



Oral  
Presentation  
to the  
Joint –Select  
Committee of  
Parliament  
Reviewing the  
Sexual  
Offences Act

October 15, 2014

Jamaica Association of Full Gospel  
Churches

Jamaica Union Conference of  
Seventh-Day Adventists

Jamaica Evangelical Alliance

Church of God in Jamaica

Jamaica Association of Independent  
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Jamaica Pentecostal Union

Jamaica Coalition for a Healthy Society

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## **Oral Presentation to Parliamentary Joint Select Committee**

**October 15, 2014**

**Mr. Chairman**, thank you for the opportunity to make an oral presentation to this Honourable Committee. I speak on behalf of a large constituency of the Jamaican electorate: the Jamaica Association of Full Gospel Churches, the Jamaica Union Conference of Seventh-Day Adventists, the Jamaica Evangelical Alliance, the Church of God in Jamaica, the Jamaica Association of Independent Churches, the Jamaica Pentecostal Union and the Jamaica Coalition for a Healthy Society. We anticipate that we'll be allowed to comment on the presentations and submissions of other interveners, so we thank you in advance for that opportunity to be further engaged in this process.

We begin by saying that laws are neither made nor implemented in a vacuum. Every law has an intention to make a specific impact on society. Creating or removing laws ought therefore to be evidence-based in order for the expected changes to be justified and defensible. In our view, changing laws based on 'personal feelings' or preferences, with no objectively determined benefit for the common good, cannot be a sustainable approach to law-making in a free, just and democratic society. Furthermore, all laws make a moral statement. The law says what is right or wrong.

There are 3 useful questions for framing an approach to a review, or examination of laws governing society:

1. What is the intent of the law?
2. What is the supporting evidence for the law?
3. What is the moral statement of the law?

We believe that these questions are important to establish the philosophical framework within which laws are created. In other words, the people of Jamaica must be clear about the philosophy behind our laws so that we are clear about our identity, our national objectives and the values that we want to pass on to all our children.

The original Motion moved by Senator Johnson-Smith regarding the care and protection of children, the elderly, disabled and pregnant women, expresses an underlying intent: the necessity to value the life of all human beings. The expansion of the Motion by the Honourable Chairman, to include sexual

offences, raises a second intent; the need for high regard of the sanctity of the sexual relationship in its right and proper context.

The churches making this submission offer the following philosophical and practical recommendation which can effectively address both intents raised in the Motion: The State and civil society must pre-emptively invest concerted and coordinated efforts to promote, nurturing and protective *family* environments. Healthy and safe families, with marriage between a man and a woman at the center, can singularly and significantly address the concerns about the care and protection of children, the elderly and disabled, and reduce domestic, sexual and other forms of societal violence.

Unless the institution of the family is given purposeful attention and unless every single building block of that institution wholistically safeguarded, the Vision 2030 of Jamaica being the place to live, raise families and do business, will be jeopardized. Without such a wholistic approach, we would not be able to achieve the goal expressed in the Motion for this Committee, ‘The better administration of justice and the effective protection of these special groups’ and we would add, the society as a whole.

Why is the healthy family approach also practical? Because throughout the history of mankind, it has been proven that the committed and nurturing monogamous heterosexual union is the ideal and optimum standard for family life, the raising of children, and the flourishing of society. Any departure from this ideal brings negative consequences, as can be seen in the Jamaican society today. In fact, Mr. Chairman, your colleague, the Minister of National Security, has himself recently acknowledged the importance of a father figure in the home, and reducing crime.

This wholistic philosophical and practical approach represents the Judeo-Christian worldview. In contrast to the secular worldview, the Judeo-Christian philosophy is the most coherent framework for defining family, ordering society, establishing values and promoting human flourishing in a pluralistic democracy. This is not the same thing as instituting a theocracy and does not mean that the fundamental rights of people who do not subscribe to the Judeo-Christian worldview will be negatively impacted. On the contrary, the fundamental rights of **all** are best respected and promoted within this framework, while it is arguable that human rights abuses are more likely to occur where laws are based on secularism, that is personal preferences that have no objective basis.

One suggestion on the table for the current review is to introduce gender-neutral language in the legislation. What is the intent of such a suggestion? To deny design and purpose. We encourage this Honourable Committee to consider the supporting evidence of where such an approach will lead us. We are fortunate enough to be presently witnessing in developed countries around the world, the logical outworking of social experiments in the sliding scale of sexual orientation and gender fluidity, driven by

the secular worldview, so that we can determine whether or not this is really what we in Jamaica want to model. These experiments are based on the denial of design and purpose, and are therefore fundamentally illogical. The full extent of the folly of these experiments has only just begun to unfold.

As an example, some schools in Vancouver, Canada have done away with the gender-specific pronouns, 'he', 'she', 'him', 'her'. These have been replaced with non-specific terms of 'xe, xem, xyr'. They have also instituted changes that allow children to choose to use any toilet facilities they prefer, including a mandatory unisex option. Similarly, in Sweden, persons can use the new genderless Swedish word 'hen' instead of the Swedish words for 'he' or 'she'. In a school district in Nebraska, USA, teachers have been instructed to stop referring to students by gendered expressions such as 'boys and girls' or 'you guys' or 'ladies and gentlemen'. Instead they are to refer to children by such 'gender-inclusive' expressions as 'you campers', 'all readers', or 'purple penguins'. This is evidence of where the philosophy of the gender neutrality agenda has taken those countries. Is this what Jamaica wants to do?

Another easily measurable parameter of the folly of ignoring design and logic is evidenced by the intractable nature of HIV epidemics among men who have 'sex' with men, in all countries regardless of income levels. Societies which have used this illogical approach for social organisation have seen the undermining of fundamental human rights of freedom of speech, conscience, and parental rights. Jamaica has recently had a taste of the illogical outcomes of attempting that approach.

A final example is the sexual 'rights' campaign promoted by groups such as the International Planned Parenthood Federation (IPPF). These groups state that children have 'rights' to have sex as they choose and that the State must remove obstacles to the expression of these 'rights', the obstacles being parents and the Church.

These groups insist on false claims that do not exist in binding international norms. They deliberately ignore the neurological, physiological and sociological evidence of the destructive effects of the early onset of sexual activity, outside of a monogamous, committed heterosexual relationship and its triggering of other harmful behaviours, such as drug and alcohol abuse. These groups perpetuate the lie that an abortion can be safe, despite the overwhelming evidence of the life-destroying consequences of abortion for both mother and unborn child. They suppress the fundamental truth: sex is for adults, not children, and any adult who encourages otherwise, means our children no good and is intentionally complicit in destroying Jamaica's future.

It is this fraudulent philosophy of sexual "rights" that forms the basis of 'comprehensive sexual and reproductive rights education' curricula, such as that found in the withdrawn HFLE texts and the controversial JFJ, CVCC and FAMPLAN programme in 6 children's homes.

Mr. Chairman, Honourable Members of this Committee, it is foolhardy to think that ‘whatever exists’ is acceptable. The Jamaican society must draw the line between what exists and what is ideal. We need to work towards the ideal, not lower standards simply because the lower standards exist. If we know ahead of time what has happened to other societies that have chosen an illogical path, would it not be prudent for us to avoid taking that very path ourselves?

Simply because another jurisdiction, in the Caribbean, the Commonwealth or elsewhere in the world has decided on a particular path, this does not bind Jamaica to following that example. We are an independent nation and we have to decide for ourselves what our society should look like.

What then is the philosophical framework driving this review and guiding its outcome? The people of Jamaica need to know that the members of this Honourable Joint Select Committee, by their recommendations to Parliament, will make a determination on behalf of the people of Jamaica about the philosophy, the worldview, on which our laws are to be based.

Regarding our written submission, the Honourable Members would have had an opportunity to peruse this. We based our submission on Minister Golding’s public comments on the focus of this review, as reported in the Daily Gleaner on November 14, 2013. Our recommendations may be summarized as follows:

1. We are sensitive to and moved by the relatively low maximum sentencing available for forced anal penetration. Forced anal penetration would be classified as buggery which attracts a maximum of 10 years. Correcting this deficiency is not without its challenges, as you, the members of the Committee, would be aware. The issue arises because any alteration to the present buggery law makes it vulnerable to successful constitutional challenge. As representatives of the people in our democracy, the Committee must bear in mind that the majority of the Jamaican public desire to keep this law in its current form.

To effectively reconcile these viewpoints, [*of maintaining the buggery law and increasing the penalty for forced anal penetration*], the Committee can only do so within a philosophical framework that is consistent with the moral preference of the Jamaican public. Once this over-arching philosophical question is resolved, the sentencing differences can be more effectively addressed.

At the same time, however, the full ambit of possible legal methods for maximizing the permitted penalty has not been utilised. We recommend that Judges ensure that maximum sentences are handed

down in appropriate cases. There have been recent cases where even the maximum sentence currently available under the Offences against the Person Act has not been applied.

We also recommend that, where possible, sentences should run consecutively, and prosecutors should ensure that charges are laid in respect of all possible offences arising from the incident(s).

As an example, where an offender has been charged with 3 counts of buggery, if given the maximum sentence for each, this would amount to at least 30 years. If charges for indecent assault are added, each charge attracts penalty of up to 15 years if the matter is heard at Circuit Court, or up to 3 years if heard at RM level. So, if 4 charges of indecent assault are brought at Circuit level and the maximum sentence is applied, that could amount to 60 years, plus the 30 years for 3 counts of buggery, for a total would be 90 years imprisonment as punishment for forced buggery.

May we reiterate that the full ambit of possible legal responses as currently available under our laws must be utilised in order to ensure that justice is done for the punishment of such a heinous crime.

2. We recommend that the definition of “sexual intercourse” be retained. This definition is based on an unchangeable, biological phenomenon and must not be changed to accommodate fluid trends. By extension, the definition of ‘rape’ also ought to be retained as is. If one changes the meaning of ‘rape’ to represent something else, the meaning of ‘sexual intercourse’ can be also simultaneously, inadvertently changed. Sexual intercourse is not just the joining of any sexual organ with any orifice. Sexual intercourse refers specifically to the complementarity of the male and female sex organs for the procreation of the human race. The State therefore has a legitimate interest in keeping it separate and distinct from other sexual activities as the state has a genuine concern in protecting the creation of future generations. When definitions are changed, this could signal a change of philosophy and lead to treating all prohibited sexual activities as being equal, which they are not.

Regarding marital rape, we recommend a careful reading of Section 5 of the Sexual Offences Act and of the English case of *R v R*. From our initial reading of the section and the case, it would appear that the Jamaican law has encoded the common law position that a husband can rape his wife if she has withdrawn her consent as evidenced by her withdrawal from cohabitation with him.

3. We recommend that the laws relating to prostitution be retained. Sex is not a commodity and transacting in sex represents double exploitation; of a person’s legitimate need for income earning, and another’s desire for physical intimacy. It is a self-defeating idea that one could “better protect the safety, health and security rights” of persons involved in an economic activity that is inherently risky and solely

based on the exploitation of persons. Furthermore, in light of our particular history, where our forefathers' and mothers' bodies were forcibly exploited against their will for the economic benefit and deviant sexual pleasure of others, it would be grossly shameful for the independent and free nation state of Jamaica to now sanction sexual exploitation as a legitimate pursuit for its citizens, under the guise of 'economic empowerment'.

If given real options, no-one would choose to sell their bodies. We urge more educational, skills training and employment opportunities for our people. Such programs in particular will assist women in choosing occupations which will enable and truly empower them to preserve and recover their dignity, instead of seeing themselves as merchants of their bodies.

We note that the reduction of HIV and STI's is one of the reasons being put forward for decriminalizing prostitution. However, recent reports have shown that HIV rates in this group are falling, without any changes in the law.

4. All children are precious and invaluable gifts. Ensuring their physical, emotional, mental and spiritual well-being ought to be the concern of every well-thinking adult. In the interest of greater protection for all our children, we recommend the following:

- Retaining the criminalization of consensual sexual intercourse between adolescents, i.e Section 10 of the Sexual Offences Act. The law can be seen as a source of education and guidance. This law helps us to see that sexual intercourse is not for minors. We stated earlier that medical science has recorded the impact of sexual involvement on the development of a child whether such involvement was with another minor or otherwise and whether consensually or otherwise.

We urge this Honourable Committee to seek expert evidence when debating this issue. In this respect, we draw the Members' attention to a number of articles attached to our submission relating to the impact on adolescents of sexual intercourse. The adolescent brain is incomplete in its development especially with regard to its reasoning and decision making powers. "The portion of the brain slowest to develop and last to mature is the part that enables us to foresee the consequences of our actions. It is the part that guides moral judgement."<sup>1</sup> This part of the brain, "...the dorsal lateral prefrontal cortex [is] important for controlling impulses [and ] is among the latest brain regions to mature without reaching adult dimensions until the early 20's"<sup>2</sup>

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<sup>1</sup> Giedd, J. M. (2004). Structural Magnetic Resonance Imaging of the Adolescent Brain. *New York Academy of Sciences*, 1021, 77-85.

<sup>2</sup> Ibid

Removing the law therefore means we are giving authority to adolescents to make decisions in an area which they are not yet equipped to handle. The development of the brain is not yet at a stage to allow them to be able to fully assess the consequences of their actions.

Studies have also shown that “Engaging in sex and drug behaviors places adolescents, and especially girls, at risk for future depression.”<sup>3</sup> In a school-based survey on risk and resiliency behaviours of youth 10-15 years of age it was found that: “An alarming quarter of all girls stated that they had been forced, while another 12% had allowed the sex to occur without agreeing to it. This is consistent with data from the Reproductive Health Survey which reported that one in every five girls, 15-19 years, is forced to have sex.”<sup>4</sup> It stands to reason that these statistics will very likely increase if there is no law forbidding the activity. When we take away this law we take away a source of protection for our young girls; we deprive them of an important argument on which to resist the advances of males.

- We are also concerned that minors unnecessarily face the criminal court. We recommend that the draft National Diversion Policy be reviewed and enacted into law.

- We propose expanding Section 22 of the Child Care and Protection Act to deal with circumstances where any person knowingly infects a child with a sexually transmitted infection. This should go beyond mere testing and become a punishable offence attracting a severe prison sentence. This should however, not include transmission by pregnancy or birth.

- For the offence of abandoning or exposing a child whereby life is endangered (OAPA, Section 28), the current sentence is imprisonment not exceeding 3 years, with or without hard labour. We recommend increasing the sentencing.

- Section 10 of the Child Care and Protection Act regarding trafficking in children has a current sentencing of a fine and/or imprisonment with or without hard labour, not exceeding 10 years. We recommend doubling the sentence.

- Regarding Sexual Grooming in Section 9 (1)(c)(i) of the Sexual Offences Act, we recommend expanding the ambit of offences. It currently reads that ‘an adult commits an offence if he or she intends to do anything to or in respect of the child... 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’. This should be amended to read ‘the commission of *sexual offence under this Act and any other legislation*’

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<sup>3</sup> Halfors, D. D. et al. Which Comes First in Adolescence—Sex and Drugs or Depression? American Journal of Preventative Medicine 2005;29(3):163–170

<sup>4</sup> Fox, K. and Gordon-Strachan, G. (2007) Jamaican Youth Risk and Resiliency Behaviour Survey 2005: School-Based Survey on Risk and Resiliency Behaviours, Measure Evaluation. Retrieved from <http://www.cpc.unc.edu/measure/publications/tr-07-58>

- Regarding aggravated assaults on women and children - section 40, OAPA, the current sentence is imprisonment not exceeding 6 months, or a fine not exceeding \$2,000. We recommend increasing the sentencing and fine.

We close by requesting the permission of the Chairman to give to each member of this Honourable Committee a copy of a DVD which outlines some of our positions in further detail and which provides support for our recommendations. We urge the Committee to approach any review of our laws with care and prudence. Any changes to our laws must reflect a particular philosophical framework consistent with our national identity, as exemplified by our Anthem and our Pledge. One ought not to disturb these Acts without understanding those frameworks and the rationale for their use. The people of Jamaica must be allowed to have a say in determining what philosophy should inform our laws.

Thank you for your attention.

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