

10

Positive Steps & Missteps

made by the Joint Select Committee of Parliament on the Sexual Offences and Related Acts

Positive Steps

1

The age of consent remained at 16 with a close-in-age provision of four years to protect young persons who consensually engaged in intercourse with persons below the age of 16 from being tried in the same light as older, predatory men.

2

The inclusion of the offence of 'Predatory Sexual Assault' (assault of a child who could clearly not consent or assault of someone with a mental disorder) with the maximum sentence of life imprisonment.

3

Section 30 of the Sexual Offences Act- Sex offenders in foreign countries who migrate to Jamaica will now have to register in the Jamaican Sex Offenders registry and failure to do this so will be considered an offence.

4

Committee agreed to include a comprehensive definition of 'Domestic Violence' (one more similar to the progressive definition found in the Antigua and Barbuda statute) which is currently completely absent from the Domestic Violence Act of Jamaica; as well as increased penalties for domestic violence.

5

Aggravated sentence for the murder of more vulnerable groups in society, including pregnant women, the elderly, the disabled and children.

6

Removal of Section 5 of the Sexual Offences Act which, in effect, made marital rape permissible.

Positive Steps (Continued)

7

Move to indemnify doctors for providing treatment to minors.

8

Section 9 of the Child Care and Protection Act which speaks to ‘cruelty to children’ will be amended to include the prohibition of corporal punishment.

9

Inclusion of stalking as a criminal offence.

10

Amendment to Section 78 of the Child Care and Protection Act to prohibit children, regardless of the offence, from being admitted into adult correctional facilities. Children guilty of ‘serious’ crimes, however, (e.g. serial murder) will be housed in maximum security facilities.

10 Missteps



The Committee failed to broaden the definition of sexual intercourse and therefore treat all rape as rape, regardless of gender or orifice.



The failure to broaden the definition of sexual intercourse, means offences such as “sexual intercourse with person under sixteen”, “incest” and even the new “predatory sexual assault” will not provide equal protection as anal penetration by a penis does not qualify in any of these offences.



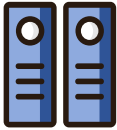
There is no clarity on how a judge will decide when “grievous sexual assault” will be tried at the Parish Court or the Supreme Court.

4



The Committee did not move to decriminalize abortion.

5



The Committee did not recommend making incest a gender neutral offence, in deference to the savings law clause.

6



The buggery law remains unchanged, therefore giving unequal protection to victims of sexual violence.

7



No move to amend Section 79 of the Offences Against the Person Act criminalizing any act of intimacy between two men gross indecency which is discriminatory and specifically targets queer men and trans women.

8



Section 27 of the Sexual Offences Act gives judges the power to allow the sexual history of rape victims to be brought into the Courtroom as evidence against them in their rape trials. Committee opted to leave this unchanged.

9



The proposal made to consider criminalizing HIV transmission.

10



The Committee demonstrated a deference to the savings law clause within the Charter of Fundamental Rights and Freedoms, which empowers them to make legislative change, rather than prevents them.