



# Pan Caribbean Partnership against HIV and AIDS (PANCAP)

**Policy Brief advocating for Law reform in Jamaica to Respond  
to Gender-Based Violence and Stigma and Discrimination**

## **I. Summary**

Gender based violence (GBV) is widespread in Jamaica. Data shows that more than 1 in every 4 women in Jamaica between the ages of 15 and 64 years of age will experience intimate partner violence. Further, a similar proportion of women will also experience non-partner sexual violence.

The data shows that certain factors heighten women and girls' vulnerability to GBV, in particular intimate partner violence (IPV). These include young age, lower level of education, pregnancy, childhood violence, and early cohabitation with male partner. Social and cultural attitudes further undergird traditional gender roles within the social order.

While the legal framework in Jamaica provides protection against GBV, several gaps leave particular groups unprotected. Some forms of abuse and violence are also not recognized as such under the laws. Additionally, there are also various institutional and cultural challenges to the effective enforcement of the laws that are in place. Legal and policy reform is, therefore, urgently needed in order to remove the obstacles that obstruct access to protection and thwart the progressive realization of gender equality in Jamaica.

## **II. Introduction**

GBV is one of the most prevalent human rights violations in the world. Evidence shows that women and girls are disproportionately affected by GBV, with intimate partner violence (IPV) being the most common form.

Despite the increasing recognition of GBV as a serious problem, both globally and regionally, the high incidence of GBV remains steady. This advocacy brief is based on the "Women's Health Survey 2016

Jamaica" Survey, as well as reports from civil society organizations, analysing the nature and prevalence of GBV in Jamaica. The brief will describe the situation of GBV in Jamaica and propose specific legal and policy reform measures needed to improve the country's response to GBV.

## **III. Prevalence of GBV in Jamaica**

While there are risk factors which increase the likelihood of women and girls experiencing GBV, it is important to underscore that women's experience of GBV is universal and cuts across socioeconomic boundaries. Indeed, the 2016 Survey revealed that the most common form of violence experienced by women in the country is IPV inflicted by a current or ex-spouse. Approximately 25% of women experience physical violence and 7.7% of women experience sexual violence at the hands of their male partner. Sexual violence against women by non-partners is also high in Jamaica.

These cut across all socioeconomic and educational backgrounds. Still, age, level of education, and intergenerational violence, were identified as the three strongest predictors of GBV for women and girls in Jamaica. The Survey showed a correlation between a younger age and a higher incidence of GBV. Adolescent and young women were seen to be disproportionately affected by sexual violence with 83% of reported rapes in 2015 being of women and girls up to 24 years old. Additionally, women who had entered into a live-in partner relationship at an early age (under 19 years old) had a higher prevalence of lifetime IPV, than those who entered into such relationships at 19 years and older. Early cohabitation was also seen to impact the social and cultural attitudes held by women. For instance, women and girls who had lived with a man by the time they were 18 years old

held more patriarchal views of IPV than women who were older at the time they first lived with a male partner. Women who first cohabited with a man at an early age were twice as likely (15 per cent) to believe that there are situations that justify IPV compared to women who were older when they first lived with a male partner.

Social and cultural attitudes also vary according to the level of education. In the Survey, women with only a primary level education were four times as likely as women with a tertiary education to believe a rape victim was in some way responsible for being raped. Likewise, women with lower levels of education were shown to experience higher prevalence of IPV and in more severe forms than women with higher levels of education.

The other factor which was seen to have a strong correlation with GBV vulnerability is exposure to childhood violence or intergenerational violence. The data shows that women whose male partners were exposed to violence in childhood had a higher rate of IPV victimization than other women. Women's exposure to childhood violence also increases the likelihood of experiencing IPV in adulthood. These experiences were not only linked an increase in IPV experience, but also in the severity of the violence.

Civil society organisations, such as the Caribbean Vulnerable Communities Coalitions ('CVC Coalition'), have also noted that persons with HIV, lesbian and bisexual women and transgender persons face a heightened risk of experiencing GBV. Lesbian, bisexual women and transgender persons face a unique risk of being victims of 'corrective rape', meaning rape carried out with the purpose of forcing the person to conform to the traditional norms of sexuality

and identity. The CVC Coalition reported 17 rapes against LBT persons within a period of five months in 2015. CVC also notes that violence against women and girls increases their vulnerability to HIV/AIDS, and HIV infection further increases women's vulnerability to violence.

Much of this grim reality is sustained by the beliefs upheld in society. The Survey revealed alarming social attitudes about gender roles in Jamaica. A concerning 77.4% of the women interviewed believe that it is natural (God-intended) that man should be the head of the family and a 70.2 % agree that a woman's main role is to take care of the home. 32.2 % believe that a wife should obey her husband even when she disagrees with him and 3.4% obligated to have sex with her husband whenever he wants. These deeply entrenched social attitudes sustain GBV in society and make it difficult for victims to report GBV. In fact, even though about 81.6% of women inform someone about their experience with IPV, about two-thirds of women do not seek help from and make reports to the formal redress mechanisms for concerns about confidentiality, among others. Most women rely on their own social network to obtain some form of support.

#### **IV. Legal and Regulatory Response**

As a signatory to numerous international and regional human rights instruments, Jamaica has an obligation to ensure that the rights of persons are respected and protected within its jurisdiction. In an effort to address GBV and comply with its human rights obligations, Jamaica enacted the following laws: -

##### *a) The Domestic Violence Act (DVA)*

Under the DVA<sup>1</sup>, victims of physical and mental abuse by persons living within the same household, or with whom they are in a

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<sup>1</sup> Enacted in 1996 and amended in 2004

visiting relationship are able to obtain a protection and/or occupation order against the abuser. A protection order prohibits the abuser from contacting and being in close physical proximity of the victim. An occupation order gives the victim exclusive use a home, furnishing and personal effects.

*b) Offences Against the Person Act*

The OAPA provides criminal redress for physical assault and acts of sexual exploitation and defilement of women and children.

*c) Sexual Offences Act*

This Sexual Offences Act repealed the Incest (Punishment) Act and repealed sections 44-67 of the Offences Against the Person Act (OAPA) which deal with offences against females. The Act reforms and incorporates a complete legal framework for addressing various forms of sexual misconduct. The Act strengthen the definition of rape by expanding on the issue of consent and created the offence of grievous sexual assault and marital rape. Additionally, complainants of sexual offences are also afforded certain protection in the criminal proceedings, such as a prohibition against their sexual history being used as evidence.

*d) The Maintenance Act*

The Maintenance Act makes provisions for maintenance within the family and confers equal rights and obligations on spouses with respect to the support of each other and their children. This Act is a companion to the Property (Rights of Spouses) Act where “spouse” is similarly defined to include a de facto (common law) spouse.

*e) The Child Care and Protection Act*

The Child Care and Protection Act imposes a mandatory requirement on citizens to report suspected or known acts of child abuse, including sexual abuse.

*f) The Child Pornography (Prevention) Act*

This Act prohibits the production, distribution, importation, exportation or possession of child pornography and the use of children for child pornography.

*g) Trafficking in Persons (Prevention Suppression and Punishment)*

Recognizing that women and girls are the main victim of trafficking for the purpose of sexual exploitation, this Act provides for their protection by creating the offence of trafficking in persons

In 2017, Jamaica has also launched a ten-year National Strategic Action Plan to Eliminate Gender Based Violence in Jamaica. While the Plan presents a comprehensive approach to combatting GBV, the Plan’s implementation has been slow.

## **V. Gaps and Challenges**

Despite the existing legal framework addressing GBV, there is still a high incidence of GBV. Legal vacuums leave persons either partially or totally unprotected. For instance, while the DVA enhanced its protective scope in 2004, the Act still fails to respond to the realities faced by same sex couples by failing to provide any protection to persons in same sex relationships. Furthermore, the categories of persons who may apply for these orders are also limited to persons within the household and do not include medical practitioners, counsellor or other frontline responders. The Act also lacks a definition of domestic violence, and only includes protection for mental and physical abuse. Financial abuse is, therefore, not covered.

Similarly, the Sexual Offences Act has a several weaknesses. First, the definition of rape under the Act is quite restrictive. Rape is

defined as occurring only upon the non-consensual penetration of a vagina by a penis. Rape, therefore, may only be perpetuated by a man against a woman and only with the use of a penis. Anal or mouth penetration with a penis or an object is not regarded as rape. Then, while the offence of marital rape is recognized, the offence may occur only in five situations, such as in a separation or divorce. A woman in an “intact” marriage is, therefore, unable to obtain redress for marital rape.

The OAPA also presents an obstacle in GBV through its continued criminalization of male same sex activity, thereby perpetuating discrimination against homosexuals in Jamaica.

Additionally, there is no HIV specific law in Jamaica addressing HIV related issues. None that ensures access to HIV and AIDS preventative measures, care and treatment without discrimination for sex workers, persons who use drugs, or men who have sex with men.

There is also a notable absence of laws addressing sexual harassment in the workplace, despite a Bill being presented in 2015.

Gaps not only exist within the legal framework. There is also a gap between the law and practice. Data shows that often victims do not resort to the protection under the Domestic Violence Act. When they do, they report experiencing difficulties in getting officials to enforce the orders granted. There is also a gap in the data collection efforts. The 2016 Survey was the first comprehensive study of violence against women and girls. Here, it is important to note the tremendous contribution of civil society organizations such as CVC Coalitions, Jamaicans For Justice and Stand Up Jamaica,

who are narrowing this evidence gap by gathering and collating information on incidents of GBV. Presently, these organizations, with the support of the Global Fund, are gathering data through the Shared Incident Database, an online platform used to record and exchange information about issues affecting vulnerable populations.

## **VI. Recommendations**

In light of the above, PANCAP urges the State to implement the following:-

- a) Support and encourage the work of civil society organizations leading evidence-based advocacy for improved policymaking;
- b) Adopt the PANCAP Model Anti-Discrimination Legislation to prohibit discrimination on the grounds of HIV status, sexual orientation, lawful sexual activity, disability, gender in order to enhance the protection under the current legal framework and remove the stigma key populations;
- c) Redefine “sex” and rape” under the laws of Jamaica to allow for recognition, reporting and redress for everyone who experiences GBV, including Lesbians, Bisexual and Transgender person. “Rape” should include any forceful penetration of the vagina anus or mouth by any body part or foreign object;
- d) Amend section 76 and 77 of the OAPA to decriminalize male same sex activity between adults;
- e) Include a definition of Domestic Violence in the DVA;

- f) Amend the Sexual Offences Act to criminalise marital rape in all circumstances;
- g) Expand the category of persons protected under the DVA and the Property Rights of the Spouses Act to include persons in same sex relationships;
- h) Enact an HIV specific law to address HIV related issues, especially relating to discrimination, stigma and confidentiality;
- i) Impose sanctions for breaches of confidentiality within the health sector to protect and encourage reporting of GBV;
- j) Ensure that the multi-stakeholder activities to implement the National Strategic Action Plan on Gender-based Violence are guided by the evidence;
- k) Allocate funding for the periodic implementation of survey to provide data to guide and assess interventions under the National Strategic Action Plan on Gender-based Violence.
- l) Strengthen and expand existing institutions (governmental and NGOs), programmes and interventions that seek to address GBV prevention and response:
- m) Ensure GBV responders/frontline workers are trained to identify victims of GBV and to respond effectively:
- n) Initiate GBV prevention strategies that promote gender equality in homes, schools, workplaces and communities.
- o) Enhance community protective factors by recognising and raising awareness about the importance of informal support.
- p) Roll out structured and sustained behaviour change campaigns to shift culture in relation to gender equality and GBV, including the stigmatisation of GBV;
- q) Ensure that police and public health system, which are the two institutions at the forefront of the efforts to protect women from violence in cases where they do seek formal support, have staff who are trained and equipped to identify victims of GBV and understand and address their needs, including making appropriate referrals and reports and follow up where needed;
- r) Scale-up widescale training of potential service providers in a range of institutions such as faith-based organisations and women's groups on how to assist women when they come forward to seek help in such instances; and
- s) Establish counselling centres and shelters in each parish for women and their children who suffer intimate partner violence. These centres can be established in partnership with civil society.