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JAM101753.E

Jamaica: Legislation governing domestic violence and its enforcement (2004 - 2007)

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Legislation

Following a statement by Jamaica's Prime Minister describing a "very worrying level of domestic violence in Jamaica'," Jamaica's parliament passed a new *Domestic Violence Act (2004)* in 2003 (AI 22 June 2006, Sec. 5; see also *The Jamaica Observer* 16 Jan. 2006). The new law amends Jamaica's first *Domestic Violence Act*, which was originally passed in 1996 (Jamaica 2004). Under the new act's provisions, women victims of domestic violence may apply through the court system for a protection order (Jamaica 2004, Art. 3). Jamaican police officers are also empowered to apply for protection orders on behalf of a child or dependent person who is in a domestic violence situation (*ibid.*). Violation of a court-issued protection order is an offence punishable by a fine of 10,000 Jamaican dollars (JMD)[or approximately 169.90 Canadian dollars (CAD) (Canada 5 Apr. 2007)] and/or a prison term of up to six months (Jamaica 2004, Art. 5). Amendments made to the act provide that divorced or separated women and their children are protected from losing economic support they may be receiving from fathers (or other visiting male partners) when a court order is issued against them (AI 22 June 2006, Sec. 5, see also *The Jamaica Observer* 16 Jan. 2006). Under the act, the courts are also empowered to issue occupation orders, which allow the successful applicant to inhabit the family home (Jamaica 2004, Art. 3).

In June 2006 Amnesty International (AI) published an extensive report on sexual violence in Jamaica, based on two years of investigative research (22 June 2006). In this report, AI notes that in addition to the *Domestic Violence Act*, the Jamaican Parliament also passed the *Family Property (Rights of Spouses) Act* in 2004 (AI 22 June 2006, Sec. 5). This act sets forth that in cases where the family home is only registered in one person's name, it nonetheless belongs to both partners in the relationship (*ibid.*). Likewise, the permission of both partners in a relationship is required for property transactions, regardless of whether the property is only registered in one of their names (*ibid.*). AI highlights that women are more easily able to leave violent relationships as a result of these provisions (*ibid.*).

AI explains that while rape constitutes a criminal offence in Jamaica, marital rape is not similarly criminalized (AI 22 June 2006, Sec. 5; *ibid.* 23 May 2006). There is, however, a "common law precedent for protection [from marital

rape] in some circumstances which is 'persuasive but not binding,' and prosecutors may decide not to prosecute" (ibid., 22 June 2006, Sec. 5; see also AsylumAid June 2004, 123). AI describes obtaining a prosecution in cases of marital rape as "difficult if not impossible" (AI 22 June 2006, Sec. 5).

A draft amendment to Jamaica's *Offences Against the Person Act* was written in 1995 and reportedly includes provisions that would criminalize marital rape (ibid.; ibid. 23 May 2006; see also UN 25 Aug. 2006, para. 21). *The Jamaica Observer* reported in March 2007 that a parliamentary committee is actively considering amendments to the *Offences Against the Person Act*, including amendments that would criminalize marital rape (*The Jamaica Observer* 1 Mar. 2007). According to the article, the Jamaica Constabulary Force (JCF) suggested to the committee that complaints of marital rape should require the consent of the Director of Public Prosecutions (DPP) before proceeding to trial, as this would "help preserve the institution of marriage" (ibid.) This opinion was reportedly echoed by a government senator, before the committee decided, under pressure from advocacy groups, that complaints of marital rape made under an amended *Offences Against the Person Act* would not be subject to the DPP's approval (ibid.).

Enforcement

The JCF established the Centre for Sexual Offences and Child Abuse (CISOCA) in 1989 (Jamaica n.d.a; AI 22 June 2006, Sec. 4.b). CISOCA offices, which are located in central police stations throughout Jamaica, have a mandate to offer counselling and support to the victims, schedule medical examinations, and ensures that evidence gathered from the victim and from the perpetrator in a given case is kept separately (AI 22 June 2006 Sec. 4.b; see also Jamaica n.d.a). AI's report notes that trained CISOCA officers do not undertake criminal investigations themselves, but that these are done by regular police officers who may lack specialized training (AI 22 June 2006 Sec. 4.b; see also ibid. 23 May 2006). The CISOCA Web site does, however, indicate that the unit "ensure[s] [the] speedy and effective investigation of incidents" (Jamaica n.d.a). Information on whether CISOCA is mandated or regularly responds to incidents of domestic violence or marital rape could not be found among the sources consulted for this Response. The CISOCA Web site does provide information on certain sexual offences, but does not include information on domestic violence or marital rape among them (Jamaica n.d.a).

In cases of rape between intimate partners when the accused does not cohabit with the complainant, AI notes that police officers generally charge the person accused of domestic violence with assault (22 June 2006, Sec. 5). In cases where the accused and the complainant share a residence, police generally refer the accused to counselling (AI 22 June 2006, Sec. 5). According to AI, when one woman called police after being raped in her own house, the officers blamed her for the attack because she was wearing "a skimpy top and shorts" (ibid., Sec. 4). AI also notes that police officers are "least likely to investigate cases [of sexual violence] when the adult suspect and victim [are] acquaintances" (ibid., Sec. 4.a). The United States (US) Department of State also documents reluctance on the part of police to become involved in domestic conflicts (US 6 Mar. 2007).

With respect to Jamaica's court system, the government-run Jamaica Information Service (JIS) Web site explains that in Jamaica family courts have been set up in four parishes (Jamaica n.d.b). These courts are mandated to

decide on "all family matters" with the exception of divorce proceedings, and are also able to refer applicants to social services so that they may resolve their complaints (ibid.).

During interviews conducted for AI's 2006 report, members of Jamaica's judiciary explained that in cases involving unconfirmed sexual assault judges are required to read the following warning, which stems from Jamaica's common law tradition:

"Madam foreman and members of the jury as this is a case of rape (sexual violence) the law requires me to give you a warning in such cases. The law says that in these types of cases it is desirable that there should be corroboration.... because experience has shown that women and young girls often tell lies and for that reason the law requires this independent evidence. However, if there is no corroboration and you believe that the complainant is telling the truth and bearing the warning in mind you can proceed to act on her evidence even if there is no corroboration." (AI 22 June 2006, Sec. 4.d; ibid., footnote 112; see also ibid. 23 May 2006; Jamaica 6 Apr. 2001, 1, 3-6)

AI continues to say that the Jamaican police and judiciary are discriminatory towards girls and women, and that "[i]n court, women's testimony is explicitly given less weight than men's" (AI 22 June 2006).

In August 2006, the United Nations (UN) Committee on the Elimination of All Forms of Discrimination Against Women published its concluding remarks on Jamaica's fifth periodic report to the treaty body (UN 25 Aug. 2006). The Committee notes that in Jamaica, victims of gender-based violence are not eligible to receive legal aid (ibid., Para. 25). While congratulating the Jamaican government for steps it had taken to address violence against women, including the new *Domestic Violence Act (2004)*, the committee notes that violence against women "has not been addressed in a holistic and systematic manner, and that measures designed to combat and eradicate all forms of violence against women are not enforced in practice" (ibid., Para. 15).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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Additional Sources Consulted

Oral sources: The Association of Women's Organizations in Jamaica (AWOJA) and Women Incorporated did not provide information to the Research Directorate within the time constraints of this Response.

Internet sources, including: British Broadcasting Corporation (BBC); Caribbean Association for Feminist Research and Action (CAFRA); European

Country of Origin Information Network (ecoi.net); Family Health International; Independent Jamaica Council for Human Rights; Inter-American Court of Human Rights; International Federation of Human Rights Defenders (FIDH); Jamaica Family Planning Association; *Jamaica Gleaner*; Office of the United Nations (UN) High Commissioner for Refugees (UNHCR); Reliefweb; UN Integrated Regional Information Networks (IRIN); U.S. Committee for Refugees and Immigrants (USCRI); Women's Crisis Centre, Kingston; World Health Organization (WHO); World Organization Against Torture (OMCT).

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