

## **Rosemarie Douglas-Beckford**

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**From:** Merrick Brown  
**Sent:** Tuesday, January 24, 2017 6:11 PM  
**To:** Rosemarie Douglas-Beckford  
**Subject:** Fw: Written Submission to the Joint Select Committee of Parliament to Review the Sexual Offences Act & Related Laws

*Sent from my LG Mobile*

----- Original message-----

**From:** Jodi Ho Lung  
**Date:** Tue, 24 Jan 2017 2:54 p.m.  
**To:** Clerk's Office;  
**Cc:**  
**Subject:** Fwd: Written Submission to the Joint Select Committee of Parliament to Review the Sexual Offences Act & Related Laws

Clerk to the Houses

Houses of Parliament

Gordon House

81 Duke Street

Kingston

Dear Sir/Madam:

*Re: Submission to the Joint Select Committee of Parliament to Review the Sexual Offences Act & Related Laws*

"The issue of sexual violence is... a serious one. A consistent 20% of female respondents to the Reproductive Health Survey (RHS) have been reporting that they have been forced or coerced into having sex. The 2008 RHS reports that almost half (48.8%) of all sexually active females, 15-24 years old, said they were coerced into having sex the first time they ever had sex." - <http://moh.gov.jm/wp-content/uploads/2016/05/Final-National-Integrated-Strategic-Plan-2014-2019-with-SRH-Validation.pdf>

A reproductive health survey of Jamaican women ages 15-49 revealed that of the women who reported sexual assault, **36% were assaulted by their husbands**, 20% by an acquaintance, 18% by a boyfriend, 12% by a stranger and 10% by a relative. - *National Family Planning Board Fact Sheet Gender Based Violence in Jamaica, 2008.*

The matter of rape being defined as a sexual offence that can only occur outside of marriage undermines the rights of women in Jamaica significantly and the cruelty of its omission can be summarized by the words of a Barbadian woman recounting her experience after having been raped by her husband. The woman called the police to report the incident and was told by the police that she was not raped because she was still legally married to her husband. She was left humiliated and without the right to hold her attacker to account for his actions.

"I called the police. As I recounted the events of the night, what I recall most of this dialogue, was that it seemed very important to the police that I understand that I was not 'raped'. Rape, two officers, made clear for me that morning, could not take place between a man and a wife... Admittedly, while it was as hard for me to be subjective that morning, as it is still now – the police were not offended by this cruel and violent act, rather they spent their efforts that morning in humiliating me – in diminishing the occurrences of that night to something insignificant and of little consequence, while to me, the events of that night had possibly more reverberations onto my life than any other event of my thirty-three years.

It was also the first time I had ever felt ashamed to be a woman." - <https://barbadosfreepress.wordpress.com/2012/05/04/domestic-violence-spousal-rape-a-bajan-womans-story/>.

The limited definition of rape within the legal contract of a marriage as only occurring under certain conditions (legal separation, divorce, non-cohabitation/non-molestation order already in place) must be addressed immediately. What happens where the husband rapes his wife prior to a non-molestation order, prior to legal separation? There is no recourse for her.

Additionally, it seems the law must provide time limitations within which the justice system must act to protect women, men and children in the case of domestic violence and child abuse. There is no prescribed time for response by law enforcement or the justice system. These systems continue to fail Jamaicans every day.

The following recommendations constitute my suggestions to be considered by the Committee for amendments to be made to the Sexual Offences Act and Related Laws.

#### Recommendations for Amendments to the Sexual Offences Act:

1. Removal of Section 5. Section 3 (1) should apply to all men and women (whether or not they are married).
2. Other sexual offences which should be included:
  - (a) where the penis penetrates the anus of a person without their consent, and this should be punishable to the same extent as rape. Under the Offences Against the Person Act, attempted buggery is a misdemeanour. The Act also does not specify whether the the act of buggery is with or without the consent of both parties, does not describe cases where it is perpetrated as an act of violence against the complainant and this should be addressed under the Sexual Offences Act.
  - (b) Sexual harassment should also be included under the Sexual Offences Act. These could be listed as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment
  - (c) Mass sexual assault should also be included. This could be defined as an event taking place in public places and in crowds whereby groups surround and assault a person, and include the following list of offences: inserting hands into their clothing, removing clothing, groping and inserting fingers into the vagina and anus, and rubbing against them.
  - (d) Elderly sexual assault should also be specified as a separate offence.
  - (e) Any unwanted sexual contact or threats, such as when someone touches any part of another person's body in a sexual way, even through clothes, without that person's consent or looks at a person's genitalia in a sexual way
  - (f) Group or mass rape should also be included as a separate offence.
3. Section 6 (d) should not differentiate between assaults which were attempted with or without a dangerous or offensive weapon or instrument.
4. Sexual offences should also include torture of a person in a sexual manner, during the sexual act or otherwise.

5. Part IV Section 8 Subsection 3 should also list the following as offences:

- (a) indecent exposure of an adult's genitals to a child or the inducement by an adult for a child to expose his/her genitals to another child
- (b) displaying pornography to a child
- (c) using a child to produce pornography
- (d) viewing of the child's genitalia in a sexual way
- (e) touching the child's genitalia in a sexual way

6. The punishment for incest should be decreased significantly. The law punishes the perpetrators more harshly than violent criminals under the same Act. There can be no justification for this. Where incest is carried out by an adult against a child, this is covered under Part IV of the Act.

7. Time limits within which law enforcement officers and the justice system must respond should be set, with clear and actionable accountability procedures for failures to respond within the time.

#### Recommendations for Amendments to the Offences Against the Person Act

1. Removal of Section 71: Bigamy or an amendment to ensure that all parties should have a contractual arrangement/agreement for bigamy to be legal.

2. Removal of Sections 72 & 73 : Jamaica must allow for abortion under certain conditions including pregnancy by rape, incest and for children under 16 years of age and within certain parameters such as a definition of the stage of the foetus after which abortion is illegal. "In the English 1967 Abortion Act, which codifies some parts of the common law, it was enacted, among other things, that a person shall not be guilty of the offence relating to abortion if *"two medical practitioners are of the opinion that the pregnancy has not exceeded 24 weeks and the continuation of the pregnancy would involve risk or injury to physical or mental health of the pregnant woman or any existing children; the termination of the pregnancy would prevent grave permanent injury to the physical or mental health of the woman or the continuation of the pregnancy would involve risk to the life of the pregnant woman or if the child was born, it would suffer from such physical or mental abnormalities as to be seriously handicapped"*. - <http://jamaica-star.com/article/features/20160215/abortion-and-law> In my opinion this is the very least that Jamaica should do.

3. Removal of Sections 76 & 77: The crime of buggery should be limited to forced sexual offences and should be covered under the Sexual Offences Act.

4. Removal of Section 79: The wording is vague, outdated and no reasonably educated person can be expected to understand its meaning. It should therefore be removed or reworded such that the public can read and understand the section clearly. What is an "act of gross indecency" and why is it a crime that can only be committed by one or more males? Could a woman not also commit an act of gross indecency? It also seems to threaten the privacy of individuals as the wording specifies "in public or in private". **Privacy** is a fundamental **human right** recognized in the UN Declaration of **Human Rights**.

#### Recommendations for Amendments to The Domestic Violence Act

The Domestic Violence Act provides for the protection of the person who is the victim, however it does not prescribe punishment for the perpetrators of domestic violence. I am not sure where this is covered under the law.

Time limits within which law enforcement officers and the legal and justice system must respond to reported cases should be set, with clear and actionable accountability procedures for failures to respond within the time.

#### Recommendations for Amendments to Childcare and Protection Act

Time limits within which law enforcement officers and the legal and justice system must respond to reported cases should be set, with clear and actionable accountability procedures for failures to respond within the time.

Kind regards,

