentis* to a minor.

Householder etc. inducing or encouraging violation of minor under sixteen

11. A person commits an offence who, being the owner or occupier of any premises, or having, or acting or assisting in, the management or control thereof, induces or knowingly allows any minor under the age sixteen years to resort to or be in or upon such premises for the purpose of—

- (a) penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person; or
- (b) engaging in any act with any man or woman that constitutes sexual violation of the minor.

Custody of minors under sixteen

12. Where on the trial of any offence under this Act it is proved to the satisfaction of the court that the seduction or sex work of a girl or boy under the age of sixteen years has been caused, encouraged, or favoured by his or her parent or guardian, it shall be in the power of the court to divest such parent or guardian of all authority over the girl or boy, and to appoint any person or persons willing to take charge of such girl or boy to be her or his guardian until she or he has attained the age of eighteen years, or any age below this as the court may direct, and a Judge of the Supreme Court shall have the power, from time to time, to rescind or vary such order by the appointment of any other person or persons as such guardian, or in any other respect.

Abduction of minors

15. A person who unlawfully takes or causes any minor, being under the age of sixteen years, to be taken out of the possession and against the will of the minor's father or mother, or of any other person having the lawful care or charge of the child, commits an offence.

Part V Other Offences

Disability

16. —(1) A person commits an offence who has or attempts to penetrate,

no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person who has a mental disability (knowing that the person has such a disability) and who does not consent to the sexual act or is incapable of consenting to the sexual act.

16.—(2) A person who is mentally incapable shall be regarded as being unable of consenting to engage in any sexual act where by reason of mental ability, the person is unable to do all of the following—

- (a) understand what the act is;
- (b) form a decision as to whether to engage in the act (or as to whether the act should take place);
- (c) communicate any such decision.

Forcible abduction 17. A person commits an offence who by force takes away or detains another person, against the will of that person, with intent to-

- (a) penetrate, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person or sexually violate that person;
- (b) cause that person to be married or to be penetrated, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person or to be subjected to a sexual act that is a violation of another person.

Procuration 18.—(1) A person commits an offence who procures or attempts to procure any other person-

- (a) who is a minor, to have sexual intercourse with or engage in a sexual act that violates any other person or persons either within or outside Jamaica;
- (b) to become, either within or outside Jamaica, a male or female sex worker;
- (c) to leave Jamaica, with the intent that the other person shall become a male or female sex worker, or an inmate of, or frequent a house of sex work; or
- (d) to leave the other person's usual place of abode in Jamaica (such place not being a house of sex work), with intent that the other person may, for the purposes of sex work, become an inmate of or frequent a house of sex work within or outside of

Jamaica.

Procuring violation of person by threats or fraud or administering drugs

19. A person commits an offence who ---

(a) by threats or intimidation, procures or attempts to procure any person to penetrate, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person or to engage in or be subjected to a sexual activity that violates their rights under the Act, either within or outside of Jamaica;

(b) by false pretenses or false representation, procures any person to penetrate, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person or to engage in or be subjected to a sexual activity that violates their rights under the Act either within or outside of Jamaica;

(c) applies, administers to, or causes to be taken by any person, any drug, matter, or thing, with intent to stupefy or overpower that person so as thereby to enable any other person to penetrate, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person or to engage in a sexual activity that violates the rights of that other person; or

(d) has or attempts to penetrate, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person or engages or attempts to engage in a sexual activity that violates the rights of any other person, when that other person is partially or entirely stupefied or overpowered as specified in paragraph (c).

Abduction of minor with intent to rape

20.—(1) A person commits an offence who takes, or causes to be taken, any minor out of the possession and against the will of his or her parent or guardian, with the intent that such minor should penetrate, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person or engage in a sexual activity that violates the rights

of any other person or persons generally.

20.—(2) It is a defence for a person charged with an offence under subsection (1) to show that the person had reasonable cause for believing that the minor was of or above the age of eighteen years.

Unlawful detention with intent to rape

21.—(1) A person commits an offence who detains another person against his or her will-

(a) in or upon premises with the intent that such person may-

(i) penetrate, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person or engage in a sexual activity that is a violation of the rights of any other person or with persons generally; or

(b) in a house of sex work.

21.—(2) A person (hereinafter referred to as "the offender") shall be deemed to detain a person—

(a) in or upon premises, who is in or upon those premises for the purpose penetrating, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person; or

(b) in a house of sex work, if, with the intent to compel or induce a person to remain in or upon the premises or in the house of sex work—

21.—(3) No legal proceedings, whether civil or criminal, shall be taken against any person detained as described in subsection (2), for taking away or being found in possession of any such clothing as was necessary to enable him or her to leave the premises or house of sex work.

Power of search

22.—(4) The victim shall be deemed to be unlawfully detained for an

immoral purpose if he or she is detained for the purpose of penetrating, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person or engaging in a sexual activity that violates the rights of any other person or with persons generally and is-

(a) in the case of a minor-

(i) under the age of sixteen years; or

(ii) of or over the age of sixteen years, so detained against his or her will or that of a parent or guardian; or

(b) in the case of an individual of majority status, so detained against his or her will.

Part VIII Miscellaneous

Power on indictment for rape to find the defendant guilty of a lesser offence

37. If upon the trial on any indictment for rape, the jury is satisfied that the defendant is not guilty of the offence charged in the indictment or of an attempt to commit the offence, the jury may acquit the defendant of the offence charged and find him guilty of an offence under Section 10 or of an indecent assault under Section 13, and thereupon the defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for an offence under either Section 10 or 13.

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