



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

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Churches

Jamaica Conference of Seventh-Day
Adventists

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BACKGROUND

We have made enquires of Parliament regarding background documents which may contain specific proposals as it relates to the review of the Sexual Offences Act, the response was that there are no such documents. We have therefore used comments made by Honourable Mark Golding Minister of Justice as was reported in the Daily Gleaner of November 14, 2013 as being our guide for the selected areas of discourse. In that article the following issues were highlighted:

1. Forced anal intercourse of man or woman which currently carries maximum sentence of 10 years under the law relating to buggery found in Section 76 of the Offences Against the Person Act and not the minimum 15 years found in the Sexual Offences Act
2. “Negative consequences associated with criminalizing teenage promiscuity as this really is a parenting issue”¹
3. The option of correctional orders for dealing with children “who face the court for uncontrollable behavior”²
4. The need to “ascertain areas which need reform”³.

We are of the view that law intersects with culture and that one of the purposes of the law is to offer guidance to a society concerning those actions which are likely to impact the individual and the society in a detrimental way. Law also intersects with the way a nation thinks.

Therefore, as it relates to the Minister’s desire to “ascertain areas which need reform”, we suggest that the change of laws must be in accordance with a view to attain, increase or secure

¹ Unknown Author (2013, November 14). Sexual Offences Act to be Reviewed, Teenage Promiscuity Among Issues. *The Jamaica Gleaner*, Retrieved from <http://jamaica-gleaner.com/latest/article.php?id=49255>.

² Ibid

³ Ibid

the common good⁴. We understand the common good to be, “the sum total of conditions which allow people, either as groups or as individuals, to reach their fulfilment more fully and more easily”⁵. The common good, being the environment in which we are all equally able to flourish is indivisible and cannot be obtained by humans in isolation of fellow citizens⁶. The human person cannot find fulfillment in himself alone and must also exist ‘with others’ and ‘for others’⁷. Society exists to facilitate the common good. In this regard we ask that careful and cautious consideration be given to the change of those laws which currently secure the healthy flourishing of human society for the equal benefit of all individuals.

1.0 FORCED ANAL PENETRATION

We now outline our concerns with regards to “Forced anal intercourse of man or woman which currently carries maximum sentence of 10 years under the law relating to buggery found in Section 76 of the Offences Against the Person Act and not the minimum 15 years found in the Sexual Offences Act”. Our concerns are as follows:

1.1 Redefinition of “Sexual Intercourse”

In order for anal penetration to be classified as rape, it will be necessary to redefine “sexual intercourse”. Redefining “sexual intercourse” to include the act of buggery/anal penetration would have far-reaching consequences in society. It is in the interest of the state to protect the definition of sexual intercourse as between a man and a woman

⁴ Scarnecchia, D.B. & McKeegan, T.(2009). The Millenium Development Goals. *International Organizations Research Group, White Paper, (10)*.

⁵ Pontifical Council for Justice and Peace (2005) Compendium of the Social Doctrine of the Church, #167.

⁶ Ibid

⁷ Scarnecchia, D.B. & McKeegan, T.(2009). The Millenium Development Goals. *International Organizations Research Group, White Paper, (10)*.

because of the natural physiological functions of the body which result in the consummation of intimate relationships and the production of children for the benefit and flourishing of society. Law is a standard-bearer defining what is acceptable and what is not acceptable in a society. Redefinition of ‘sexual intercourse’ to include anal penetration would convey that the act of anal penetration is not merely morally permissible but also equal in moral value to sexual intercourse and therefore worthy of the same protection and support of society by law.

We therefore ask that the definition of “sexual intercourse” contained in the Sexual Offences Act being, “the penetration of the vagina of one person by the penis of another person” be preserved as it is true being in accordance with the physiological design of the body.

1.2 Caution Against Repeal or Amendment of the ‘Buggery Law’

We are very concerned about the matter of forced anal penetration. However as the Committee considers the matter we ask that care be taken to ensure that the revision of the Sexual Offences Act does not in any way result in a repeal or an amendment of the buggery law as is found in Sections 76, 77 and 79 of the Offences Against the Person Act. Any direct or indirect amendment of the buggery law *in any way* will assist efforts to normalize anal penetration.

1.2.1 It must be noted that, in 2007⁸, 2012⁹ and 2014¹⁰ efforts were made to entrench the normalization of anal-penetration and homosexual relationships in the society by including such content in educational curricula geared towards children. In all instances these efforts caused national outrage and were discontinued with reference to the authority of Laws such as the ‘Buggery Law’ and the Child Care and Protection Act. These occurrences underscore the importance of maintaining the integrity of the ‘Buggery Law’ in the context of the repetitive attempts to inculcate values in our children that are external and contrary to our society. Retention of the law will assist in securing the values which we pass on to our children by helping them to learn and understand that the normal manner of sexual intercourse is the penetration of the vagina of one person by the penis of another person”.

1.2.2 We note that according to Halsbury’s (2004), “An Act may be repealed by a later Act either by express words or by implication”¹¹. We further note that according to Halsbury’s (2004), “an Act is intended to operate by way of repeal of an earlier enactment if it imposes a different penalty for the same offence or the procedure in relation to it”¹². The implications of the above are that any statutory provision relating to anal penetration will very likely be seen by the courts as impacting the buggery law in

⁸ Tyrone Reid (2007, October 31). Same-sex lessons - Ministry-recommended textbook lists homosexual unions as family option. *The Jamaica Gleaner*, Retrieved from <http://jamaica-gleaner.com/gleaner/20071031/lead/lead1.html>

⁹ Unknown Author (2012, September 14). Education Ministry Withdraws ‘Homosexual’ Book. *The Jamaica Gleaner*, Retrieved from <http://jamaica-gleaner.com/latest/article.php?id=39913>

¹⁰ Unknown Author (2014, June 17). Indecent Exposure - Oral, Anal Sex Acceptance Sneaked Into JFJ Course In Children's Homes. *The Jamaica Gleaner*, Retrieved from <http://jamaica-gleaner.com/gleaner/20140617/lead/lead1.html> <http://jamaica-gleaner.com/gleaner/20071031/lead/lead1.html>

¹¹ *Halsbury’s Statutes of England and Wales, 4th Edition, (2004)*. London, UK: LexisNexis UK. p. 766.

¹² *Ibid*, p. 768.

one form or another. The provisions of one statute can also be used to interpret another statute. This happened in the recent Privy Council decision of *Jamaican Redevelopment Foundation Inc. v. The Real Estate Board* [2014] UKPC. In that case the Privy Council used a fraud requirement from Section 70 of the Registration of Titles Act 1889, in its interpretation of the application of certain sections of the Real Estate Dealers and Developers Act 1987. Similarly in the case of *National Transport Co-operative Society Limited v. The Attorney-General of Jamaica* [2009] UKPC Case Ref 48 the Privy Council re-characterised franchises granted under the Kingston Metropolitan Transport Region Act as “road licences” under the Road Traffic Act.

In the case before us as it relates to a provision for “forced anal penetration” the law as contained in the Offences Against the Person Act would then only be relevant to non-consensual buggery. It would certainly become susceptible to a legal challenge as that law will not be that which was saved by Section 13 (12) (a) of the Charter of Rights.

1.2.3 Furthermore, redefining “rape” to include “forced anal penetration” will affect how we view anal penetration. “Rape” has always been viewed as “sexual intercourse” by force or/and without consent. Inclusion of forced anal penetration in this definition would allow ‘consensual buggery’ as a defence thereby clothing anal penetration/buggery with acceptability albeit that it is being done in a negative manner. Additionally, any specific provision for “forced anal penetration” can be argued as constituting an amendment to the buggery law, thereby compromising its integrity.

1.3 Grievous Sexual Assault

Section 4 of the Sexual Offences Act: We note that Section 4 of the Act makes provisions for the offence of “grievous sexual assault” . Section 4 states in part as follows:

“4(1) A person (hereinafter called "the offender") commits the offence of grievous sexual assault upon another (hereinafter called the "victim") where, in the circumstances specified in subsection (3), the offender-

(a) penetrates the vagina or anus of the victim with-

(i) a body part other than the penis of the offender; or

(ii) an object manipulated by the offender;...

1.3.1 A person who commits the offence of “grievous sexual assault” is liable on “conviction in a Circuit Court to imprisonment for life or such other term as the court considers appropriate not being less than fifteen years” Section 6 (1) (b) (ii)

1.3.2 The thinking may be that, “forced anal penetration” could be provided for under the offence of “grievous sexual assault”. This would still be extremely problematic. We refer to the reasoning in the Privy Council Decision in the case of Lambert Watson v. R (Privy Council Appeal No 36 of 2003). The case of Lambert Watson had to do with the death penalty. In 1992 the Offences Against the Person Act was amended to allow for capital and non-capital murder with mandatory death sentence for murder in certain circumstances. Prior to that amendment the law stipulated mandatory death sentence in all cases. The issue which came before the Privy Council was whether the mandatory death sentence which was imposed by virtue of the amended law was unconstitutional.

There would not have been a problem before the amendment of the law as the old law had been saved by then s. 26(8) of the Constitution. The Privy Council reasoned that:

“So long as these laws remained untouched, they did not have to be scrutinised.

But as soon as they were changed, adapted or modified in any respect, except in the circumstances referred to in paragraphs (a) and (b) of section 26(9), they had to comply with the requirements of Chapter III”

1.3.3 The Privy Council held that the amendment to the law which had attempted to mitigate the harshness of the existing law was unconstitutional in “that the imposition of the mandatory death penalty on the appellant subjected him to inhuman or degrading treatment”. Note the words of the Privy Council as soon as the law was “changed, adapted or modified in any respect”- this is what will happen if there is any law which changes or modifies the existing buggery law in any respect. The reasoning in that case indicates that changes in the form of a law are sufficient changes to remove a law from the protection of the saving law clause in the Constitution, as transpired in that case with the judicial abolition of the mandatory death penalty. If there is any provision for forced anal penetration by whatever means whether by including same as rape or by including it in offence of “grievous sexual assault” it will be held to be a provision which has changed or modified the law. The buggery law will then lose its protection under the Charter of Rights it will no longer have a presumption of constitutionality.

1.3.4 However it may very well be that in cases of forced anal penetration that elements of the offence of “grievous sexual assault” are present. In such cases then one would expect the prosecution to lay charges involving all offences committed during the incident(s) complained of.

1.4 Reasons to Retain the “Buggery Law”

1.4.1 Philosophical Reasons for Retention:

Sections 76, 77 and 79 of the Offences against the Person Act prohibit buggery between mankind or with animals (s.76). “Buggery” is defined at common law as, “intercourse per anum by a man with a man or a woman or intercourse per vaginam by a man or a woman with an animal”¹³ Section 77 prohibits an attempt to commit buggery or commit an indecent assault on a male s. 79 prohibits acts of gross indecency between males. Note that the offence of “buggery” covers both consensual and non-consensual acts. Proof of penetration is necessary for the offence to be proved.

These prohibitions:

- Promote the common good as they guide citizens to stay away from practices which are detrimental to wholeness of the individual and that of society
- Accord with the reality of the design of the human body. The human anatomy serves specific functions, the buggery law encodes what ought to be apparent, that the anus is not a sex organ but a part of the body’s excretory system and is solely for the purpose of excretion.
- Provide sound principle by warning citizens against harmful behaviour. Anal penetration has negative implications for both individual and society. The medical outcomes of buggery has costly public health implications.
- The buggery law provides philosophical and legal support for true marriage in that buggery being the antitype of sexual intercourse is proscribed. Therefore at present philosophically, same-sex marriage /unions cannot be entertained. Repeal

¹³ Smith, M.E. & Hogan R.D. (2005) Criminal Law (3rd ed.) USA: Oxford University Press. p. 357.

of this law will provide a philosophical basis for a challenge to the definition of sexual intercourse and to the definition of marriage although thankfully marriage is now defined.

1.4.2 Public Health Reasons for Retention:

- i) Medical evidence demonstrates that unprotected anal penetration is 18 times more effective in transmitting HIV/AIDS than unprotected vaginal penetration¹⁴.
- ii) Men who have sex with men¹⁵ are at significant risk for HIV infection and account for a substantial proportion of HIV infected populations regardless of ethnicity, nationality, income level, education¹⁶.
- iii) Buggery is associated with a statistically measurable increased risk of harm to the individual and the society. As such, public policy should be informed by this fact of statistics. The active discouragement and prohibition of buggery serve as a guide to the society in what should be considered as healthy intimate behaviour and will thereby provide health benefits to those who obey the law.
- iv) We note that in developed countries where buggery is not unlawful there continues to be an intractable increase in the rate of HIV/AIDS among men who have sex with men:

¹⁴ Baggeley, R.F., White, R.G. and Marie-Claude Boily. (2010) HIV Transmission Risk through Anal Intercourse: Systematic Review, Meta-Analysis and Implications for HIV Prevention. *International Journal of Epidemiology*, 2010, 1-16. Retrieved from file:///C:/Users/Owner/Downloads/HIV%20transmission%20risk.pdf

¹⁵ We are compelled in citing studies to use the terminology 'men who have sex with men (MSM). However, we are of the view that insertion of the penis in the anus is buggery and not sexual intercourse.

¹⁶ Centre for Disease Control and Prevention (2014, July 4). HIV Infection and Risk, Prevention, and Testing Behaviors Among Injecting Drug Users — National HIV Behavioral Surveillance System, 20 U.S. Cities, 2009. *Morbidity and Mortality Weekly Report*, 63(6). Retrieved from <http://www.cdc.gov/mmwr/pdf/ss/ss6306.pdf>

- (a) **United States** – In April 2011, the Centre for Disease Control (CDC) reported that, “The sexual health of gay, bisexual, and other men who have sex with men (MSM) in the United States is not getting better despite considerable social, political and human rights advances”¹⁷.
- (b) **England** – In January 2013 it was reported in ‘The Lancet’ - “HIV infections among men who have sex with men (MSM) are indeed soaring.”¹⁸ Another article published by the Lancet, “explore[d] the unique aspects of the HIV epidemic in MSM, showing that it is factors such as the biology of anal sex, the characteristics of MSM networks and known behavioural factors that are driving the epidemic in this population.”¹⁹
- (c) **France** : Although the buggery law has been repealed since 1791, in October 2010 it was also reported in “The Lancet’ that, there is a persistent and high incidence of HIV among men who have sex with men (MSM) in France, a situation they describe as being “out of control” in the MSM population.”²⁰

1.4.3 Social and Political Reasons for Retention: Social Instability and Impact on Human Rights.

Experiences in England, Canada and United States after the repeal of buggery laws has been one of perverse/controversial curricula in schools, adoption of children by same sex

¹⁷ AIDS Behav. 2011 Apr; 15 Suppl 1:S9-17 in an article entitled, “Sexual health, HIV, and Sexually transmitted infections among gay, bisexual, and other men who have sex with men in the United States

¹⁸ (‘New HIV diagnoses in London’s gay men continue to soar’, by Tony Kirby and Michelle Thornber-Donwell, The Lancet, Volume 382, Issue 9889, page 295).

¹⁹ Millet, G.A. et al, ‘HIV in Men Who Have Sex with Men’, The Lancet The Lancet Infectious Disease, Volume 380, Issue 9839, Pages 341 - 348, 28 July 2012

²⁰ Dr Stéphane Le Vu et al, ‘Population base HIV-1 Incidence 2003-08: a modelling analysis’, Lancet Infectious Disease 2010 October; 10 (10), pages 682-687

couples, threats to human rights including loss of freedom of speech, conscience and religious liberty, loss of parental rights by those who object to homosexual lifestyles. Objectors have been punished by dismissals, fines, disciplinary proceedings, arrests, incarceration. We note that in England in 1988. Section 28 of the Local Government Improvements Act was passed which prevented the “teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship.” This law came under severe pressure from homosexual activists causing the repeal of the law in 2003. These countries having lost a reference point/logical basis for defining abnormality are now at the point where those who would dare to express a dissenting opinion regarding homosexuality are punished. For these countries the legal push in this area began with the repeal of the buggery/sodomy laws which would have served as a reference point for defining abnormality.

1.5 Alternatives

1.5.1 In light of our cautions we note that the challenge which this Committee will therefore be confronted with is how to provide for “forced anal penetration” without undermining both the savings clause of the Charter of Rights as found in Section 13 (12) (a) and the ‘buggery law’ as found in Section 76, 77 and 79 of the Offences Against the Person Act. In its deliberations the Committee may therefore want to consider the following options:

1. Where possible sentences should be run consecutively in order to ensure that the maximum sentencing possible is handed down for this offence.

2. Judges also need to ensure that maximum sentences are handed down in appropriate cases.
3. Where possible Prosecutors should ensure that charges are laid in respect of all possible offences arising from the incident (s)

2.0 THE CRIMINALIZATION OF TEENAGE PROMISCUITY

We now outline our concerns and recommendations regarding the Minister's statement, "Negative consequences associated with criminalizing teenage promiscuity as this really is a parenting issue"²¹

2.1 Section 10 of the Sexual Offences Act – "Teenage Promiscuity"

Section 10 of the Sexual Offences Act states in part as follows:

"Subject to subsection (3), a person who has sexual intercourse with another person who is under the age of sixteen years commits offence".

This section criminalizes inter alia consensual sexual intercourse between persons under 16 years old .We see no need to change this statement. 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.

2.2 Expert Evidence

We are aware of the ruling in the South African Supreme Court case of Teddy Bear Clinic For Abused Children and Rapcan and Minister of Justice And Constitutional Development National Director Of Public Prosecutions Case CCT 12/13 [2013] ZACC

²¹ Unknown Author (2013, November 14). Sexual Offences Act to be Reviewed, Teenage Promiscuity Among Issues. *The Jamaica Gleaner*, Retrieved from <http://jamaica-gleaner.com/latest/article.php?id=49255>.

35 where a law similar to Section 10 of the Sexual Offences Act was deemed to be unconstitutional. Unfortunately, the Court in that case did not have the benefit of expert evidence on the side of the Defence. Furthermore, Jamaica must choose whether it wants to subscribe to the sexual rights agenda.

2.2.1 We would implore Parliament to seek expert evidence as it relates to 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 have attached a number of articles relating to the impact on adolescents of sexual intercourse.

2.2.2 In an article published by the American Journal of Preventive Medicine (2005) under the title, “Which Comes First in Adolescence—Sex and Drugs or Depression?” the conclusion from the study states:

“Engaging in sex and drug behaviors places adolescents, and especially girls, at risk for future depression. Future research is needed to better understand the mechanisms of the relationship between adolescent behavior and depression, and to determine whether interventions to prevent or stop risky behaviors will also reduce the risk of later depression.”²²

2.2.3 In a school-based survey on risk and resiliency behaviours of youth 10-15 years of age it was found that:

“Most of the adolescents (76%) who had had sex stated that they had agreed to it on the first occasion but significantly more boys (80%) than girls (65%) stated that this was so (Table 5.9). An alarming quarter of all girls stated that they had been forced, while another 12% had allowed the sex to occur without agreeing to

²² 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

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. It suggests a level of passivity and powerlessness in decision making among adolescent girls and point to the need for their empowerment to reduce the risk of sexually transmitted disease including HIV/AIDS, and pregnancy.”²³

This means that approximately 37% of the girls studied had had sexual intercourse by force/without having agreed to the act. This is happening even with a law in place. It stands to reason that this percentage 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.

2.2.4 One must also note that 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.”²⁴ In an article entitled, “Structural Magnetic Resonance Imaging of the Adolescent Brain” it is stated that , “ The dorsal lateral prefrontal cortex important for controlling impulses is among the latest brain regions to mature without reaching adult dimensions until the early 20’s.”²⁵

2.2.5 Removing the law means we are giving authority to adolescents to make decisions

²³ 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>

²⁴ Giedd, J. M. (2004). Structural Magnetic Resonance Imaging of the Adolescent Brain. *New York Academy of Sciences*, 1021, 77-85.

²⁵ Ibid

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. We therefore recommend that sex between minors remain unlawful.

2.3 Alternatives

With regards to the criminalization of ‘teenage promiscuity’ we refer the Committee to the Child Justice Guidelines produced by the Office of the Children’s Advocate. According to the guidelines, the Addendum Outlining The Multi-Agency Approach permits:

“ Where both parties under the age of eighteen years, having admitted to being involved in ‘consensual’ sexual relationship and that they are first time offenders would qualify to be reviewed by the multi-agency approach. These matters may be diverted from the traditional criminal justice system once the criteria are satisfied and the children referred for counseling, through the Office of Public Prosecutions and the Women’s Centre Foundation.”²⁶

One of the purposes for the launch of program is to “divert carefully selected cases of carnal abuse away from the criminal justice system where appropriate and only if they involve sexual activities between children”²⁷. The program therefore allows for non-custodial orders to be administered. We note that the programme is not a codified one and has been limited to Kingston & Saint Andrew. We therefore suggest that serious consideration be given to enacting same into law. We affirm that these programs are good

²⁶ Office of the Children’s Advocate, Child Justice Guidelines. July 2013

²⁷ Ibid

and necessary. However, the severity of the offence needs to be undergirded by the authority and gravity of the law.

3.0 CHILDREN WHO FACE THE COURT FOR UNCONTROLLABLE BEHAVIOUR

We now outline our concerns regarding, “the option of correctional orders for dealing with children “who face the court for uncontrollable behavior”²⁸

3.1 Diversion Policy and the Office of the Children’s Advocate (OCA) Child Justice Guidelines

We too are concerned that minors unnecessarily face the criminal court. Consequently, we refer this Committee to the Draft National Diversion Policy and the Child Justice Guidelines produced by the Office of the Children’s Advocate (2014).

3.1.1 Presently there is National Diversion Policy which is being formalized with the intention of enacting same into law. Among the aims of this Policy are the following:

- “GOAL 1: To reduce the number of children who are charged with offences and exposed to the formal criminal justice system, as a result.
- GOAL 2: To increase the use of diversionary programmes that re-habilitate children as a response to crime and wrongdoing.”²⁹

²⁸ Unknown Author (2013, November 14). Sexual Offences Act to be Reviewed, Teenage Promiscuity Among Issues. *The Jamaica Gleaner*, Retrieved from <http://jamaica-gleaner.com/latest/article.php?id=49255>.

²⁹ Ministry of Justice (2014) Child Justice Program Retrieved September 2014 from <http://moj.gov.jm/programmes/child-justice>

3.1.2 OCA, Child Justice Guidelines: Part four, section 46 states:

“The court should consider a correctional order as being the last resort and should give primacy to a fir person order or a supervision order as preferred orders bearing in mind that children should only be deprived of their liberty as a option of last resort and for the minimum necessary period When deprivation of liberty seems the only appropriate option, primacy is to be given to the rehabilitation of the child and the child’s ultimate reintegration. To this end the relevant GOJ Departments...should pursue a multi-agency approach in a bid to execute suitable support programmes and provide critical support services.”³⁰

3.2 Recommendations

3.2.1 The full implementation the Diversion Program and adherence to the OCA Policy Guidelines regarding correctional orders will greatly alleviate the problem of “uncontrollable children” being brought in contact with the formal justice system. We recommend that these programs be implemented extensively covering all parishes.

3.2.3 We also strongly recommend that Section 10 be retained as it is and that the Diversion Policy be reviewed and enacted into law.

4.0 TREATING WITH CERTAIN OTHER ISSUES

We now highlight certain other areas which have been highlighted in the media and otherwise which may be said to need reform.

³⁰ Office of the Children’s Advocate, Child Justice Guidelines. July 2013, p 51.

4.1 Prostitution

We have heard calls for a repeal of laws pertaining to prostitution in the context of dealing with HIV/AIDS. Section 23 of the Sexual Offences Act states in part as follows:

“Every person who:

- (a) Knowingly lives wholly or in part on the earnings of prostitution. Or
- (b) In any place, whether public or private, persistently solicits or importunes for immoral purposes, commits an offence...”

4.1.1 We have noted that the rate of HIV among prostitutes is trending downwards. An article published in the West Indian Journal 2008 entitled, *A comprehensive response to the HIV/AIDS epidemic in Jamaica: a review of the past 20 years*, stated that “HIV prevalence among sex-workers has declined only marginally from 12% in 1989 to 9% in 2005”³¹. Thereafter, the figures for 2008 taken from the “2008 National HIV/STI Programme, Jamaica Country Progress Report” reflected a significant decline with HIV prevalence among sex-workers reported as being 4.9%. It seems to us that Jamaica has made much progress in dealing with HIV among prostitutes notwithstanding the illegality of prostitution.

4.1.2 Is there a link between prostitution and human trafficking? There are studies which suggest that human trafficking has increased as countries have liberalized laws relating to prostitution.

³¹ Figueroa, J.P. et al. (2008), A comprehensive response to the HIV/AIDS epidemic in Jamaica: a review of the past 20 years. *West Indian Medical Journal* vol.57 no.6 Mona Retrieved from http://caribbean.scielo.org/scielo.php?script=sci_arttext&pid=S0043-31442008000600008

4.1.3 According to Janice G. Raymond, (Professor Emerita, University of Massachusetts, Amherst and Coalition Against Trafficking in Women) :“The majority of women in prostitution come from marginalized groups with a history of sexual abuse, drug and alcohol dependencies, poverty or financial disadvantage, lack of education and histories of other vulnerabilities. A large number of women in prostitution are pimped and drawn into the sex industry at an early age. These are women whose lives will not change for the better if prostitution is decriminalized. Many have entrenched problems that are best addressed not by keeping women in prostitution but in establishing programs where women can be provided with an exit strategy and the services that they need to regain their lost lives. Furthermore, there is no evidence that in countries that have decriminalized or legalized prostitution, things are better for women in prostitution, or that trafficking and other crimes are reduced.”³²

4.4.4 Like Professor Raymond we call for programs which will assist women in choosing occupations which will enable and empower them to preserve and recover their dignity instead of seeing themselves as merchants.

5.0 SUMMARY OF RECOMMENDATIONS

5.1 For forced anal penetration we recommend that for reasons outlined herein that the following options be considered:

³² Gender Equality, Prostitution And Trafficking Janice G. Raymond, Professor Emerita, University of Massachusetts, Amherst and Coalition Against Trafficking in Women. Keynote Speech – II Latin American Congress on Human Trafficking and the Sex Trade: Migration, Gender and Human Rights <http://www.catwla.org/en/gender-equality-prostitution-and-trafficking/>

- Judges need to ensure that maximum sentences are handed down in appropriate cases
- Where possible sentences should be run consecutively in order to ensure that the maximum sentencing possible is handed down for this offence
- Where possible Prosecutors should ensure that charges are laid in respect of all possible offences arising from the incident (s)

- 5.2 That the definition of “sexual intercourse” be retained
- 5.3 That the laws relating to criminalization of consensual sexual intercourse between adolescents be retained. i.e Section 10 of the Sexual Offences Act
- 5.4 That the Diversion Policy be reviewed and enacted into law
- 5.5 That the laws relating to prostitution be retained – sex is not a commodity we would urge more skills training and employment opportunities for our people
- 5.6 That the laws found in Sections 76, 77 and 79 of the Offences Against the Person Act be not repealed, amended or undermined in any way.

These are our concerns and submissions. We have not had the benefit of seeing specific proposals for amendments. In view of our concerns we ask that we be allowed to make submissions in response to specific proposals especially when it would appear that such submissions are counter to what is contained herein.

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 Churches

Jamaica Pentecostal Union

Conrad H Pitkin 12/09/2014

Rev Conrad Pitkin Date:

Appendix

List of Articles

- i. OXYTOCIN SHAPES THE NEURAL CIRCUITRY OF TRUST AND TRUST ADAPTATION IN HUMANS
- ii. IMPACT OF THE SEXUAL REVOLUTION: CONSEQUENCES OF SEXUAL BEHAVIOUR
- iii. BRAIN OXYTOCIN: A KEY REGULATOR OF EMOTIONAL AND SOCIAL BEHAVIOURS IN BOTH MALES AND FEMALES
- iv. SEXUALLY ACTIVE TEENS ARE MORE LIKELY TO BE DEPRESSED AND COMMIT SUICIDE
- v. STRUCTURAL MAGNETIC RESONANCE IMAGING OF THE ADOLESCENT BRAIN
- vi. THE HARMFUL EFFECTS OF EARLY SEXUAL ACTIVITY
- vii. THE TEEN BRAIN: INSIGHTS FROM NEURO-IMAGING
- viii. WHICH COMES FIRST IN ADOLESCENTS: SEX AND DRUGS OR DEPRESSION?