



UN JAMAICA

COMMENTS ON THE SEXUAL OFFENCES ACT (2009) BY THE UNITED NATIONS COUNTRY TEAM

**SUBMITTED TO THE JOINT SELECT COMMITTEE OF PARLIAMENT
REVIEWING THE SEXUAL OFFENCES ACT, 2009**

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**Attention: Mrs. Heather Cooke
heather.cooke@japarliament.gov.jm
Houses of Parliament
81 Duke Street
Kingston
Jamaica**

**Contact:
Mr. Bruno Pouezat
United Nations Resident Coordinator
1-3 Lady Musgrave, Kingston 5
Telephone: (876) 978 – 2390
Email: Bruno.Pouezat@one.un.org**

1. BACKGROUND AND RATIONALE

- 1.1 The UN in Jamaica commends the Parliament for its intention to amend the Sexual Offences Act, 2009 and expresses its commitment to support the country in bringing forward legislative and policy reform that enhances the quality of life of all Jamaicans, especially vulnerable groups; while promoting and protecting human rights, thereby advancing national development.
- 1.2 The UNCT recommends that the amendments to the Sexual Offences Act, 2009 and other related legislation should be aligned with the Treaties that Jamaica is a State Party to, taking into consideration their interpretation by the Treaty Committees in the General Comments/Recommendations and the country specific Concluding Observations. The human rights obligations under international Law consist of taking necessary measures to achieve the full realization of the rights set out in the conventions ratified, including legislative measures as necessary to fully integrate the treaty provisions in domestic Law.
- 1.3 The provisions to be considered in this review are provided by the International Covenant on Civil and Political Rights, the Convention on the Eliminations of all Forms of Discrimination against Women, the Convention on the Rights of the Child (and its Protocols) and the Convention on the Rights of Persons with Disabilities. In addition, consideration should be given to the regional human rights treaties to which Jamaica is a State Party, such as specifically the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention). In addition, in the aim of creating harmonious legislation and to reflect throughout the legislation the same high standard, the honorable Members of Parliament could also consider the Child Pornography (Prevention) Act, 2009 which provides adequate interpretation of the treaty provisions.
- 1.4 The UNCT underlines that the positive obligations on States Parties to ensure full discharge of the rights contained in the treaty is only given if individuals are protected by the State, “not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities” The failure of the State to ensure protection (exercise of due diligence) would also “give rise to violations by States Parties of those rights, as a result of States Parties’ permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities”¹.

¹ General Comment No. 31 of the Human Rights Committee, 26 May 2004, in CCPR/C/21/Rev.1/Add. 13, paragraph 8, pages 3,4.

1.5 In specific reference to children as a particularly vulnerable group, the UN in Jamaica wishes to stress the ‘best interest of the child’ as a foundational principle in this and any subsequent review of laws applying to citizens aged 0-17. For this age group, there are three different ages specified, one each for criminal responsibility, sexual consent and age of majority. Depending on the final formulation of this law and other pieces of legislation, this variance in ages can help or hinder the full realization of children’s rights in accordance with their evolving emotional, mental and intellectual maturity. The UN would encourage due diligence to ensure that a development perspective is applied in any legal reviews with relevance for children and adolescents.

2. COMMENTS ON PARTICULAR PROVISIONS OF THE SEXUAL OFFENCES ACT

2.1 General observation:

Gender equality as outlined by the CEDAW Committee means “Inherent to the principle of equality between men and women, or gender equality, is the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices.”²

Recommendation 1: It is therefore recommended that the Act should be amended to use gender neutral terms such as ‘the offender’, ‘the perpetrator’, ‘the victim’, instead of ‘men’, ‘boy’, ‘male’ or ‘women’, ‘female’ in these categories.

2.2 Part I Preliminary, Definition of Sexual intercourse

Recommendation 2: The definition of ‘Sexual Intercourse’ (“penetration of the vagina of one person by the penis of another person”) should be extended to or add forms of penetration other than provided, such as penetration of the mouth, anal intercourse or by non-sexual organs and objects (except for medical purpose).

Rationale: The definition of ‘sexual intercourse’ is key for the definition of the criminal types of gender based and sexual violence. If it is narrow, the legal recognition of sexual violence against men and boys would not fall under it in an equally protective way as against women and girls. If ‘sexual intercourse’ does not consider the possibility of other penetrative practices that may be used for inflicting grave sexual violence to any person, it does not recognize the same nature of any sexual penetration and diminishes particularly humiliating or painful traumatic experience that victims may undergo. The definition by the Child Pornography Prevention Act Section 2 ‘Sexual Activity’ could serve to harmonize the SOA: “activity other than sexual intercourse, whether involving persons of the same or opposite

² Committee on the Elimination of Discrimination against Women, general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 22.

sex- (i) involving the penetration of the anus, vagina or mouth with any part of a person's body, or the anus or vagina with anything else”.

2.3 Part II, Section 3, Definition of Rape

Recommendation 3: The definition of ‘rape’ should be reformulated as ‘against any person’ which includes men and boys.

Rationale: For the equal protection of all persons under the law, the Committee should consider the current unequal treatment of men and boys and the fact that rape can be inflicted on them (currently defined as ‘grievous sexual assault’) with the similar serious consequences for the victim. This is widely recognized in international human rights and criminal Law and jurisprudence after recognizing that in circumstances, such as incest, armed conflict, torture and imprisonment where rape is also inflicted on men and boys with serious bodily and mental harm and suffering, in addition to social stigma which makes it a widely underreported and mostly not prosecuted crime. More information is provided in **Annex 1**.

2.4 Section 5, and Marital Rape

Recommendation 4: In alignment with the most recent concluding observations on Jamaica of the CEDAW Committee, the Sexual Offences Act should be reviewed to allow “no restrictive conditions” regarding marital rape.³ It should be made clear that any women is protected against rape regardless of her marital status.

Rationale: The Sexual Offences Act should provide the highest standard of protection of women and girls against sexual violence. In the case of the definition of marital rape, the included exceptions under Section 5.3 are not in consonance with the Convention of Belem do Para in article 7 c), d) and e). The Convention obliges to include in domestic legislation provisions needed to prevent, punish and eradicate violence against women and girls, adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the women and girls or using any method that harms or endangers their lives life or integrity, as well as amend or repeal existing laws and regulations which sustain the persistence and tolerance of violence against women and girls.

3. PART IV

3.1 Age for being considered a child under the Act.

Recommendations 5: The Sexual Offences Act should define a child consistently as a person under 18 years as done in the preliminary part, but later abandoned under Part II Rape and IV Offences against children and indecent assault - defining a child as a person under the age of 16.

³ See para 22 (b) 52nd session, 9-27 July 2012.

Rationale: The definition for being considered a child is provided in CRC Art. 1 as any person under the age of 18 years, providing flexibility with regard to age of majority and/or age of consent/minimal age of criminal responsibility in a country is set differently. The recommended amendment would also be aligned to the definition of a child as stipulated in the Child Care and Protection Act 2004.

3.2 Minimum age of criminal responsibility (*Part VI, Section 24*)

Recommendation 6: The Committee on the Rights of the Child notes that the age of 12 is in its view the absolute acceptable minimum for the age of criminal responsibility “bearing in mind the facts of emotional, mental and intellectual maturity” of the child.⁴ Also taking note of CRC art. 40 3b) “Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected”, the Joint Select Committee could consider to include a special provision in the Sexual Offences Act and the Child Care and Protection Act that indicate judicial proceedings as a last resort exhausting first other possibilities of treatment, including under the child diversion policy.

Rationale: The CRC provides in art. 40.4 that a “variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.”

In its Concluding Observations for Jamaica in 2015 the Committee of the Right of the Child made the following observations and recommends to the Government of Jamaica:

“64. The Committee welcomes the various initiatives to assist children in conflict with the law, including the Reducing the Juvenile Population in State-supported Institutions in Jamaica project, the Unite for Change campaign, the National Child Diversion Policy, the Child Justice Guidelines, the training workshops supported by UNICEF, and information concerning the establishment of child-friendly police stations with children-only holding areas. However, the Committee is concerned about:

- (a) The increasing number of children in conflict with the law;*
- (b) The illegal detention of children in police lockups;*
- (c) The grouping together of children in juvenile facilities with no separation based on category, offence, age or special need;*
- (d) Inadequate psychological and educational services provided to children in juvenile facilities;*
- (e) Children may still be sentenced to life imprisonment; and*

⁴ General Comment 10, Children’s rights in juvenile justice, CRC/C/GC/10, 25 April 2007, paragraph 32

(f) *Inadequate training of correctional officers who interface with children, and lack of access by judges to information, including copies of current legislation, computers and the Internet.*

65. *In line with its general comment No. 10 (2007) on children's rights in juvenile justice, the Committee urges the State party to bring its juvenile justice system into line with the Convention, and, in particular, the Committee recommends that the State party:*

(a) *Adopt a holistic and preventative approach to addressing the problem of children in conflict with the law and the underlying social factors, with a view to supporting children at risk at an early stage, including by expanding intervention programmes, vocational training and other outreach activities; ...*

(c) *In cases where detention is unavoidable, ensure that adequate facilities exist for children in conflict with the law, that children are not detained together with adults, and that detention conditions are compliant with international standards, including with regard to access to education and health services;*

(d) *Provide effective rehabilitation services, including access to mental health counselling and substance abuse treatment, as well as effective social skills development and education, including vocational training programmes;*⁵

The UN also notes and welcomes the 2014 OCA submission to the Joint Select Committee of Parliament on the SOA and other pieces of legislation; with particular reference to the close-in-age group exceptions which would serve to make the law(s) sensitive to the best interest of the child at different ages and stages of maturity. This particular amendment would serve to decriminalize sexual experimentation between adolescents – addressing a major concern which the UN has had with the law in its current form.

3.3 Age of consent

Recommendation 7: The UN in Jamaica would not see a need to modify the age of consent of 16 years. However, the UN notes and welcomes the 2014 OCA submission to the Joint Select Committee of Parliament on the SOA and other pieces of legislation; with particular reference to the close-in-age group exceptions which would serve to make the law(s) sensitive to the best interest of the child at different ages and stages of maturity. This particular amendment would serve to decriminalize sexual experimentation between adolescents – addressing a major concern which the UN has had with the law in its current form.

Rationale: The UN wishes to point out the critical need for all adolescents to be able to access quality health care and counselling and for medical and other professionals to be legally able to provide such services without fear of prosecution. In this regard, the UN is

⁵ CRC/C/JAM/CO/3-4, Concluding Observations on the combined third and fourth periodic reports of Jamaica, 4 February 2015.

supporting the effort of the Ministry of Health to propose specific legislative amendments to address this challenge, taking the best interest of the child as the foremost concern.

To prevent early sexual intercourse and abuse by much older persons, the UN in Jamaica asks the Committee to consider that there is a variety of interventions available which include: measures for creating an enabling social and family environment; strengthening the child's capacity to opt for health-promoting behavior; and to address social and economic root causes of deprivation and poverty that induce adolescents into risky behaviour, as well as lack of information, education, support and access to health services for this specific age group.

The raising of the age of consent may not necessarily have a preventive or deterring effect on perpetrators and victims as the current situation proves, among other reasons because the enforcement presents numerous difficulties in practice, including often the complicity of the victim and or the victim's family with sexual abuse and violence. Besides, raising the age of consent in criminal law may have more undesired side effects on the life of adolescents themselves in terms of respecting their growing capacity to exercise their rights and responsibilities, than anticipated benefits in the prevention of crime.

Criminalization as a critical measure against sexual abuse and violence should target the perpetrators of sexual abuse and crimes against girls and boys directly; and on the other hand the access to the justice system for children and adolescents should be enhanced based on the analysis of causes that prevent them to do so.

Since there is a broad variety of approaches on the age of consent in most countries, the CRC Committee in its General Comment 4 (2003) on Adolescent health and development provides substantive criteria for decision taking by the countries themselves setting out a minimum standard of elements to be taken into consideration by legislators. (See Annex 2)

3.4 Special needs and protection for the child victim

Recommendation 8: The Committee could consider to add a section on the protection of child victims in accordance to the CRC Optional Protocol, on the Sale of Children, child prostitution and child pornography that recommends integrating provisions to ensure the adoption of appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

- a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;
- b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

- c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
- d) Providing appropriate support services to child victims throughout the legal process;
- e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
- f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

Rationale: Children are vulnerable under the Justice system and require special protection measures. This is even more important when it comes to children being victims of sexual crime abuse and violence. Recognition must be made of the fact that child victims of sexual violence often demonstrate a delay in reporting to the police for reasons of fear, humiliation, stigma, or psychological trauma. There is often the perception that the complainant is unreliable, especially where the sexual violence is committed against women and girls⁶. In pursuant with Article 1 and Article 5 of CEDAW, which speaks to discrimination (both direct and indirect) and sex role stereotyping and prejudice in laws, policies and programmes; those who implement the law and interface with victims of sexual violence, should do so without prejudice. The appropriate training and regulatory framework and disciplinary procedures should be put in place for health care providers, legal personnel and police officers; and this should form part of the institutional framework supporting the implementation of the Act.

3.5 Legal guarantees and privacy of juvenile offenders:

Recommendation 9: For any judicial procedure where a child is involved as offender in sexual violence, the text of the SOA should be amended with a provision of treatment considering the dignity of the child, legal guarantees and protection of his/her privacy in accordance to Art. 40 of CRC.

Rationale: Adherence to international standards in the Convention on the Rights of the Child which provides in art. 40 for their judicial guarantees fully respected. The General Comment No. 10 (2007) on Children's rights in juvenile justice provides guidance on interventions without resorting to judicial proceedings and child diversion as well as in the context of judicial proceedings.

4. PART VI OTHER OFFENCES

⁶ See for instance, Handbook for Legislation on Violence Against Women, UN Women, NY 2012.

4.1 Recommendation 10: The language of this Part should be adapted to the obligations under the Convention on Rights of Persons with Disabilities (CRPD), in particular in view of the declaration of incapability in Section 16 of the Sexual Offences Act in order to ensure the dignity and rights of persons with disabilities.

In addition, the UN Country Team draws attention to the exclusion of persons with intellectual disabilities under the SOA, and recommends that these persons be included in the class of persons protected under section 16. This would be in keeping with Art. 12 of the CRPD.

Rationale: It is the obligation of the State party to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities. The CRPD defines: “Persons with disabilities include those *who have long-term physical, mental, intellectual or sensory impairments* which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

As a general principle CRPD lines out in Art. 3 “*The principles of the present Convention shall be: (a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons; (b) Non-discrimination; “*

And in Art. 12 on equal recognition before the law: “*1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law. 2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. 3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.”*

5. PART VII PROCEDURAL PROVISIONS

Safeguards for victims of sexual violence,

5.1 Recommendation 11: The SOA should provide robust processes to ensure that complainants are protected from perceived or real threats. A review of the SOA should seriously consider bolstering the law with such safeguards.

Rationale: Even under the most supportive environments making a complaint is not easy if they are to lodge a complaint with the police. A more recent positive example from the region is the Sexual Offences Act in Guyana in 2010 which provides in Section 41 robust procedures for police investigation, which is mandated and time-bound if a complaint is made, with liability imposed on the police for failure to do so.

The SOA provides important protections to guarantee anonymity of the complainant in Section 28. However, other procedural measures can be stipulated to ensure that the stigma of sexual violence is addressed and complainants feel empowered and encouraged to pursue complaints and prosecutions. For example, these include facilitating evidence to be furnished in trial through technologies to avoid intimidation, and mandating closed court proceedings.

Additionally, laws such as the SOA can also mandate innovative models to raise awareness and family or community support for victims of sexual violence through general awareness campaigns, and to strengthen the existing structures such as CISOCA (Centre for Investigation of Sexual Offences and Child Abuse) to ensure that protocols and guidelines on police support, medical and social services for victims of sexual violence are enhanced and information on them made available to the wider public. Such measures need to go hand-in-hand with robust substantive provisions in order to ensure that violence against women, girls and other vulnerable groups are effectively curbed. This can contribute significantly to controlling the HIV epidemic in Jamaica, decreasing trafficking in children and reducing adolescent pregnancy stemming from sexual violence.

END

Annex 1

Definition of Rape

Given the importance of the subject matter, we would take the opportunity to bring to your attention some elements based on international experience that drove the change in the definition of rape over the last two decades.

1. International legal developments on the definition of rape have been based on the expression of sexual and gender based violence in conflict situations (in particular “rape as a weapon of war”), in particular in the former Yugoslavia and conflict affected countries in Africa (Rwanda, DRC). Today ‘rape’ is an international crime recognized in International Criminal Law as well as in the jurisprudence of International Tribunals, the European Court and the Treaty Committees⁷ of International Human Rights Law.
2. The international elements of definition have found entry in numerous national criminal codes including under Common Law. In particular two considerations should be taken into account:
 - a. *A narrow definition of the commitment of rape:* In this regard, it is important to draw attention to the fact that it is not only committed as described in Art. 3 of the SOA. Among other forms, anal penetration is used, in particular, in the especially heinous case of the so called “corrective” rapes of women who were identified as Lesbians, but also in many other cases where a woman is the victim. The non-recognition of such cases as rape under the present formulation in the SOA, and instead as ‘grievous sexual assault’ (Art.4, SOA) creates a peculiar situation and has led to uncertainties in sentencing of such cases, resulting in disregard of the seriousness of the crime and in consequence, to lesser punishment as examples show.⁸ This affects the State obligation to act with due diligence in cases of violence against women, including rape, set forth in Article 7(b) of the Convention of Belém do Pará and violates the duty to investigate and punish such crimes

⁷ Rape including penetration by an object was endorsed by the European Court of Human Rights in the case of *Zontul v Greece* (2012) concerning rape of a man by a baton in immigration detention. The elements of rape were also considered by the European Court of Human Rights in *MC v Bulgaria* (2003). The CEDAW Committee in *Vertido v the Philippines* (2010) recommended that the government remove any requirement in legislation criminalising sexual assault that it be committed by force or violence, and any requirement of proof of penetration. The Human Rights Committee and Committee against torture have also repeatedly recommended during state party reviews that states amend their domestic legislation on rape to include rape of any person, man or woman and to include marital rape within the definition of the crime e.g. Mongolia (CCPR/C/79/Add.120): HRC Japan (A/64/40), CAT, Norway (CAT/C/NOR/CO/6-7), Mauritius CAT/C/MUS/CO/3 (CAT, 2011), Togo CAT/C/TGO/CO/2 (CAT, 2012), Sri Lanka, CAT/C/LKA/CO/3-4 (CAT, 2011).

⁸ See for instance in *Sentence Garfield-Vassel vs. R*, Supreme Court Criminal Appeal no 121/2010 at <http://www.courtofappeal.gov.jm/sites/default/files/judgments/Vassell%20%28Garfield%29%20v%20R.pdf>.

in accordance to their seriousness as contained in Articles 8(1) and 25 of the American Convention on Human Rights.⁹

The documented cases of rape show clearly that rape is perpetrated in a variety of forms violating a person's integrity. For instance, the ICC definition points out that *"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 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."*

Rape as unwanted and forceful sexual act: Understanding 'rape' in this way provides a clear criterion as a disempowering violation in a coercive environment which disable a person to give genuine consent. Sex therefore is not only unwanted, but forced on the person with all adverse consequences, referred to in the literature as the "5 Ps" (Physical, Psychological, Psycho-Sexual, Psycho-Social, and Political impact).¹⁰

- b. ***It can be committed against any person (women and girls as well as men and boys),*** notwithstanding the fact that it is committed mostly against women and girls. There is ample jurisprudence of male rape cases by ICTR, ICTY that shows the reality and existence of male rape, in addition to the WHO reports and other references. The workshop report on Sexual Violence against men and boys in conflict situations¹¹ provides an overview of the devastating consequences for male victims and survivors of sexual violence. The recognition of rape for men is particularly relevant with regards to male victims of rape in prison settings where the State has the responsibility to ensure protection and safety of persons under its custody. Not surprisingly, the CRC also uses a gender neutral definition of violence against children, including sexual violence in its Art 19 where the reference on legislative, administrative, social and educational measures is made to a "child", notwithstanding his or her sex.

Sexual violence against men and boys exists in all regions. The nature and context of it have been documented as an issue of significant concern by the World Health Organization in its report on Violence and Health (2002) and in its guidelines on medico-legal care for victims of sexual violence (2003). The Report said that "Rape and other forms of sexual coercion directed against men and boys take place in a variety of settings,

⁹ I/A Court H.R., Case of Miguel Castro-Castro Prison v. Peru, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C No. 160, para. 470(6). In: Inter-American Commission on Human Rights, OEA/Ser.L/V/II. 143 Doc. 60, 3 November 2011, Legal standards related to gender equality and women's rights in the Inter-American human rights system: development and application Original: Spanish, page 11.

¹⁰ "The invasion was committed by force, or by the threat of force or coercion, such as that was 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." (Prosecutor vs. Kunarac, ICTY, ICC Elements of Crimes 7(1) (g)-1).

¹¹ Compiled by the Special Representative of the UN Secretary General on Sexual Violence in Conflict in 2013.

including in the home, the workplace, schools, on the streets, in the military and during wars, as well as in prisons and police custody¹². In terms of extent and magnitude of this problem, the report states that studies indicate an incidence of 5-10% of men report childhood sexual abuse.¹³ It further highlights that official statistics vastly underreport the number of male rape victims. The evidence suggests that male are less likely than female victims to report to authorities for a variety of reasons, including shame, guilt and fear of not being believed or of being denounced for what has occurred along with myths and strong prejudices surrounding male sexuality.

3. *Guyana Sexual Offences Act, 2010.*

Guyana was the first State in the Caribbean region to introduce definitions for penetration and rape, among the review of other sexual crimes, that reflects the before discussed developments in criminal law.¹⁴

Definition of 'penetration': Part 1, Preliminary Section 2 h)

- h) "penetration" means any intrusion, however slight and for however short a time, of any part or a person's body or of any object into the vagina or anus of another person and any contact however slight and for however short a time between the mouth of one person and the genitals or anus of another, including but not limited to sexual intercourse, cunnilingus fellatio, anal intercourse, female to female contact, and where the penetration is by the penis,
- i. the emission of seminal fluid is not necessary to prove the penetration
 - ii. penetration is a continuing act from entry to withdrawal;

Part II, Offences,
Section 3

¹² World Report on Violence and Health, WHO 2002, page 154f. Box 6.1.)

¹³ Available studies indicate that in the United States 11%-15% of rape victims are men, 3% of men have experienced rape/attempted rape. In England 7.5% of reported rapes are of men, (population prevalence of 2.89%). In Peru the incidence in men is 20%, Namibia 3.6% and Tanzania 13.4%. Worldwide rape occurs in 3% of men vs. 13% of women.

¹⁴ To get an impression of the context, we cite from an interview in Guyana Chronicle 27 May 2010: The Minister of Human Services and Social Security in Guyana then, Ms. Priya Manickchand, acknowledged "all the women who were involved in the process and conceived of the thought that the country's laws, as it related to sexual offences, were archaic and needed to be reformed. In that context, she recognised and applauded the efforts and lobbying, for the legislation to where it is today, by the women of this country. "We must applaud each and every one of them, those mentioned and those that we will never be able to mention, like the women on the consultation who would have made the arrangement for us to go under the benab at Moruca to consult with the people there and the women in Corentyne, who would have made dinner for us when we went there to consult, people whose names would never be known to you but who would have contributed to this legislation becoming a reality today in no small measure. ... She mentioned, specifically, too, the men who have been behind the process from the beginning or who joined in later, once they became aware of the fact that it was not an anti-male piece of legislation. "And I want to salute those men who, even at the risk of being taunted and called very unattractive names, went forward and carried the torch to bring this legislation to where we are today," Manickchand added".

UN Country Team Submission to the Joint Select Committee of Parliament
On the Revision of the Sexual Offences Act, 2009

- (1): A person ("the accused") commits the offence of rape if -
- (a) The accused -
 - (i) Engages in sexual penetration with another person ("the complainant"); or
 - (ii) Causes the complainant to engage in sexual penetration with a third person;
 - (b) The complainant does not consent to the penetration; and
 - (c) The accused does not reasonably believe that the complainant consents.
- (2) Sections 7 and 8 (relating to presumptions about consent) apply to an offence under this section.
- (3) A person who commits the offence of rape is liable, on conviction on indictment, to imprisonment for life.

Section 4

- (1) A person ("the accused") commits the offence of sexual assault if-
- (a) The accused -
 - (i) touches another person ("the complainant") in a sexual way;
 - (ii) causes the complainant to touch the accused in a sexual way;
 - (iii) Causes the complainant to touch a third party in a sexual way; or
 - (iv) otherwise indecently assaults the complainant within the meaning of any other law;
 - (b) The complainant does not consent to the touching or the act which would constitute indecent assault; and
 - (c) The accused does not reasonably believe that the complainant consents.

Annex 2

Age of Consent

a) Convention on the Rights of the Child (CRC)

Although the CRC is silent about an age of consent, it provides valuable guidance in terms of protection from and prevention of crime against children in articles 19 and 32-36, 39. Since there is a broad variety of approaches on the age of consent in most countries¹⁵, the CRC Committee in its General Comment 4 on Adolescent Health and Development provides substantive criteria for decision taking by the countries themselves through the following guidance, not recommending a specific age of consent¹⁶, but setting out a minimum standard of elements to be taken into consideration by legislators.

- a) *“The age of consent should closely reflect the recognition of the status of human beings under 18 years of age as rights holders, in accordance with their evolving capacity, age and maturity.*
- b) *The State has a duty to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse “through all appropriate legislative and administrative, social and educational measures, including social programmes and other forms of prevention and for identification, reporting, referral, investigation treatment and as appropriate for judicial involvement”.*¹⁷
- c) *Further, adolescents need to have easy access to individual complaint systems as well as judicial and appropriate non-judicial redress mechanisms that guarantee fair and due process, with special attention to the right to privacy (art. 16).”*¹⁸

In addition to the already quoted guidance, it points out that:

“The right of adolescents to access appropriate information is crucial if States parties are to promote cost effective measures, including through laws, policies and programmes, with regard to numerous health related situations, including those covered in articles 24 and 33 such as family planning, prevention of accidents, protection from

¹⁵ A comprehensive article on age of consent with legal references, including on recent reform trends and almost all countries and regions is available in http://en.wikipedia.org/wiki/Age_of_consent#References.

¹⁶ It would be difficult to do so since from a comparative perspective, the age of consent of most countries shows that the age of consent is closely linked to internal factors, including tradition, religion and culture. See previous footnote.

¹⁷ Convention of the Rights of the Child, Art. 19

¹⁸ Paragraph 9 General Comment 4, 2003. Committee of the Rights of the Child, CRC/GC/2003/4, 1 July 2003, page

harmful traditional practices, including early marriages and female genital mutilation, and the abuse of alcohol, tobacco and other harmful substances."¹⁹

*"Adolescents have the right to access adequate information essential for their health and development and for their ability to participate meaningfully in society. It is the obligation of States parties to ensure that all adolescent girls and boys, both in and out of school, are provided with, and not denied, accurate and appropriate information on how to protect their health and development and practise healthy behaviours. This should include information on the use and abuse, of tobacco, alcohol and other substances, safe and respectful social and sexual behaviours, diet and physical activity."*²⁰

¹⁹ CRC General Comment No. 4., op.cit., page 3, Paragraph 10.

²⁰ CRC General Comment No. 4, op.cit., page 7, Paragraph 26.