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CULTURE OR RIGHTS VIOLATION?
AN EXAMINATION OF THE ROLE OF JAMAICA’S
SOCIOPOLITICAL CULTURE ON WOMEN’S RIGHTS

BY DANIELLE J. BARRETT

This paper seeks to discuss the relationship between culture and violations of women’s rights in Jamaica. Because they endanger fundamental freedoms, violations of women’s rights should be seen as an abuse of the human dignity and worth of the individual. International treaties, as well as regional and domestic legislation for the protection of fundamental human rights, require that member States reflect both compliance with their mandate and a course for enforcement of these laws. Specific to women’s rights, such treaties and legislation require that governments adopt policies reflecting recognition of the equal rights of women and men and provide for equal access to resources. In order to achieve total equity in gender rights, Jamaica’s national development must incorporate changes to its policies, and incorporate strategies to better enable its institutions and relevant organizations to enforce these ameliorations.

THE JAMAICAN CONSTITUTION AND THE COMMON LAW SYSTEM

Jamaica’s efforts to secure gender equity should include amendments to its Constitution. Considering the global recognition of the importance of human rights and their protection, many countries have adopted new laws or amended their legislation to advance gender equality in an attempt to eliminate discrimination and abuses based on sex. Gender based violence, and penalties geared toward deterring such violence, have been recognized in the language of various newly drafted or amended constitutions. Rwanda’s 2003 constitution for example, prohibits discrimination based on sex and establishes a National Human Rights Commission and a National Council of Women to oversee
women's rights. Similarly, Cuba's 2002 constitution affirms that spouses are equal in rights and duties.

Although a number of countries have amended their constitutions to include provisions constituting legal reform towards gender equity, Jamaica has yet to follow suit even of its regional neighbor, Cuba. In defining those activities constituting discrimination, the Jamaican constitution's chapter regarding Fundamental Rights and Freedoms omitted "sex." The Jamaican constitution defines "discriminatory" as "affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed." According to Professor Vasciannie, a consultant in the Jamaican Ministry of Justice, the constitution's failure to prohibit discrimination based on gender may be attributed to the prevailing social context at the time of its construction. However, Jamaica's constitution, because it prohibits discrimination based on a host of factors, but not on the basis of gender, in effect discredits today's legal and societal intolerance of gender based discrimination.

Essentially, the Jamaican constitution does not recognize an acceptable legal principle that denounces discrimination based on gender. Such a constitutional flaw could be corrected with the adoption of a Charter of Rights Bill to replace the constitution's current chapter on fundamental freedoms. Another alternative to constitutional protection of women's rights is via the regional and international judicial systems to which Jamaica, if it ratifies the

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4 Id.
5 Id. at ch. III, § 24.
7 Id.
8 Id.
proposed charters creating these systems, would be held accountable. According to Professor Vasciannie, the impending Caribbean Court of Justice ["CCJ"] "would serve to broaden the rights of the average Jamaican."\(^9\) With the establishment of the CCJ, an appeal on matters of fundamental rights and freedoms would be made an automatic right, rather than there existing the need for "special leave," as is required under the existing system of appeal to the Privy Council.\(^10\) Similarly, the establishment of the International Criminal Court ["ICC"], if Jamaica ratifies the Rome Statute establishing the court, would prove an attractive alternative to the current system as provided by the Jamaican constitution.\(^11\) The ICC is also a good approach to enforcement of fundamental rights since the concept of "complementarity," "which means, in effect, that Jamaica would retain the right to try and punish individuals" for even those crimes over which the ICC has jurisdiction, would correct any divergence between the ICC and Jamaican law.\(^12\) In the event therefore, that the Jamaican courts find an individual guilty of a particular crime for which the death penalty is prohibited under the ICC’s jurisdiction, that individual may still be executed under the local law.\(^13\) Accordingly, the establishment of both the ICC and the CCJ would supplement rather than nullify the Jamaican constitution.

Jamaica’s penal code is also flawed in that it fails to provide an explicit definition of sexual harassment from which a standard of legal prohibition of such conduct may be recognized.\(^14\) As a result of Jamaica’s failure to legally prohibit sexual harassment by making it an offense warranting criminal punishment, such conduct is exempted from social abhorrence and

\(^9\) Id.
\(^10\) Id.
\(^12\) Id.
\(^13\) Id.
\(^14\) Offenses Against the Person Act (Jam.), available at http://www.moj.gov.jm/?q=law/view/327 [hereinafter Offenses Against the Person Act].
relegated to the shadows of the private sphere where it may thrive rather than be eliminated. According to one expert, "as long as domestic violence was seen as a private matter, it would be very hard to eliminate it."15 "Instead, domestic violence should be seen as a social crime and be punished accordingly. There had to be a deterrent factor to prevent it."16

There remains disproportionate participation by Jamaican women in the public sphere relative to their makeup of the nation’s populace. Although the overall political will of Jamaica seems in favor of allowing greater participation of women in public involvement, there still remains a host of national legislation wherein gender stereotypes abound, reflecting discrimination based on sex. One such piece of legislation is the Offenses against the Person Act in which the overly narrow definition of rape as a transgression against the individual victim, fails to qualify rape as a social crime warranting criminal punishment.17 Much of Jamaica’s current legislation must be amended in consideration of the fact that females are exposed to violence and abuse based on their sex throughout all stages of their life cycle.18 As early as in the prenatal stage, in the case of a woman who suffers domestic and spousal abuse, the unborn child can be harmed.19 Also, in many nations where the cultural practice is to place value on a male child over a female one, girls may experience differential access to certain amenities or sustenance. Indicative of this type of a gender bias, "males in many Jamaican households are given larger portions and served first."20 Similarly, indicative of another

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16 Id.
17 Offenses Against the Person Act, supra note 14 at § 44.
19 Id.
20 Id.
form of gender bias in child-rearing practices, girls constitute a majority of those children sexually abused by family members or strangers.\(^\text{21}\) Even in adolescence and into adulthood, females continue to suffer physical and other abuses at the hands of boyfriends, are coerced into sexual activity or are victims of date rape.\(^\text{22}\)

Without the protection of policies and legislation criminalizing domestic violence and abuses against women, the measures taken by the Jamaican government – establishing rape investigation units, a dispute resolution foundation, victim support programmes and educational campaigns on sexual abuses – to eliminate the problem of violations against women’s rights will fail.\(^\text{23}\) Instead, a gender perspective needs to “be streamlined into all Governmental programmes.”\(^\text{24}\) Without an explicit and consistent implementation of gender assessment into Jamaica’s domestic policies, the nation’s attempts at gender equity will continue to be eclipsed by other factors, and thereby will fail to realize the intended goal.

**GLOBALIZATION SPAWNS GENDER RIGHTS VIOLATIONS**

Governmental and legislative mechanisms geared toward dealing with women’s issues must be considered within the context of a nation’s overall development or lack thereof. Despite even the political will to improve the conditions of women, thereby fulfilling human rights commitments, the Jamaican government is forced to contend with limited financial resources, as well as developmental and structural problems, all of which interfere with its efforts for improvements.\(^\text{25}\) As a result, gender discrimination and abuses continue to disproportionately plague that sector of the Jamaican population which often already suffers the worst.\(^\text{26}\) Problems such as the spread of HIV/AIDS, poverty, prostitution

\(^\text{21}\) Id.  
\(^\text{22}\) Id.  
\(^\text{23}\) *Jamaican Women Cry For Action Not ‘A Bag Mouth’,* supra note 18.  
\(^\text{24}\) Id.  
\(^\text{25}\) Press Release, supra note 15.  
\(^\text{26}\) Id.
and violence against women therefore persist and even worsen, despite the government’s efforts to eliminate these, because of overriding issues of structural adjustment, globalization and a growing burden of debt.\textsuperscript{27} With these broader prevailing problems eclipsing even the government’s admirable efforts to secure gender equity, gender violations and/or abuses could be attributed to national problems more than to cultural stereotypes surrounding gender roles.

In pleading the country’s efforts to secure gender equity in compliance with the Convention on the Elimination of All Forms of Discrimination against Women [hereinafter “CEDAW”], one of Jamaica’s reports before that convention covering the period from 1985 to 1997, expressed that “over the last decade, the status of women in Jamaica has been affected by globalization, the debt crisis and structural adjustment policies administered by the International Monetary Fund.”\textsuperscript{28} These factors have contributed to diminishing the living standards of Jamaicans, as well as augmenting the need for governmental spending on social services, and have indirectly spawned an increased burden upon the nation’s women who are over-represented within the low income earning segment of the populace.\textsuperscript{29} Among rural society, wherein the primary source of livelihood is farming, women are still denied equal access to resources, probably because of underlying traditional views as to the role of women.\textsuperscript{30} Globalization has also caused an influx of imported goods to Jamaica that has reduced the demand upon the local market, resulting in reduced income for an already low income group.\textsuperscript{31}

**Jamaica’s Sociopolitical Cultural Influence on the Rights of Women**

Any examination of violations of the human dignity of women and impediments to their full enjoyment of fundamental

\textsuperscript{27} Id.

\textsuperscript{28} Press Release, supra note 15.

\textsuperscript{29} Id.

\textsuperscript{30} Id.

\textsuperscript{31} Id.
freedom in Jamaica must call into consideration the role of cultural and traditional stereotypes in the promulgation of such violations. Amid the problems of globalization, as well as structural and financial problems faced by the nation as a whole, the denial of females to equal access to resources and opportunities plagues the Jamaican culture. Although school enrollment levels for girls and boys are comparable at a primary school level, more girls than boys are enrolled in secondary schools and tertiary institutions, such as the University of the West Indies. But despite Jamaican women’s great academic advancements, including access to continuing education programmes, “they occupied few positions of real power and influence” and also continued to be underrepresented in Jamaican politics. Among rural Jamaican households, women were among the most vulnerable as they suffered unequal access to resources and opportunities as a function of stereotypical cultural and traditional views as to the role of women.

Because women are traditionally relegated to the private sphere, they are forced to seek alternative means of employment for financial independence. The sex industry has often been a means for women to earn a living, but has also caused them to typify gender roles pertaining to their status in society. Not surprisingly, the sex industry, especially as it relates to the tourism trade, has become a source of employment for women in Jamaica and now poses a national problem. Furthermore, considering Jamaica’s reputation as a tourist destination, the growing demand for sex workers, the yield of foreign exchange into the country as a result of the sex-tourism industry, and the fact that there are no explicit laws addressing sex-tourism, will only lead to the industry continuing to thrive. Faced with a high level of unemployment, Jamaican women, many of whom are from rural communities, also

32 Id.
33 Press Release, supra note 15.
34 Id.
35 Id.
37 Id.
sought employment as domestic workers.\textsuperscript{38} The ‘forced’ employment of women in the sex-tourism industry and as domestic workers essentially reflects another layer of their relegation away from the public sector and public life, embedding them deeper into the private sphere wherein violations against them may continue unimpeded.

Jamaican women are further relegated away from the public sphere with regards to their limited role in government. According to reports made to CEDAW, “women have never held positions of Governor General or Prime Minister since political independence in 1962, acting in both capacities only when the incumbents were away from the island.”\textsuperscript{39} With such grave issues as the “feminization of poverty,” growing unemployment and the limited presence of women in the political arena facing Jamaica, gender inequity in the nation’s public sphere is expected to persist.

\textbf{JAMAICAN’S OBLIGATION UNDER HUMAN RIGHTS TREATIES}

Jamaica is a signatory to various international treaties which require the observation of human rights provisions. All

\textsuperscript{38} Press Release, \textit{supra} note 15.

\textsuperscript{39} Press Release, \textit{supra} note 15. Between the period during which this article was written and later published, Mrs. Portia Simpson-Miller was sworn in as the seventh Prime Minister and first female Head of Government of Jamaica on Thursday, March 30, 2006. In the internal vote of one of Jamaica’s leading political parties, the People’s National Party, held on February 26, 2006 to elect former Prime Minister, P.J. Patterson’s successor, Ms. Simpson-Miller was elected as the party’s President. She defeated three other contenders for the position and also ascending to the post of Prime Minister as Mr. Patterson’s replacement. Prior to her victory, Ms. Simpson-Miller was Minister of Local Government, Community Development and Sport since 2002; her some 34 years of service to the party included being Vice President since 1978 and Minister of Tourism and Sport for two years from 2000. Portia Simpson Miller is Prime Minister Designate, Jam. Information Service, (Mar. 5, 2006), available at http://www.jis.gov.jm/officepm/.
these treaties share a common thread as to the worth of the individual, which must be socially respected and protected. Possibly the most specific treaty as to the rights of women however, is the CEDAW, which may be thought of as an international bill of rights for women.\textsuperscript{40} CEDAW also defines the types of discrimination against women and prescribes a plan for national action to eliminate such discrimination.\textsuperscript{41} For the purposes of the Convention, discrimination against women is defined as, “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women” of their human rights and fundamental freedoms in all fields, inclusive of political, economic, social, cultural and civil rights.\textsuperscript{42} In defining discrimination against women, CEDAW also sets forth that the marital status of a woman is negligible as to the consideration of discrimination.\textsuperscript{43} Signatories to the Convention are required to “condemn discrimination against women in all its forms, agree to pursue by all appropriate means” an immediate policy including specified provisions to eliminate discrimination against women.\textsuperscript{44} Accordingly, Jamaica as a signatory to CEDAW, is required to immediately undertake measures designed to extinguish all types of discrimination against women in order to harmonize its national laws with international norms and standards. Towards this end, Jamaica’s national policies must be revamped so that the gender stereotypes inherent in them may give way to gender equity and thereby better reflect those standards upheld by the United Nations, the parent body governing human rights related issues. Such a progressive political endeavor requires that Jamaica adopt new legislation or amend its existing laws.


\textsuperscript{41} Id.

\textsuperscript{42} Id. art. 1.

\textsuperscript{43} Id.

\textsuperscript{44} Id. at art. 2.
Like CEDAW, the International Covenant on Civil and Political Rights [hereinafter "ICCPR"], of which Jamaica is also a signatory, sets forth human rights provisions with which member States must comply.\textsuperscript{45} Article 26 of the ICCPR provides that "the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination" on grounds that include sex.\textsuperscript{46} The ICCPR focuses mainly upon political rights of the individual as the primary realm to be protected from infringement and as central to the human rights of the individual.\textsuperscript{47} As such, the ICCPR, in dealing with the public sphere and the civic rights of the individual, requires that Jamaica change its political culture to incorporate greater participation of women in public life. Changing the political culture within Jamaica however, is especially difficult because, as is the case in most countries, the culture "was determined by men, and a change in that system [would] not come naturally."\textsuperscript{48} Cultivating a society in which an equal number of women and men participate in deciding its future will only come from consistent gender analyses of existing domestic policies and a systematic approach to eliminating all types of discrimination based on sex.

Arguably the most amorphous of those international treaties to which Jamaica is bound is the International Covenant on Economic, Social and Cultural Rights ["ICESCR"].\textsuperscript{49} Though the ICESCR recognizes the inherent dignity of the individual, it prescribes that member States must undertake steps, especially of an educational and technical nature, to adhere to its provisions to that extent that the nation's resources allow.\textsuperscript{50} Because of the ICESCR's "national resources" clause, a State party to the


\textsuperscript{46} \textit{Id.}

\textsuperscript{47} \textit{Id.}

\textsuperscript{48} Press Release, \textit{supra} note 15.


\textsuperscript{50} \textit{Id.}
Convention may plead financial inability or other incapacity as justifications for its noncompliance with the treaty's provisions. Notably however, the less demanding nature of the ICESCR suggests that the social, economic and cultural rights upheld in the Convention are subject to less recognition and protection as fundamental human rights than are the civil and political rights upheld by the ICCPR. Alternatively, the ICESCR's less than insistent language may evince the view that cultural rights and those other rights it upholds as most important to human worth, are more difficult to protect as they require the State to engage in systematic education in targeting all segments of the society simultaneously.\footnote{Id.} The ICESCR essentially requires the nation State not only to revamp its legislations in accordance with the United Nations' human rights standards, but also requires an adoption of a new, often different social and cultural model. This kind of paradigm shift in Jamaica's sociopolitical culture would require a more hands on approach and financial investment on the nation's part. In addition to its ratification of various international treaties however, the Jamaican government should also "open itself up to international scrutiny by ratifying conventions against torture."\footnote{Jamaica Rejects Report by US Group Linking HIV with Discrimination, Caribbean Media Corporation News Agency, (Nov. 24, 2004), available at LEXIS, BBC Worldwide Monitoring: International Reports.} Such an initiative by the Jamaican government would better realize the goal of prohibiting various forms of abuse against women by making such abuses punishable under international law as acts of violence, in violation of human rights standards.