

**Presentation to Joint Select Committee of Parliament  
reviewing laws on sexual offences in Jamaica  
Wednesday, June 21, 2017**

Presentation by:

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Our comments today build on our written submissions and 2014 written and oral presentations. As we began our submission in 2014, today we reiterate the importance of this Honourable House recognising that laws are neither made nor implemented in a vacuum. Every law is intended to make a specific impact on society. The philosophy or motivation behind our laws should be consistent with what we desire to be our national identity, objectives for national development and commonly held values. If Vision 2030 is the desired destination, that of making Jamaica the place to live, work, raise families and do business, our laws and policies ought to move us in that direction.

However, there is a critical caveat – laws cannot be made or changed based on subjective preferences. There has to be an evidence-based, objectively determined benefit for the common good and the general well-being of society as the motivation for that law.

The themes under discussion by this Joint Select Committee all concern the institution of the family. No one can dispute that the natural family is the organic foundation for every society. All other institutions in society – school, church, government and marketplace - arise out of the family. The behaviours being regulated through these laws on sexual offences, domestic violence, child care and protection reflect the dysfunctional state of the Jamaican home. This condition is in fact a barometer for the condition of our economy, social relations and political conduct.

The public good gained from healthy family life with stable marriage between a man and a woman at the center, can singularly and significantly address all our concerns about the care and protection of children, the elderly and disabled, and domestic, sexual and other forms of societal violence among other benefits. Unless every legal and policy effort is directed towards nurturing and safe family environments, any hope of achieving Vision 2030 will be jeopardized.

We will now highlight our main recommendations for the Child Care and Protection Act, Domestic Violence Act, Offences against the Person Act and Sexual Offences Act:

**1. Child Care and Protection laws.** To make Jamaica, the place of choice to raise families we suggest the following principles to guide our discussion on what is best for children. **Every child has a right to life** and that life is of intrinsic worth. All adults in society have a role to play in preserving and protecting the life and worth of every child. A **child's biological father and mother** are his natural primary caregivers. Protective and nurturing fathers and mothers are any Government's best and least expensive intervention against child abuse. Proper parenting education to pre-parents, and continuous education and support to parents are critical measures to help prevent and reduce child neglect and abuse. We support the OCA's recommendations of adopting a therapeutic approach as a 1<sup>st</sup> step to re-addressing dysfunctional parent-child relationships and its attendant behavioural problems.

**Another guiding principle is that children are children.** They are not small adults. Their unique vulnerability places a duty on all adults in society to protect children and society from the long-term consequences of a child's immature choices. Because children are children and not adults, **sex is not for children.** This Hon. House has heard of the neurological evidence of the pace of brain maturity. The part of the brain, the prefrontal cortex, responsible for mature judgment, evaluating long-term consequences of choices, does not fully mature until age 24. Children are not neurologically, mentally, emotionally, psychologically, physically, educationally, financially or in any way, ready or able to manage, process sex and the consequences of sex.

As such, we are very hesitant to support the recommendation for close- in- age exceptions. While we understand the sympathetic intention behind the proposal to prevent teens from having a criminal record, we see a greater danger than simply avoiding a police record. The principle is that children cannot consent and should not be having sex, whether with an adult or another child. We have to be consistent in applying this principle. If the exception is permitted, the over-arching principle regarding under-age sex is irrevocably changed. It would no longer be 'sex is not for children', full stop, but 'sex is not children but there are exceptions ... for children between certain ages'.

Any wedge in the door will be exploited against the very ones we are trying to protect. It is not improbable to imagine an adult attempting to engineer blame on a teen male within the protected age range in order to avoid punishment for raping a minor. We must ask however if the Child Diversion programme is in effect, is a close-in age exception needed?

Because children are children and not small adults, we also cannot support the recommendation to provide children with access to contraceptives. *Providing* condoms and oral pills cannot be equated to a constitutional right to *information*. The law is entitled to discriminate in dissuading children from engaging in sex for their own protection. Contraceptives facilitate sex. They render the abused and exploited child vulnerable to more exploitation. We would do well to learn from the UK's experience. The Oxfordshire Safeguarding Children's Board issued a Serious Case Review in 2015 on the extensive child sex abuse ring in Rochdale and Oxford. Over a period of 16 years, over 300 under-age girls, some as young as 10 years old were groomed and sexually abused by a gang of seven adult Asian men. Some of the girls has visited teenage health clinics and were readily provided contraceptives without any questioning. The report criticised the professionals who provided the contraceptives as exhibiting "professional tolerance" of underage sex. They did not investigate

or advise against it but were more concerned about being “non-judgmental” about sex, then the actual condition of the children. The report recommended a “rethink of national guidance regarding sexually active children to ensure that well-intentioned policies to support the vulnerable young do not inadvertently add to a climate that facilitates exploitation.”<sup>1</sup>

Some may ask, how then do we reduce the high rate of teen pregnancy? We suggest that one cannot address teen pregnancy unless one starts with the reasons for teen sex. If we are serious about reducing teen sex, then we have to be serious about utilizing every law, policy and measure to protect children from the cascading impact of our sexualised culture.

1. The law must be fully enforced against adults sexually exploiting minors.
2. Enforcement of current laws for child neglect.
3. Include in section 40 of the Child Care and Protection Act, ganja and other addictive substances among the prohibited products to be sold to children.
4. Proactively educate and practically support parents to be good and protective fathers and mothers.
5. Strengthen filters on online media content.
6. Implement a continuous public education campaign to warn children and adults about the danger of watching pornography and consequential damage to their brains, bodies and future relationships. The public must be informed about the links between watching pornography and the commission of sex crimes.
7. We support the OCA’s Recommendation to raise the age of consent. Children are not sexual beings capable of and entitled to participate in adult activities. As many boundaries as possible are necessary in order to protect children in our highly sexualised world. A potential increase in the number of cases before the courts cannot be the determining factor for the appropriate age of consent.
8. Promote stable married family life for both father and mother to be present and involved in child’s life. It is futile for Jamaica to avoid talking about the public policy goods derived from marriage and simultaneously be in distress about the social consequences directly stemming from the absence of a strong marriage culture. International and local research has shown clear linkages between violent crime in society and the prevalent absence of stable 2 parent homes. Unless family well-being is given the policy attention and collective investment it required, Jamaica will continue to flounder in effectively addressing our social and economic pains. ‘Girls are likelier to suffer sexual abuse and to have children as teenagers and out of wedlock if they do not grow up with their father. Boys reared without their father tend to have much higher rates of aggression, delinquency, and incarceration.’<sup>2</sup>

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<sup>1</sup> Retrieved from <http://www.oscb.org.uk/case-reviews/>

See also <http://www.telegraph.co.uk/news/uknews/crime/11446312/Oxford-grooming-social-workers-and-police-turned-blind-eye-to-sexualised-culture.html> AND <http://nationalpost.com/news/world/oxford-sex-grooming-gang-exploited-girls-because-of-officials-reluctance-to-condemn-underaged-sex-review-says/wcm/ed2fb29b-4023-4dcf-9cd2-114463d815f3>

<sup>2</sup> Paul R. Amato, The Impact of Family Formation Change on the Cognitive, Social, and Emotional Well-Being of the Next Generation, *Future Children*, Fall 2005, at 75, 75–96, available at

9. We must also be careful what we teach as sex education. We agree that age-appropriate information is to be taught to children but within a framework of moral instruction and promotion of stable family relationships. We are concerned about proposals to promote comprehensive sexuality education (CSE) into our school system and endorsing it for use in communities across Jamaica. CSE is the curriculum that seeks the deliberate early sexualization of children. It has already been rejected by the Ministry of Education, Jamaican parents and the general public in 2012, 2014 and 2016. This curriculum was taken without authorisation into Children’s Homes and Places of Safety.

There is evidence that this curriculum does not lead to a decrease in teen pregnancy and STI’s. The Cochrane Database of Systematic Reviews reported in 2016 that educational curriculum-based programs for preventing HIV, sexually transmitted infections, and pregnancy in adolescents,” showed “little evidence” of being “effective in improving sexual and reproductive health outcomes for adolescents.”<sup>3</sup> This report was based on peer-reviewed data from more than 55,000 young people from longitudinal randomised controlled trials from Europe, Latin America and sub-Saharan Africa. The study found that what was effective in lowering teen pregnancy was helping children to stay in school – e.g. “a small cash payment, or giving away a free school uniform, can encourage students to remain at school, especially in places where there are financial barriers to attending. Such incentives to stay at school reduced pregnancy rates by around a quarter and also reduced sexually transmitted infections (STIs) in both girls and boys.”

We could conclude from these findings that children would want to stay in school and it is false to presume that abstinence education will be ineffective. It also points to wider structural issues that influence sexual health outcomes, beyond an educational curriculum, such as parental support to stay in school. Comprehensive Sexuality Education is not the answer to our problems, it will only exacerbate them.

May we also point out that in in 2013 the Croatian Government removed CSE from its schools<sup>4</sup> as did the Ugandan Government in 2016 as CSE is against that country’s customs and aspirations.<sup>5</sup>

- 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.

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[http://futureofchildren.org/futureofchildren/publications/docs/15\\_02\\_05.pdf](http://futureofchildren.org/futureofchildren/publications/docs/15_02_05.pdf); Cynthia C. Harper & Sara S. McLanahan

<sup>3</sup> Retrieved from <http://onlinelibrary.wiley.com/doi/10.1002/14651858.CD006417.pub3/full>. Countries reviewed were Sub-Saharan Africa (Malawi, South Africa, Tanzania, Zimbabwe, and Kenya), Latin America (Chile), and Europe (England and Scotland).

<sup>4</sup> Retrieved from [http://www.huffingtonpost.com/2013/05/24/croatia-sex-education-catholic-church-court-ruling\\_n\\_3332518.html](http://www.huffingtonpost.com/2013/05/24/croatia-sex-education-catholic-church-court-ruling_n_3332518.html).

<sup>5</sup> Retrieved from <http://allafrica.com/stories/201702140390.html>

- 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.
- Make a specific sub-section on sexual touching (s.8, SOA) by persons who are members of the victim's family or hold a relationship of trust. This would address incidents of sexual activity between family members of the same sex.
- 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*'

**2. Domestic Violence Act:** The categories of persons who can apply for a protection order under this Act are limited. An application for a Protection Order can be made by a spouse including a former spouse or parent or :

s 3 (2) (c) " a person who is a member of the respondent's household or who is in a visiting relationship with the respondent, in respect of the alleged conduct engaged in or threatened by the respondent toward that person."

The protection of the Act does not extend to a person who in the past was a member of the respondent's household or who was in the past in a visiting relationship with the respondent. We recommend an amendment to deal with these categories of persons.

## **2. Offences against the Person Act.**

**Abortion.** We continue to affirm that life begins at conception and that abortion is an intentional act of killing an unborn child, who has a right to life and is entitled to protection by his family, the society and the State.

Arguments have been made that abortion should be permitted in limited circumstances of a pregnancy resulting from incest or rape. In response, we state that it is critical to be clear about two distinct events in such a circumstance.

(1), the occurrence of a sexual violation, a tragedy in itself which must be prevented and duly punished,

(2), the possible biological outcome of sexual intercourse. The fusion of sperm and egg is independent of the emotional or moral context in which sexual intercourse has taken place. The act of conception is not coloured by the presence or absence of consent by the mother or father. It is a biological phenomenon which is the potential result of a particular physical act.

If two children were to stand in this chamber, one conceived in rape and the other in consensual sex, how could you tell which of these two human beings were conceived in rape? You could not tell. No one could distinguish them based on their appearance. In fact, you could not tell at any stage of their development. There is no medical test that could differentiate them. Both are innocent and both deserve to live. The State has no obligation to sign the death warrant for any innocent human being.

If we are motivated by compassion for the victim, then let us discuss and determine what is the best and most compassionate response to the occurrence of sexual violation. Both State and civil society can do more to protect and help women who are in crisis pregnancies, and provide life-affirming opportunities for such women, whatever the nature of the crisis.

We would recommend the following:

1. Provision of counseling for all rape victims,
2. Provision of prompt and effective therapy to prevent STIs and pregnancy in victims of rape.
3. Emotional support to the expectant mother through-out pregnancy,
4. Urgently completing necessary reforms to Adoption Act so that mothers who decide not to keep their baby after birth can find willing parents to raise her child as their own.

Abortion is no remedy for rape. One travesty cannot be used to justify another and expose our nation's females to the multiple known mental and physical effects resulting from abortion.<sup>6</sup>

**{N.B. Provided in written 2017 submission. Not presented in oral 2017 submission}**

- *A 2011 study showed that induced abortion increased the risk of anxiety disorders by 34%; depression by 37%; alcohol abuse by 110% and suicide behaviours by 155%.<sup>7</sup>*
- *Women who have an abortion are at least six times more likely to commit suicide than those who carry their pregnancy to term.<sup>8</sup>*
- *Induced abortion has been found to increase the risk of bi-polar disorder by 167% and major depression by 45%. With regards to anxiety disorders, abortion increased the risk of panic disorders by 111%, panic attacks by 44%, post-traumatic stress disorder by 59% and agoraphobia by 95%.<sup>9</sup>*
- *Induced abortion is also commonly linked to a number of negative reactions including regret, grief, anger and sleeping difficulties. In one study of women suffering from post-*

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<sup>6</sup> Please see the February 2017 submission of these groups. Examples of consequences provided below.

<sup>7</sup> British Journal of Psychiatry (2011), Priscilla K. Coleman, "Abortion and mental health: quantitative synthesis and analysis of research published 1995-2009". The analysis, conducted by Priscilla K. Coleman from Bowling Green State University, Ohio, USA, is the largest study of its kind and is based on 22 published studies, with a combined number of participants totalling over 850,000.

<sup>8</sup> British Journal of Medicine 313:1431-4, 1996, Gissler, Hemminki & Lonnqvist, "Suicides after pregnancy in Finland, 1987-94: register linkage study," and European J. Public Health 15(5):459-63,2005, M. Gissler, "Injury deaths, suicides and homicides associated with pregnancy, Finland 1987-2000."

<sup>9</sup> Journal of Psychiatry (2008) Dr. Priscilla Coleman and Dr. Vincent Rue

abortion problems, 80% said they experienced guilt, 83% regretted their decision, 79% had feelings of “loss”, 62% felt anger and 70% experienced depression.<sup>10</sup> In a 1980 study, 44% of women reported nervous disorders, 36% experienced sleeping problems, 31% felt regret, and 11% had been prescribed psychotropic medicine by their doctor.<sup>11</sup>

- *Medical complications after an induced abortion can lead to reduced fertility, cancer and even death. These post-abortive women are 2.3% more likely to suffer from cervical cancer compared to women with no history of abortion, and three times more likely to develop breast cancer in later life. Abortion also places women at a risk of developing serious life-threatening complications, such as haemorrhage, endometriosis and pelvic inflammatory disease which can all be fatal if left untreated.*<sup>12</sup>

- *Induced abortion increases the risk of premature delivery in subsequent pregnancies. Premature delivery in turn increases the risk of cerebral palsy. Research has also showed that there is a significant increase in premature births amongst women who have had an abortion.*

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**4. Sexual Offences Act:** Proposals have been to the Honourable House to **redefine rape** to mean any kind of non-consensual penetration of a sexual nature. We recommend maintenance of the current definition. The definition of rape is tied to the definition of sexual intercourse. The definition of sexual intercourse refers specifically to the complementarity of the male and female sex organs. Not all acts of penetration are equivalent.

We do understand that the word ‘rape’ has strong emotional weight. It evokes a necessary outrage in person’s minds even more than the words ‘grievous sexual assault’. However, because words have specific meaning in law and the words used describe facts of biology and anatomy, legislators must be careful to distinguish the emotional effect of a word from the factual biological distinction of types of sexual violation.

The current law recognises this clear distinction by classifying violations based on the *type* of penetration. ‘Rape’ refers to sexual violation involving the forcible penetration of the female sex organ by the male. ‘Grievous sexual assault’ involves inter alia forcible penetration of the vagina and anus, by body parts other than the penis or an object and the mouth by the penis.

We therefore recommend that all acts of grievous sexual assault be triable at Circuit Court. This will achieve equivalence of sentencing between rape and grievous sexual assault with the aim of allowing for the minimum sentence of 15 years to be applicable to both types of violation.

It has also been proposed to redefine rape to include non-consensual buggery. We continue to assert that the existing laws already address non-consensual buggery. Again we are fully aware of the desire to bring the emotional weight of the word ‘rape’ to an incident of forced buggery. This is indeed a horrific violation. However words have specific meaning because they describe factual biological and anatomical differences. We are also sensitive to concerns about the relatively low maximum sentencing available for non-consensual buggery. Our

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<sup>10</sup> D. Reardon, *Aborted Women, Silent No More* (Springfield, IL: Acorn Books, 2002)]

<sup>11</sup> Ashton, “The Psychosocial Outcome of Induced Abortion”, *British Journal of Ob & Gyn.* 87:1115-1122, 1980

<sup>12</sup> [http://www.abortionfacts.com/reardon/effect\\_of\\_abortion.asp](http://www.abortionfacts.com/reardon/effect_of_abortion.asp)

<sup>13</sup> Rooney, B and Calhoun, BC, *Journal of American Physicians and Surgeons*, 8 (2), 2003, pages 46 – 49

recommendation to redress this is that the full ambit of possible legal methods for maximizing the permitted penalty should be utilised:

- (i) Judges should ensure that maximum sentences are handed down in appropriate cases.
- (ii) Where possible, sentences should run consecutively, and
- (iii) 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. The full ambit of possible legal responses as currently available under our laws must utilised in order to ensure that justice is done for the punishment of such a heinous crime.<sup>14</sup> - NB. Stated in 2014 oral submission, not 2017}*

Making a specific provision to recognise non-consensual buggery separate from consensual buggery even for children will undermine the existing buggery law and render it vulnerable to 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. The Bill Johnson Poll of September 2014<sup>15</sup> reported in the Gleaner of Monday October 6, 2014 that “91% of Jamaicans believe lawmakers should make no attempt to repeal the controversial Buggery Law.....”

It is important to note that Jamaica has the benefit of observing the consequences of removing the buggery law in other countries. This has led to the reorganization of those societies with the loss of fundamental human rights and freedoms, such as freedom of speech, freedom of conscience, freedom of religion and parental rights. These freedoms have been lost because of the LGBTTTQI political ideology.

This ideology is based on a delusion that human desire can define reality. It is a wholly illogical basis for law and social organization and must not be forced on the Jamaican people by either the courts or Parliament. As such Jamaica should not proceed on that path.

The buggery law is a valuable law. Consequently, it was saved in the Charter of Rights, by means of a Savings Law Clause and nothing should be done to undermine its integrity or the integrity of the Savings Law Clause itself. We are fully aware that there is a political agenda to defeat the effectiveness of the Savings Law Clause and thereby rendering the Buggery Law vulnerable to challenge.

Of note, there is a court case pending on the issue of the buggery law. We are certain Parliament would not wish to act prematurely by prejudicing the outcome of that case.

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<sup>14</sup> This example was provided in the group’s 2014 submissions.

<sup>15</sup> Sept 6-7 & 13-14

5. The proposal has been made to **decriminalize prostitution**. It is a fiction to think decriminalizing prostitution will make life better for prostitutes. It will not. The very character of prostitution is exploitation. Countries that have legalized prostitution such as Germany, the Netherlands <sup>16</sup> have seen increased rates of human trafficking, child prostitution and violence against prostitutes. A 2008 Dutch National Police report stated that “the idea that a clean, normal business sector has emerged [with decriminalization] is an illusion”.<sup>17</sup> The fact is once you remove the law that states a human being is not sexual merchandise, the replacement message is that exploitation and violence for sex is approved *when paid for*, and that some human beings are not entitled to full human rights.

Perhaps members of this Hon. House were aware of a project reaching out to prostitutes in Kingston, Portmore, Spanish Town and May Pen. It was run through the Joytown Development Foundation from 2011- 2015 and sponsored by USAID and the Ministry of Health. An estimated 300 prostitutes were provided with sexual and reproductive health information, HIV/AIDS testing and assistance in securing skills training and the police informed ahead of time of their outreach. The majority were women. They said they did not want to be selling their bodies in order to make money to feed their families and send children to school. They do not want their children to be living off the earnings of prostitution. They wanted to come off the road and attempted to make plans to do so. They expressed a need for education, skills training and the opportunity for legitimate work.

A common profile of the prostitute was a history of abuse in childhood, unstable home life, frequent dislocation moving from home to home, and possessing only primary level education. Many used drugs – smoking marijuana and consuming alcohol – in order to numb the hurt and depression of their reality. They do not want their children to become prostitutes. They hide what they do from their families but they can and do access health care services. We note that Jamaica AIDS Support in their presentation to Parliament reported a decline in the prevalence rate of HIV among prostitutes, moving from 12 per cent in 2007 compared with 2.9 per cent in 2017. This provides a basis for stating that the repeal of the law is not necessary in order to deal with HIV/ AIDS among prostitutes. Even with skills training, many revert to prostitution because they cannot find jobs in a market saturated with the particular skills gained such as cosmetology, and housekeeping.

What then is the compassionate response by the State to this factual reality of some of its citizens?

1. It is to comprehensively address the root triggers causing persons to turn to prostitution. This means actively promoting stable family life. This will not come through casual lip-service. Instead it has to be the subject of policy and of daily work in the trenches by church, civil society and State. That is the only way to ensure the well-

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<sup>16</sup> Cho, Seo-Young; Dreher, Axel; Neumayer, Eric, “Does Legalized Prostitution Increase Human Trafficking?”, *World Development Journal*, 2013, 41:67-82

<sup>17</sup> ‘Prostitution - Sweden Punishes Buyers to Target Demand’. Janice G. Raymond, September 2010, Retrieved from <http://www.casac.ca/content/prostitution-sweden-punishes-buyers-target-demand>

being of children, ensuring that they complete their education and have access to better job opportunities. 'Choosing' prostitution is often a decision of last resort.

2. The responsibility should not be placed only on the prostitutes and pimps. We recommend an additional offence to be enacted against purchasers of commercial sex. This should carry a stronger penalty. This is an approach adopted by Nordic countries such as Sweden where penalising buyers saw reduction of street prostitution by half, according to a 2014 Government report.<sup>18</sup>
3. Governments that legalize prostitution as "sex work" will inevitably foster an economic stake in maintaining the sex industry. If prostitutes are regarded as workers, then the government will abdicate its responsibility for making decent and sustainable employment available to women and men and upholding their dignity as citizens.
4. It also would be inconsistent for this country to aim for Tier 1 ranking in the Fight against Trafficking in Persons (TIP) by the United States' Department of State, while at the same time legalizing the exploitation of its citizens, as studies have made a link between prostitution and human trafficking.

**6. Marital rape.** This is a heated and controversial topic. To dispassionately arrive at a just legal response to abuse in marriage, we need first to have a clear understanding of what marriage is and what are marital norms. Marriage is a legal, civil and social institution that binds a man and woman together. Marriage is a comprehensive union, joining spouses in body as well as in mind. It is undertaken by a legal commitment and sealed by sexual intercourse.

It is also self-regulating in that for marriage to flourish there needs to be mutual and daily implementation of the norms of marriage by both husband and wife. These norms are permanence, exclusivity and monogamy, mutual respect and consideration. In marriage, both husband and wife give consent to each other for conjugal union. Marriage presumes consent for sex by both parties. This is why rape in marriage, that is non-consensual sex, is conceptually challenging because of the inherent presumption of consent.

It is tragic when abuse takes place in some marriages. One may even argue that where abuse exists or persists, there is no marriage because abuse offends the norms of marriage and destabilizes and undermines the institution.

The criminal law makes provision for remedies which can be utilised where there is abuse in marriage. At common law there is provision for assault and battery; and in legislation, the Domestic Violence Act and the marital rape provision in Sexual Offences Act, section 5.

The argument has been made that this section places married women at a disadvantage compared to co-habiting and women not in a marital relationship. We disagree. There are 2 equal parties in this special relationship of marriage. Conflicts can arise and the desire to be

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<sup>18</sup> 'SUMMARY: The extent and development of prostitution in Sweden 2014 - National co-ordinators office against prostitution and trafficking, Sweden.' Retrieved from:

<http://www.lansstyrelsen.se/stockholm/SiteCollectionDocuments/Sv/manniska-och-samhalle/jamstalldhet/prostitution/SUMMARY-Prostitution-kartlaggning-2014.pdf>.

vindictive by either party. It is not unreasonable to contemplate an angry wife wanting to wield a charge of rape. It is not unreasonable to contemplate a husband using force to exact sex. Because of the presumption of consent, the Court will need certainty and accuracy as to the revocation of consent in either scenario, for a just outcome for both parties. The provisions of Section 5 have already provided the certainty and accuracy needed in these cases.

For those who argue that these circumstances are limiting and do not anticipate non-consensual sex in an otherwise functioning marriage, we would encourage a closer examination of sub-section 5 (3a) on separation within the meaning of the Matrimonial Causes Act. The Matrimonial Causes Act defines 'separation' as taking place even where 'cohabitation was brought to an end by the action or conduct of one only of the parties'. [s.6(1)] There is also separation even if the spouses continue to reside in the same residence or that either party has rendered some household services to the other. [s.6(2)]

Additionally, if a man forces his wife to have sexual intercourse she can resort to the Courts under section 4 of the Domestic Violence Act for a protection Order. Where he breaches that Order then he can be charged with rape pursuant to s.5 (3) (d) of the Sexual Offences Act.

We submit that what currently obtains in our law is adequate to address abuse in marriage. To go further interferes with the particular norms and sanctity of marriage and will damage its stability. Solutions should be sought to provide infrastructural support to abused married women to access the presently available legal instruments.

**We thank the Joint Select Committee for this opportunity to make recommendations on these important issues.** 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.

Thank you for your attention.

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