

Jamaica

# Women of the World:

## Laws and Policies Affecting Their Reproductive Lives



Latin America and the Caribbean

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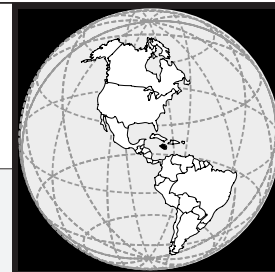
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# Jamaica



## Statistics

### GENERAL

#### *Population*

- Jamaica's population is approximately 2.5 million,<sup>1</sup> with women accounting for slightly more than half the population.<sup>2</sup> The annual population growth rate is 0.9%.<sup>3</sup>
- Nearly one-third of the population is under the age of 15.<sup>4</sup>
- In 1994, approximately 55% of the population resided in urban areas, and the average annual rate of growth for the urban population from 1990 to 1994 was 2.1%.<sup>5</sup>

#### *Territory*

- Jamaica has a surface area of 4,244 square kilometers.<sup>6</sup>

#### *Economy*

- The World Bank estimates Jamaica's gross national product per capita in 1994 was U.S.\$1,540.<sup>7</sup>
- From 1990 to 1994, gross domestic product ("GDP") grew at an estimated annual rate of 3.5%.<sup>8</sup>
- From 1992 to 1993, the government spent approximately 6% of its GDP on health,<sup>9</sup> compared with the U.S. which spent approximately 12.7% of its GDP on health in 1990.<sup>10</sup>

#### *Employment*

- In 1993, 1.3 million persons were employed in Jamaica.<sup>11</sup> Women account for 45% of the total labor force.<sup>12</sup>
- In 1992, the female unemployment rate in Jamaica was 22.8%, and the total unemployment rate was 15.7%.<sup>13</sup>

### WOMEN'S STATUS

- The average life expectancy for women is 76.8 years, compared to 72.4 years for men.<sup>14</sup>
- The percentage of females attending secondary schools in Jamaica has been consistently higher than that of males. While adult illiteracy among males is 19%, it is only 11% for females.<sup>15</sup>
- 42% of Jamaican women are heads of households.<sup>16</sup>
- 1,108 rapes were reported to police in 1992, and the Women's Crisis Centre, established in 1985 in Kingston, recorded more than 2,000 telephone calls and office visits relating to incidents involving rape, incest, domestic violence, domestic crisis, or requests for shelter in 1991.<sup>17</sup>

### ADOLESCENTS

- Although the median age at marriage for Jamaican women was most recently estimated at 29.7<sup>18</sup> years, a 1988 survey of Jamaican females aged 14 to 24 revealed an average age of sexual initiation of 16.9 years.<sup>19</sup>
- Nearly one-fourth of all births in Jamaica are to adolescent women.<sup>20</sup>

### MATERNAL HEALTH

- The total fertility rate in Jamaica from 1990 to 1995 was 2.4 children per woman, down from 5 children per woman from 1970 to 1975.<sup>21</sup>
- The maternal mortality rate for Jamaica for 1990 was estimated to be 115 deaths per 100,000 live births.<sup>22</sup>
- The infant mortality rate is 12 per 1,000 live births.<sup>23</sup> In 1993, the under-five mortality rate was 17 per 1,000 live births.<sup>24</sup>
- In Jamaica, 92% of births are assisted by trained attendants.<sup>25</sup> While 75% of mothers accessed antenatal care in the 1980s, the proportion fell below 70% in 1990. But the proportion of women accessing postnatal service increased from 37% in 1981 to 67% in 1991.<sup>26</sup>

■ In 1985, eighty-four percent of all births in Jamaica were to unmarried women.<sup>27</sup> Kingston's illegitimacy rate was 89% in 1981, and national out-of-wedlock birthrates have been higher than 60% for the entire 20th century.<sup>28</sup>

#### CONTRACEPTION AND ABORTION

■ 67% of Jamaican women report using some method of birth control, and 64% report using a modern method of birth control.<sup>29</sup>

■ Because abortion is illegal in most circumstances in Jamaica, it is difficult to get information about its prevalence there. It is estimated that there were from 10,000 to 20,000 illegal abortions in the 1970s and that 20% of all gynecological beds in Jamaican hospitals were occupied by patients suffering from the effects of illegal abortions. Seven and one-half percent of all maternal deaths were attributed to septic abortion.<sup>30</sup>

#### HIV/AIDS AND STIs

■ Through 1996, there have been 2,060 reported cases of AIDS in Jamaica since 1982. Five hundred and twenty seven new cases were reported in 1996. Two hundred and six of those stricken were women.<sup>31</sup>

■ Transmission of the HIV virus occurs mainly through heterosexual contact in Jamaica.<sup>32</sup>

■ The incidence of sexually transmitted infections in Jamaica is high, with 5,125 cases of gonorrhea, 2,414 cases of syphilis, and 7,455 cases of chlamydia having been reported in 1995.<sup>33</sup>

#### ENDNOTES

1. UNITED NATIONS POPULATION FUND, *THE STATE OF WORLD POPULATION: THE RIGHT TO CHOOSE: REPRODUCTIVE RIGHTS AND REPRODUCTIVE HEALTH 72 (1997)* [hereinafter *STATE OF WORLD POPULATION 1997*].

2. JAMAICA NATIONAL PREPARATORY COMMISSION, *NATIONAL REPORT ON THE STATUS OF WOMEN IN JAMAICA, PREPARED FOR THE FOURTH WORLD CONFERENCE ON WOMEN, BEIJING: SEPTEMBER, 1995, 15 (1994)* [hereinafter *NATIONAL REPORT*]. Statistics here are from 1992.

3. *STATE OF WORLD POPULATION 1997*, *supra* note 1, at 72.

4. *NATIONAL REPORT*, *supra* note 2, at 15, ¶1.3.

5. WORLD BANK, *WORLD DEVELOPMENT REPORT 1996: FROM PLAN TO MARKET 204 (1996)* [hereinafter *WORLD DEVELOPMENT REPORT 1996*].

6. WORLD ALMANAC BOOKS, *THE WORLD ALMANAC AND BOOK OF FACTS 1997*, at 787 (1996).

7. *Id.*, at 188.

8. *Id.*, at 208.

9. *NATIONAL REPORT*, *supra* note 2, at 53, ¶6.4.18.

10. WORLD BANK, *WORLD DEVELOPMENT REPORT 1993: INVESTING IN HEALTH: WORLD DEVELOPMENT INDICATORS 211 (1993)*.

11. WORLD BANK, *WORLD TABLES*, 379 (1995).

12. *WORLD DEVELOPMENT REPORT 1996*, *supra* note 5, at 194.

13. *NATIONAL REPORT*, *supra* note 2, at 58, table 6.4.

14. *STATE OF WORLD POPULATION 1997*, *supra* note 1, at 69.

15. *WORLD DEVELOPMENT REPORT 1996*, *supra* note 5, at 200.

16. *NATIONAL REPORT*, *supra* note 2, at 6, ¶3.9a.

17. *Id.*, at 69.

18. UNITED NATIONS, *THE WORLD'S WOMEN 1995: TRENDS AND STATISTICS 35 (1995)* [hereinafter *THE WORLD'S WOMEN 1995*]. This statistic is from the early 1980s.

19. *NATIONAL REPORT*, *supra* note 2, at 50, ¶6.4.8.

20. *Id.*

21. *THE WORLD'S WOMEN 1995*, *supra* note 17, at 30.

22. *Id.*, at 86.

23. *STATE OF WORLD POPULATION 1997*, *supra* note 1, at 69.

24. WORLD BANK, *WORLD DEVELOPMENT REPORT 1995: WORKERS IN AN INTEGRATING WORLD 214 (1995)*.

25. *STATE OF WORLD POPULATION 1997*, *supra* note 1, at 72.

26. *NATIONAL REPORT*, *supra* note 2, at 50, ¶6.4.7.

27. *THE WORLD'S WOMEN*, *supra* note 17, at 19.

28. SUZANNE LAFONT, *THE EMERGENCE OF AN AFRO-CARIBBEAN LEGAL TRADITION: GENDER RELATIONS AND FAMILY COURTS IN KINGSTON, JAMAICA 30 (1996)*.

29. *THE WORLD'S WOMEN*, *supra* note 17, at 86.

30. UNITED NATIONS, *ABORTION POLICIES: A GLOBAL REVIEW, VOLUME II, GABON TO NORWAY 78 (1993)*.

31. *AIDS costs JA \$50m*, *THE GLEANER*, February 7, 1997, at 1.

32. *NATIONAL REPORT*, *supra* note 2, at 54, ¶6.5.3.

33. PLANNING INSTITUTE OF JAMAICA, *ECONOMIC AND SOCIAL SURVEY 22.8 (1985)*.

Jamaica is a Caribbean island with an area of 4,244 square miles<sup>1</sup> and a population of approximately 2.5 million.<sup>2</sup> Although it is a multiracial country, the majority (76%) of its people are of African descent. Fifteen percent are Afro-European, and there are small minorities originating from the United Kingdom, India, China, Syria, Portugal, and Germany.<sup>3</sup> Jamaica is a predominantly Christian country. While 56% of the population is Protestant,<sup>4</sup> there are churches of all denominations, as well as small Jewish, Muslim, and Hindu minorities.<sup>5</sup>

In 1962, after more than 300 years of British colonial rule, Jamaica attained independent status.<sup>6</sup> Jamaica is a monarchical constitutional parliamentary democracy and a member of the British Commonwealth of Nations. Queen Elizabeth II is the nominal head of state and is represented by Governor General Howard Cooke, who has held this office since 1991.<sup>7</sup> Since free elections were established under universal adult suffrage in 1944, two political parties have alternated in power; in 1995, a third major party was established.<sup>8</sup>

## I. Setting the Stage: the Legal and Political Framework

To understand the various laws and policies affecting women's reproductive rights in Jamaica, it is necessary to consider the legal and political systems of the country. Without this background, it is difficult to determine the process by which laws are enacted, interpreted, modified, and challenged. The passage and enforcement of law often involves specific formal procedures. Policy enactments, on the other hand, are usually not subject to such a process.

### A. THE STRUCTURE OF NATIONAL GOVERNMENT

Jamaica has a monarchical democratic parliamentary system of government. The head of state is Queen Elizabeth II, head of the British Commonwealth. Her representative in Jamaica is the governor general, whom the queen appoints and who holds office for as long as the queen determines.<sup>9</sup> The three arms of government are (1) the executive,<sup>10</sup> (2) the legislative,<sup>11</sup> and (3) the judiciary.<sup>12</sup>

#### **Executive branch**

Executive authority in Jamaica is formally vested in the queen and is to be exercised on her behalf by the governor general.<sup>13</sup> In practice, the prime minister and the cabinet exercise executive control over the administration.<sup>14</sup> The cabinet, which consists of the prime minister and no fewer than 11 other ministers, is the principal policy instrument of Jamaica. It is in

charge of the general direction and control of the government and is collectively responsible to Parliament.<sup>15</sup>

The governor general selects the prime minister from the members of the House of Representatives, all of whom are popularly elected. Under Jamaican law, the governor general appoints the person who in his judgment is best able to command the confidence of a majority of the members of the House.<sup>16</sup> However, in practice, he is obliged to select the leader of the party that wins a majority of the seats in Parliament.<sup>17</sup> The governor general also appoints the other ministers of state on the advice of the prime minister.<sup>18</sup> The governor general, in consultation with the prime minister, appoints an attorney general, who is the principal legal advisor to the government of Jamaica.<sup>19</sup> The director of public prosecutions, who has power to institute and undertake criminal proceedings, is appointed by the governor general on the advice of the Public Service Commission.<sup>20</sup>

The governor general, in consultation with the prime minister, appoints the six-member Privy Council, whose primary function is to make recommendations to the governor general regarding his prerogative of mercy. This empowers the governor general to pardon persons convicted of criminal offenses, grant temporary or indefinite respites from criminal punishment, lessen the punishments imposed, or remit the whole or part of any punishment.<sup>21</sup> Members of the Privy Council serve for a term of up to three years.<sup>22</sup> The governor general summons the Privy Council<sup>23</sup> and, so far as is practicable, attends and presides over its meetings.<sup>24</sup>

Other than the aforementioned powers, the governor general has little executive power. The governor general's powers with respect to external affairs are exercisable only on the advice of the foreign minister.<sup>25</sup> While the governor general has the formal authority to dissolve Parliament and make appointments to tribunals of inquiry as well as ministerial and legislative positions, in practice his role is to lend formal approval to the decisions of the prime minister and other ministers of state.<sup>26</sup>

The prime minister controls the allocation of ministerial offices and has the power to advise the prorogation, or dissolution, of Parliament. As a result, the prime minister can control the timing of general elections.<sup>27</sup> Although the House of Representatives may resolve that the appointment of the prime minister be revoked, the prime minister can prevent the enactment of such a resolution by requesting that the governor general dissolve Parliament.<sup>28</sup> The prime minister, in consultation with the leader of the opposition, appoints the chief justice and the president of the Court of Appeal, as well as members of the Service Commissions, which oversee public servants and serve to insulate public service from political patronage and partisan

pressure.<sup>29</sup> The Defense Law of 1962 confers on the prime minister the right to issue orders to the Chief of Staff of the Jamaica Defense Force “for the purpose of maintaining and securing public safety and public order.”<sup>30</sup>

### **Legislative branch**

The Parliament of Jamaica consists of the governor general, representing the queen; the Senate; and the House of Representatives.<sup>31</sup> The governor general appoints 13 of the 21 members of the Senate, in accordance with the advice of the prime minister, and the remaining eight in accordance with the advice of the leader of the opposition.<sup>32</sup> The Constituencies (Boundaries) Order of 1959 divided Jamaica into 45 constituencies, each of which elects one member to the House of Representatives.<sup>33</sup> The Jamaica (Constitution) Order in Council of 1962 (the “Jamaican Constitution”)<sup>34</sup> allows the governor general to increase the number of constituencies to a maximum of 60.<sup>35</sup>

Parliament makes laws “for the peace, order and good government of Jamaica.”<sup>36</sup> Each Parliament sits for five years,<sup>37</sup> but the governor general may dissolve the Parliament at any time in accordance with the advice of the prime minister.<sup>38</sup> A Parliament’s life can also be extended in time of war for an additional two years.<sup>39</sup> Members of both the House of Representatives and the Senate generally serve for the duration of the Parliament.<sup>40</sup> General election of members of the House of Representatives must be held within three months of the dissolution of Parliament.<sup>41</sup>

### **Judicial branch**

In most common law legal systems, including Jamaica’s, courts both create and interpret law. The judicial system can have a significant impact on legislation, including laws that affect reproductive rights, because it is able to enforce the law and rule on complaints from individuals challenging the constitutionality of specific laws. While the Jamaican Constitution does not explicitly embrace the doctrine of the separation of powers, following the common law tradition, it is a basic principle of Jamaican constitutional law that judicial bodies should not be subject to the control or directions of the other two branches of government.<sup>42</sup>

The Jamaican Constitution establishes two separate superior courts, the Court of Appeal and the Supreme Court of Judicature (the “Supreme Court”).<sup>43</sup> It does not establish a system of inferior courts; independent statutes, such as the Judicature (Resident Magistrates) Act of 1928 (the “Resident Magistrates Act”)<sup>44</sup> and the Judicature (Family Court) Act of 1975 (the “Family Court Act”),<sup>45</sup> established the inferior court system. The Jamaican Constitution empowers the Court of Appeal to hear civil and criminal appeals from the Supreme

Court and from the Resident Magistrates Courts.<sup>46</sup> It also hears appeals from orders in contempt proceedings.<sup>47</sup>

The final court of appeal for Jamaica is Her Majesty in Council.<sup>48</sup> Appeals to Her Majesty in Council can be made from decisions of the Jamaican Court of Appeal as of right<sup>49</sup> or with leave of the Court of Appeal.<sup>50</sup> Appeals can be made from decisions of the Court of Appeal as of right when the matter in dispute involves a sum of at least J\$1,000 (approximately U.S. \$30);<sup>51</sup> claims or questions regarding property; or final decisions in any civil proceeding,<sup>52</sup> including those for dissolution of marriage<sup>53</sup> and those relating to the interpretation of the Constitution of Jamaica.<sup>54</sup> Appeals with the leave of either the Court of Appeal or of the queen arise in more limited circumstances. Where the Court of Appeal is of the opinion that although there is no constitutionally established right of appeal, the matter is of such great general or public importance that it ought to be submitted to the queen for determination, the Court of Appeal can submit the case to Her Majesty in Council.<sup>55</sup>

The Supreme Court, originally created in 1880, was declared to be “the Supreme Court for the purposes of the [Jamaican] Constitution.”<sup>56</sup> Its jurisdiction in civil and criminal matters is unlimited, with the court’s civil jurisdiction encompassing common law, equity, family law, bankruptcy, and admiralty matters.<sup>57</sup> Presiding over this court are the chief justice, a senior associate judge, and other associate judges (referred to as puisne judges).<sup>58</sup> Below the level of the Supreme Court are the Resident Magistrates Courts. The Resident Magistrates Courts were created by statute, and their jurisdiction is therefore derived entirely from statute, not from constitutional authority.<sup>59</sup> They are inferior courts of record with broad jurisdiction over common law actions, cases involving land, actions in equity, probate and administration, and bankruptcy.<sup>60</sup> There is one such court in each of the 14 parishes.<sup>61</sup> Within the Resident Magistrates Courts’ jurisdiction are the Traffic and Family Courts. The Family Courts have concurrent jurisdiction with the Supreme Court in relation to paternity, maintenance, and custody of children. They also preside over cases involving the adoption of children.<sup>62</sup> The Domestic Violence Act of 1995 (“Domestic Violence Act”)<sup>63</sup> has extended the jurisdiction of the Family Courts and Resident Magistrates Courts by granting to them sole jurisdiction to deal with all applications for protection, occupation, and ancillary orders obtainable under the act.<sup>64</sup>

### **B. THE STRUCTURE OF TERRITORIAL DIVISIONS**

Jamaica is divided into 14 administrative districts called parishes. Each parish has its own individual Parish Council with elected members. The parishes of Kingston and St. Andrew are, however, constituted under one Parish Council, known as the

Kingston and St. Andrew Corporation.<sup>65</sup> The Parish Councils serve as local, administrative bodies, but the scope of their authority is limited.<sup>66</sup> Parish Councils are corporations and have the capacity to enter into contracts; sue and be sued; and acquire, hold, and dispose of real and personal property.<sup>67</sup> They are headed by a mayor and comprise parish councilors who are elected in a general election every three years.<sup>68</sup> The Parish Councils provide services in the areas of public health and sanitation; water supply; poor relief; maintenance of minor roads and of street lighting; regulation of markets and slaughterhouses; fire services; maintenance of cemeteries; and regulation of the development of private property.<sup>69</sup>

### C. SOURCES OF LAW

#### ***Domestic sources of law***

Laws that affect women's legal status — including their reproductive rights — derive from a variety of sources. As a former British colony, Jamaica's legal system is based in English common law. "Common law" is a body of law that develops and derives from judicial decisions, which have precedential value in future disputes, as distinguished from legislative enactments. The sources of law in Jamaica are the Jamaican Constitution, acts of Parliament, the common law, and subsidiary legislation made thereunder in the form of rules, regulations, proclamations, and orders.<sup>70</sup> The Constitution declares itself the supreme law of the land. Any law that is inconsistent with its provisions is void to the extent that it is in conflict.<sup>71</sup> The Constitution also provides, however, for its own amendment through act of Parliament.<sup>72</sup> Constitutional amendments generally require the approval of a two-thirds majority of both the House of Representatives and the Senate.<sup>73</sup> If the Senate twice rejects such an amendment, it may be submitted to the general electorate. Depending on the nature of the proposed amendment, the Constitution requires either a three-fifths or two-thirds majority of the electorate to override the Senate's rejection of the measure.<sup>74</sup>

The Constitution enumerates certain fundamental human rights and freedoms afforded protection without regard to "race, place of origin, political opinions, color, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest."<sup>75</sup> The Constitution's antidiscrimination provision, however, defines as discriminatory any action "affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, color, or creed."<sup>76</sup> Discrimination based on gender is thus not explicitly prohibited. This nondiscrimination provision also specifically provides that its terms shall not apply to any law related to adoption, marriage, divorce, burial, devolution of property on death, or other

matters of personal law.<sup>77</sup> Constitutional provisions relating to fundamental rights underlie and are applicable to all proceedings in every court.<sup>78</sup> However, relief on constitutional grounds will only be granted if all other processes for relief have been exhausted or there is no other form of relief available in law.<sup>79</sup>

Decisions made by the United Kingdom Privy Council on cases from other territories, as well as decisions of the British House of Lords, have highly persuasive authority in the courts of Jamaica. Decisions made by the Privy Council in relation to cases on appeal from Jamaica have binding authority.<sup>80</sup>

#### ***International sources of law***

Because international instruments are legally binding, they create an obligation on the part of the government to undertake numerous actions, including those at the national level. Treaties are considered acts of state in Jamaica and, as such, may be entered into by the executive branch, which controls most aspects of foreign policy without parliamentary scrutiny. Subject to the exceptions noted below, treaties are immune from judicial review and do not require prior parliamentary approval for their negotiation, signature, or ratification.<sup>81</sup> Under common-law practice as applied in Jamaica, the executive branch must submit to Parliament those treaties that involve a reduction or alteration of the rights or legal obligations of Jamaican citizens, an extension of the powers of the executive, or the imposition of financial obligations on the state.<sup>82</sup> The government is bound under international law by any treaty that it enters into, whether or not parliamentary ratification has been secured.<sup>83</sup> If an international convention has been signed or ratified by Jamaica, the government must comply with its terms and, if necessary, enact local legislation implementing those terms.<sup>84</sup>

The Jamaican government is party to a number of international legal instruments, including, *inter alia*, the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>85</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>86</sup> the International Covenant on Civil and Political Rights,<sup>87</sup> the Convention on the Elimination of All Forms of Discrimination Against Women,<sup>88</sup> the Convention on the Rights of the Child,<sup>89</sup> and the American Convention on Human Rights.<sup>90</sup> Jamaica has not yet signed the recently concluded Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ("Convention of Belém do Pará").<sup>91</sup>

## II. Examining Health and Reproductive Rights

In Jamaica, issues of reproductive health and rights are dealt with within the context of the country's health and population policies. Thus, an understanding of reproductive rights in Jamaica must be based on an examination of those policies.

### A. HEALTH LAWS AND POLICIES

#### *Objectives of the health policy*

Although discussions for the elaboration of a new national health policy are taking place, there is currently no national health policy in effect.<sup>92</sup> The Jamaican Ministry of Health is the principle provider of health care and operates under principles outlined in three policy documents: the Population Policy and Primary Health Care Strategy of 1977; the National Health Policy of 1991; and the World Health Organization's ("WHO") Health for All by the Year 2000.<sup>93</sup>

#### *Infrastructure of health services*

The Public Health Act of 1985 (the "Public Health Act")<sup>94</sup> established one national Central Health Committee<sup>95</sup> and a local Board of Health in each parish.<sup>96</sup> The Central Health Committee advises the minister of health and the local boards on matters connected to public health.<sup>97</sup>

Health services are available to all persons in Jamaica at public hospitals, clinics, private hospitals, and private doctors' offices. As of 1995, there were about 350 government-operated health centers in Jamaica, which provide traditional primary health care and basic curative medical care.<sup>98</sup> The Ministry of Health also operates 19 acute-care hospitals and three specialized chronic-care facilities.<sup>99</sup> The implementing agencies for primary health care are the Ministry of Health, nongovernmental organizations ("NGOs"), the private sector, private doctors, and churches. In particular, approximately fifty NGOs participate in the provision of health care services and thus supplement the services that the Ministry of Health provides.<sup>100</sup> The University Hospital of the West Indies in Kingston, Jamaica, is a teaching hospital for doctors of all specialties.<sup>101</sup>

#### *Cost of health services*

Although WHO recommends a minimum allocation of 10% of a country's total budget to maintain its health system, Jamaica's governmental allocation for health has declined from 79% of the national budget for 1979 to 1980 to 6.0% for 1992 to 1993.<sup>102</sup> The government-allocated budget to the Ministry of Health for health care services for 1996 to 1997 is J\$5,409,875,000 (or

approximately U.S.\$160 million).<sup>103</sup> The government has instituted a cost recovery program in all public hospitals and clinics. The program requires that patients pay 5% of the market rate for medical treatment and medication.<sup>104</sup> Patients are thus required to pay J\$20 (U.S.\$60) for antenatal visits and J\$10 (U.S.\$30) for medication at public institutions. Condoms are provided free of charge. All other contraceptives and reproductive health services are charged at 5% of their market price.<sup>105</sup>

In April 1997, the health minister, Dr. Peter Phillips, introduced a Green Paper in the House of Representatives proposing a national health insurance plan to cover essential medical services for all residents of Jamaica. The proposed insurance would cover specific hospital in-patient services, laboratory and diagnostic tests, and pharmaceuticals. The plan would make it mandatory for everyone to subscribe to the national insurance scheme.<sup>106</sup>

Problems in the financing of the health sector have hampered reform efforts. Because of low levels of remuneration, position vacancies persist among critical groups within the public health sector, despite the Ministry of Health's efforts to recruit and retain medical professionals.<sup>107</sup> For example, as of 1991, the doctor-patient ratio was 1 to 1,700; the Pan American Health Organization recommends a ratio of 1 to 910.<sup>108</sup> The proportion of vacant positions is also very high in other health-related professions. The vacancy rates are especially high among pharmacists (75.2%), midwives (52.9%), mental health officers (47.4%), enrolled assistant nurses (45.7%), public health nurses (31.7%), and registered nurses (29.4%).<sup>109</sup>

#### *Regulation of health care providers*

Critical questions regarding health care providers exist. Who is legally permitted to provide what types of care? Are there meaningful guarantees of quality control within health care services? Because the Jamaican government regulates these issues, reviewing relevant laws is important. Three statutes regulate health professionals in Jamaica: the Medical Act of 1976 (the "Medical Act");<sup>110</sup> the Nurses and Midwives Act of 1966 (the "Nurses and Midwives Act");<sup>111</sup> and the Pharmacy Act of 1975 (the "Pharmacy Act").<sup>112</sup>

The Medical Act establishes a Medical Council<sup>113</sup> that registers medical practitioners, appoints examiners to test persons applying for registration as medical practitioners, and ensures the maintenance of proper standards of professional conduct by registered medical practitioners.<sup>114</sup> Medical doctors must complete the required course of study and meet the requirements for registration to practice medicine in Jamaica.<sup>115</sup> The Ministry of Health recognizes twenty-three different categories of medical practitioners. The Medical Act also addresses the unauthorized practice of medicine. It is a criminal offense

for any person to practice medicine, make medical diagnoses, or prescribe or administer drugs if that person has not been registered as a medical practitioner under the Medical Act<sup>116</sup> or if his or her registration has been suspended.<sup>117</sup> The Medical Act does not require practitioners of alternative medicine to register.<sup>118</sup> The Medical Act establishes medical and ethical guidelines for registered medical practitioners.<sup>119</sup> The Medical Council hears complaints in relation to any acts or conduct in breach of these guidelines.<sup>120</sup>

The Medical Act empowers the Medical Council to suspend or revoke the license of any medical practitioner who (a) is suffering from any habit or mental or physical condition that renders him or her unfit to practice medicine; (b) procured his or her registration through the use of misleading, false, or fraudulent misrepresentation; (c) has been convicted of a criminal offense; or (d) engages in "conduct which is disgraceful in a professional respect."<sup>121</sup> The Medical Act also enumerates eight categories of behavior deemed "disgraceful in a professional respect," for which medical practitioners can be subject to disciplinary action by the Medical Council.<sup>122</sup>

A medical appeals tribunal hears appeals from the decisions of the Medical Council.<sup>123</sup> The tribunal may either allow or dismiss the appeal or send it back to the Medical Council to be reconsidered.<sup>124</sup> The tribunal may also set aside any punishment imposed by the Medical Council and substitute a milder sanction that is, in its view, more appropriate.<sup>125</sup>

The Nurses and Midwives Act establishes the Nursing Council<sup>126</sup> and empowers it to control the training and practice of nurses, midwives, and assistant nurses.<sup>127</sup> This council also has power to register nurses and midwives, to enroll assistant nurses,<sup>128</sup> and to discipline nurses and midwives by revoking or suspending their registration or enrollment.<sup>129</sup> It is an offense to practice midwifery or to act as or imply that one is a nurse or assistant nurse if one lacks a certificate of registration or enrollment or if that certificate has been suspended.<sup>130</sup>

The Pharmacy Act establishes the Pharmacy Council<sup>131</sup> and empowers it to serve a variety of regulatory functions.<sup>132</sup> This council registers pharmacists, pharmaceutical students, pharmacies, owners of pharmacies, and authorized sellers of poisons. It also establishes and maintains proper standards of conduct by persons registered under the Pharmacy Act and regulates the training of pharmaceutical students. The Pharmacy Council is additionally empowered to discipline those whom it registers through censure, suspension, or removal from the register.<sup>133</sup> It also publishes lists of drugs and poisons.<sup>134</sup> Only a registered pharmacist or a pharmaceutical student under the supervision of a registered pharmacist, working on premises registered as a pharmacy, may compound, dispense, and store for sale or retail the drugs listed.<sup>135</sup> Similarly,

more restrictive regulations apply to the retailing, storing, selling, dispensing, and delivery of poisons.<sup>136</sup>

### ***Patients' rights***

Laws also seek to ensure quality health services by protecting the rights of patients. In practice, the consent of a patient or someone legally empowered to act on the patient's behalf is required before medical procedures can be carried out. The Ministry of Health encourages practitioners to have their patients sign consent forms before treatment, but there is no statutory requirement for such consent. In addition, there are no statutory provisions regarding either harm caused to a patient or medical malpractice. Common-law rules relating to assault and negligence, however, do apply.<sup>137</sup> A doctor who is found guilty of assault of a patient, could have his or her registration revoked or suspended for a maximum period of two years.<sup>138</sup>

The requirement of informed consent is an established principle of the English common law and is applicable in Jamaica.<sup>139</sup> To constitute valid consent, the person undergoing a medical procedure must both know of the risks involved and willingly consent to take these risks. By consenting to the procedure, the patient consents to the risks inherent in the procedure but does not consent to negligence on the part of the surgeon. A client who suffers injury due to the negligence of a medical practitioner may be able to allege a legal claim against the practitioner under tort principles of common law. To succeed in an action for negligence, the plaintiff must prove that the defendant was in breach of the duty of care owed by medical practitioners toward their clients, and that, as a result of the breach of that duty, the plaintiff suffered harm. Medical procedures that are performed without a client's consent may constitute an actionable tort — "trespass" to the client's person.<sup>140</sup>

## **B. POPULATION, REPRODUCTIVE HEALTH, AND FAMILY PLANNING**

### ***Population laws and policies***

Jamaica's population policy provides the framework within which its family planning services are provided. The general objectives relating to population, as stated in the Revised Statement of National Population Policy of 1995 ("Revised Population Policy Statement"),<sup>141</sup> are to improve the satisfaction of basic human needs and the quality of life of Jamaican people in areas such as housing, health, nutrition, education, transportation, and the environment.<sup>142</sup> The government believes that the achievement of these objectives depends on ensuring that the population does not exceed the number of persons who can be satisfactorily supported by the nation. The population policy seeks specifically to restrict population growth to a maximum of 0.8% per annum over the next three decades.<sup>143</sup> The current average population growth rate is estimated at 0.9%.<sup>144</sup> The Revised Population

Policy Statement predicts that if that annual rate of decline continues, Jamaica should be able to achieve replacement level fertility (two children per woman) by the year 2000 or shortly thereafter.<sup>145</sup> Although the population policy aims at a population not to exceed three million by 2020,<sup>146</sup> the United Nations Population Fund (“UNFPA”) projects that Jamaica’s population will increase to around 3.4 million by 2025.<sup>147</sup>

The Planning Institute of Jamaica (the “PIOJ”) has designed a National Plan of Action on Population and Development 1995 to 2015 (the “National Plan of Action on Population”),<sup>148</sup> to implement the Revised Population Policy Statement and the Cairo Programme of Action (the “Cairo Programme”)<sup>149</sup> of the International Conference on Population and Development of 1994 (the “ICPD”).<sup>150</sup> The National Plan of Action on Population is to guide the implementation of the national population policy and reflects the ICPD’s theme of the interrelationship of population, sustained economic growth, and sustainable development.<sup>151</sup>

The agencies and institutions responsible for the process of monitoring the implementation and evaluation of the national population policy are the minister responsible for population; the Population Policy Coordinating Committee (“PPCC”), a multisectoral body appointed by the government in 1982; the PIOJ; and the Information, Education, and Communication Subcommittee of the PPCC. In addition, NGOs, other ministries of government, private sector organizations, and nonprofit private organizations also contribute to the implementation of the population policy.<sup>152</sup>

### ***Reproductive health and family planning laws and policies***

The National Family Planning Act of 1970 (the “National Family Planning Act”)<sup>153</sup> established the National Family Planning Board (“the Family Planning Board”) as the principal agency of government for the allocation of financial assistance and grants to bodies or persons engaged in family and population planning.<sup>154</sup> It coordinates or directs the work of those engaged in family and population planning to ensure an economical and effective national effort.<sup>155</sup> The National Family Planning Act empowers the Family Planning Board to promote research and disseminate information in relation to family planning;<sup>156</sup> to provide for sex education; and to arrange and participate in national and international courses, seminars, and conferences on family planning.<sup>157</sup> The National Family Planning Act requires the Family Planning Board to provide the minister of health with information on family and population planning upon request.<sup>158</sup> The minister may, after consulting with the chairman of the Family Planning Board, provide it with general directions that he or she believes to be in the public interest. In such instances, the Family Planning Board must follow the chairman’s directions.<sup>159</sup>

### ***Government delivery of family planning services***

Family planning services are available throughout Jamaica in the public health system.<sup>160</sup> Family planning services are delivered through a network of health centers, hospitals, private physicians, and NGOs. In 1995, approximately 40,000 clients received services through the public family planning program.<sup>161</sup> The Family Planning Board is responsible for ensuring access to family planning services for those who want them; coordinating clinical services offered by public, private, and voluntary organizations; promoting outreach services, utilizing mobile units to distribute nonclinical methods of contraception; undertaking and promoting research and disseminating information relating to family planning and family-life education; monitoring the development of research in the areas of reproductive behavior and contraceptive health; and reviewing for adoption new or refined means of fertility regulation.<sup>162</sup>

The president of the Medical Association of Jamaica (the “MAJ”) reports that doctors are seeing fewer patients in Jamaica generally because “many patients cannot afford it.”<sup>163</sup> The Ministry of Health also reports a decline in the percentage of pregnant women receiving care from the public health system. While 73.8% of pregnant women received such care in 1994, only 68.2% did so in 1995.<sup>164</sup> The number of people visiting family planning clinics has declined from more than 370,000 in 1991 to slightly more than 170,000 in 1995.<sup>165</sup> During the first 16 weeks of pregnancy, however, the overall percentage of pregnant women in Jamaica seeking medical care has stayed relatively stable at just below 19%, and the average number of visits to public health services per pregnant woman has also remained stable at around four visits per pregnancy.<sup>166</sup> In recent years, the percentage of persons accepting contraception among those registered with the public family planning program declined from 22% in 1985 to 16.9% in 1992.<sup>167</sup>

## C. CONTRACEPTION

### ***Prevalence of contraceptives***

Knowledge of at least one form of contraception is practically universal in Jamaica.<sup>168</sup> The most popular methods in the 1980s (by prevalence) were contraceptive pills, female sterilization, the condom, and Depo Provera®.<sup>169</sup> The rate of contraceptive use nationwide has increased steadily, from 38% in 1975 to 55% in 1989 to 67% in 1996.<sup>170</sup> All methods and types of contraceptives are readily available in hospitals, clinics, and Family Planning Board outlets. About 30% of the women of Jamaica, especially those whose male partners refuse to use condoms, use injections, contraceptive pills, IUDs, and diaphragms.<sup>171</sup> Of the 40,000 clients serviced by the family planning program in 1995, the pill was chosen by 47.8% as their method of contraception, while 28.8% chose condoms, and 21.7% chose

the Depo Provera® injection.<sup>172</sup> Although gender-specific statistics on contraception usage rate are unavailable, the Ministry of Health has acknowledged that the burden and responsibility for contraception in Jamaica falls largely on women. Most men hold the view that women must ensure their safety from pregnancy, and some actively oppose the use of any contraception by themselves or their partners. Public education programs seek to change the attitude of such persons.<sup>173</sup>

#### **Legal status of contraceptives**

Jamaican law does not restrict the use of contraceptives. The Ministry of Health and the Family Planning Board are the primary implementing agencies for the distribution of contraceptives. Sales and distribution of condoms reportedly have increased from approximately two million in 1985 to 10 million in 1996. The Ministry of Health aims to increase that number to 20 million in the next five years.<sup>174</sup> Various types of contraceptives are available in private clinics and retail outlets, primarily pharmacies.<sup>175</sup> Condoms are not distributed in schools, but a young person may obtain them from any government clinic or family planning center.<sup>176</sup>

#### **Regulation of information on contraception**

There are no laws in Jamaica specifically controlling the provision of information on contraceptive methods. As described above in the section Family Planning Laws and Policies, the National Family Planning Act empowers the Family Planning Board to disseminate information in relation to family planning and to provide for sex education.

#### **Sterilization**

Sterilization is legally available in Jamaica. Nearly 4,000 female sterilization procedures were carried out in 1995;<sup>177</sup> male vasectomies are extremely rare in Jamaica.<sup>178</sup> The procedures are performed at sixteen hospitals and four health centers. The government-operated Glen Vincent Fertility Unit performs tubal ligations, provided the woman has had more than two children, has received adequate counseling, and has signed a consent form.<sup>179</sup> Fees for the service at government facilities are set so as to cover the government's costs. The cost of the procedure in a private facility is unregulated. There is no specific legislation regulating those who provide sterilization services.<sup>180</sup>

#### D. ABORTION

Because abortion is illegal in most circumstances in Jamaica, it is difficult to obtain information about its prevalence. It is estimated that there were from 10,000 to 20,000 illegal abortions in the 1970s and that 20% of all gynecological beds in Jamaican hospitals were occupied by patients suffering from the effects of illegal abortions.<sup>181</sup> Complications brought on by illegal abortions are one of the leading causes of maternal deaths in Jamaica.<sup>182</sup>

#### **Legal status of abortion**

In Jamaica, abortion is *prima facie* illegal. It is a felony for anyone to perform an abortion or for a pregnant woman to attempt to abort her fetus by using any instrument, poison, or other means with the intention of causing herself to miscarry.<sup>183</sup> Where the abortion is performed by another person, the woman's consent to the abortion is no defense. A person may be guilty of an attempt to procure abortion even though the woman is not pregnant.<sup>184</sup> It is also a criminal offense to procure any poison or instrument for another person knowing that she or he intends to use it for the purpose of performing an abortion.<sup>185</sup>

Although the Penal Code provides no exceptions to its prescription against abortion, the common law has developed principles permitting specific exceptions. In the English case, *Rex v Bourne*, the House of Lords ruled that an abortion would not be unlawful when the operation was performed in good faith for the purpose of preserving the life of the mother.<sup>186</sup> The court stated that this did not merely mean saving the mother from death but included cases where the continuation of the pregnancy would cause her physical or emotional harm.<sup>187</sup> Since decisions of the House of Lords are of highly persuasive authority in Jamaica,<sup>188</sup> *Bourne* has been applied in Jamaica since 1975, when the Minister of Health embraced it in a policy paper, as described below.<sup>189</sup>

However, the *Bourne* principle merely provides a person performing an abortion with a defense to a criminal charge. The person performing the abortion remains technically subject to criminal prosecution, and she or he has the burden of establishing that the abortion was lawful according to the holding in *Bourne*. Some physicians are thus hesitant to perform abortions.<sup>190</sup> Neither the decision in *Bourne* nor any other provision of Jamaican law establishes any qualification necessary for the person who performs an abortion. Therefore an unqualified person, as well as a qualified one, may avail herself or himself of the *Bourne* defense. No statute establishes procedures for spousal or parental consent or for review or consultation among doctors. Jamaica's Medical Council allows for abortions, however, if continuing the pregnancy would involve "serious threat to the life or health (mental or physical) of the mother."<sup>191</sup>

#### **Requirements for obtaining legal abortion**

In 1975, Kenneth A. McNeill, then Jamaica's Minister of Health and Environmental Control, issued a Statement of Policy on abortion. The Ministry acknowledged the common-law position making it "lawful for a registered medical practitioner acting in good faith to take steps to terminate the pregnancy of any woman if . . . he forms the opinion that the continuation of the pregnancy would be likely to constitute a

threat to the life of the woman or inure to the detriment of her mental and physical health.”<sup>192</sup> The Statement of Policy called for the amendment of the Offences Against the Person Act of 1864 (the “Offences Against the Person Act”)<sup>193</sup> so as to “make clear when abortion would be lawful in Jamaica” and “to take steps to make rape, carnal abuse and incest a lawful ground for abortion.”<sup>194</sup> Despite this statement, Jamaica has not amended the Offences Against the Person Act. The Medical Association of Jamaica supports the legalization of abortion and has lobbied for Jamaica’s adoption of an abortion law modeled on Barbados’s Medical Termination of Pregnancy Act, which allows for abortion before the twentieth week of pregnancy or in cases of rape or incest.<sup>195</sup>

Legal abortions are performed both at government clinics and by private doctors. The government finances the service at public health facilities.<sup>196</sup> Official government policy states that an abortion may be performed in a public facility when two doctors recommend it on the basis that the pregnant woman is physically or mentally at risk.<sup>197</sup> Public hospitals and the government-run Glen Vincent Fertility Unit provide abortions if certain conditions are met.<sup>198</sup> A pregnant teenager under the age of 17 can obtain an abortion if she is accompanied by a parent and provides documentation proving her age. A woman who has been the victim of rape or incest can also obtain an abortion, but she must provide documented evidence of the crime that caused her pregnancy. A pregnant woman referred by the police, the Family Court, or by a family planning clinic operated by the Ministry of Health can obtain an abortion if the referring public authority provides evidence documenting her need for an abortion. Women who require abortions because of medical or therapeutic reasons need not provide documentation to support the medical reason given. No woman can have more than one abortion, however, and every woman who obtains an abortion must be counseled on contraception prior to and immediately after the abortion.

#### ***Penalties for abortion***

Persons performing abortions, as well as women who attempt to abort their fetuses, are subject to life imprisonment with or without hard labor.<sup>199</sup> The penalty for procuring any poison or instrument for another knowing that she or he intends to use it for the purpose of performing an abortion is three years with or without hard labor.<sup>200</sup>

#### ***Regulation of abortion information***

There is no formal law or regulation restricting information about abortion. However, notwithstanding the government’s policy permitting abortions in certain circumstances, there tends to be little information available relating to the availability of abortion services.<sup>201</sup>

#### **E. HIV/AIDS AND SEXUALLY TRANSMISSIBLE INFECTIONS (“STIs”)**

Examining HIV/AIDS issues within a reproductive health framework is essential insofar as the two areas are interrelated from both medical and public health standpoints. Hence, a full evaluation of laws and policies affecting reproductive health and rights in Jamaica must examine HIV/AIDS and sexually transmissible infections (“STIs”). According to the Ministry of Health, since 1982, there have been 2,060 reported cases of AIDS in Jamaica. In 1996, 527 new cases were reported; 321 of those stricken were men and 206 were women. There have been a total of 154 cases of children with the virus. Of the reported cases, 55.7% of those who have developed AIDS have died.<sup>202</sup> The trend has been for the number of cases of AIDS to double every two years.<sup>203</sup> The incidence of STIs in Jamaica is high, with 5,125 cases of gonorrhea, 2,414 cases of syphilis, and 7,455 cases of chlamydia reported in 1995.<sup>204</sup>

#### ***Laws on HIV/AIDS and STIs***

The Jamaican Parliament has passed no legislation to address HIV/AIDS, and no regulations address it. There is no law prohibiting discrimination against AIDS victims.<sup>205</sup> Several independent advocacy organizations have protested the Ministry of Health’s delays in introducing legislation to protect people with AIDS. In 1995, the ethical subcommittee of Jamaica’s National AIDS Committee (“NAC”) submitted a position paper to the Ministry of Health in support of new legislation to protect people with AIDS.<sup>206</sup> The NAC position paper supports legislation to protect persons with AIDS from discrimination and would also protect their privacy rights by establishing policies on confidentiality and disclosure. The NAC also calls for criminal and civil liabilities against people with HIV/AIDS who willfully expose others to the disease.<sup>207</sup> The Jamaica Employers’ Federation has also called for a standard policy to protect the rights of persons with AIDS and of other employees.<sup>208</sup> The Ministry of Health has cited a lack of public consensus as the cause for its delay in implementing an AIDS policy.<sup>209</sup>

Few laws in Jamaica specifically address STIs. The Public Health Act empowers the Ministry of Health to call upon the local boards of health to investigate any disease present in their parishes and to do “whatever is necessary for arresting the spread of that disease.”<sup>210</sup>

#### ***Policies on prevention and treatment of HIV/AIDS and STIs***

The government has issued a policy to deal with HIV/AIDS. The National HIV/STD Control Programme, Medium Term Plan 1997-2000 (the “Medium Term Plan”), identifies the policy priorities and critical issues. The Medium Term Plan intends to consolidate the response to the AIDS epidemic by coordinating

the efforts of government, private, community, religious, and civic sectors. The epidemiology unit of the Ministry of Health will act as the national coordinating body and as the resource for direct technical cooperation. On the local level, the Medium Term Plan supports parish leaders in their HIV/AIDS/STD interventions and activities. Specifically, the Medium Term Plan calls for the improvement of access to and use of condoms; the formulation of a prison health policy and a policy on HIV/AIDS in the workplace; and the integration of STD services into primary health care, especially in the maternal and child health program and in the school system.<sup>211</sup> The Association for the Control of Sexually Transmitted Diseases (“ACOSTRAD”), a nongovernmental organization, works with the epidemiology unit of the Ministry of Health to educate the public on AIDS and to encourage condom use. Employees of the Ministry of Health also place condoms in bars and low-rent hotel rooms.<sup>212</sup>

### III. Understanding the Exercise of Reproductive Rights: Women’s Legal Status

Women’s reproductive health and rights cannot be fully evaluated without investigating women’s status within the society in which they live. Not only do laws relating to women’s legal status reflect societal attitudes that will affect reproductive rights, but such laws often have a direct impact on women’s ability to exercise reproductive rights. The legal context of family life, a woman’s access to education, and laws and policies affecting her economic status can contribute to the promotion or the prohibition of a woman’s access to reproductive health care and her ability to make voluntary, informed decisions about such care. Laws regarding the age of first marriage can have a significant impact on a young woman’s reproductive health. Furthermore, rape laws and other laws prohibiting sexual assault or domestic violence present significant rights issues and can also have direct consequences for women’s health.

#### A. CIVIL RIGHTS WITHIN MARRIAGE

##### *Marriage law*

Marriages in Jamaica are governed by the Marriage Act of 1897 (the “Marriage Act”)<sup>213</sup> the Hindu Marriage Act of 1957 (the “Hindu Marriage Act”),<sup>214</sup> and the Muslim Marriage Act of 1957 (the “Muslim Marriage Act”),<sup>215</sup> which prescribe the prerequisites for a valid marriage. The Muslim Marriage Act and the Hindu Marriage Act confer upon marriages performed in accordance with the customs of those faiths substantially the same status as marriages solemnized under the Marriage Act.

To be valid, a marriage must be solemnized before two witnesses and before a person who is registered as a marriage officer.<sup>216</sup> Such a person may be either a minister of religion or a civil registrar.<sup>217</sup> The Marriage Act provides for the publishing of banns<sup>218</sup> (a public notice of the names of the parties intending to marry), the issuing of marriage licenses,<sup>219</sup> and the registration of marriages in a general registry.<sup>220</sup> It is an offense under the Marriage Act to falsify, destroy, injure, remove, or conceal a public register of marriage or any notice or document in relation to a marriage that a marriage officer has in his or her custody.<sup>221</sup> It is also an offense for a marriage officer to make any false certification of any document or for a person to pretend to be a marriage officer.<sup>222</sup> Bigamy is an offense, and the law requires the Registrar General to record any conviction for bigamy.<sup>223</sup>

##### *Regulation of common-law marriage*

In addition to legally recognized marriages, many couples form “visiting unions,” in which the man visits the woman, often at the parental home, or common-law marriages, many of which develop out of visiting unions. Couples often live together for many years and raise several children together before entering a legal union.<sup>224</sup> However, a recent study of the Kingston Family Court found that in most Jamaican families women are at the core of the family unit, while men tend to be more transitory, although they still play an important financial role.<sup>225</sup>

##### *Divorce and custody law*

There is only one ground for divorce: an “irretrievable breakdown” of the marriage.<sup>226</sup> Pursuant to the Matrimonial Causes Act of 1989 (the “Matrimonial Causes Act”), the parties are able to establish that their marriage has broken down irretrievably only if they can prove that they have lived separate and apart for a continuous period of no less than twelve months immediately preceding the date of filing the divorce petition.<sup>227</sup> Persons may prove that they have been living apart even though they have been sharing the same house provided that they live in separate rooms and do not have conjugal relations.<sup>228</sup> The Supreme Court, which has jurisdiction in most divorce cases, will not hear divorce petitions without special leave, that is, a specific request by a party, unless the parties have been married for at least two years at the time when the petition is presented.<sup>229</sup> The judge may grant such leave if she or he is satisfied that the parties have attempted reconciliation with the assistance of a marriage counselor and there are special circumstances that justify the hearing of the petition.<sup>230</sup> Upon hearing any petition for divorce the Court may either grant or refuse a decree, or it may adjourn the case and refer the parties to an approved marriage counselor.<sup>231</sup> The Matrimonial Causes Act provides for custody and/or maintenance applications to be

entertained in proceedings preliminary to, at, or after a divorce proceeding.<sup>232</sup> It also provides for financial provisions to be made in respect of either spouse<sup>233</sup> and for protective orders to be issued with respect to a spouse or child of the marriage.<sup>234</sup>

The court may enforce an order for maintenance by attachment of the person's income or pension, seizure of assets, or, ultimately, imprisonment.<sup>235</sup> In general, a husband is not obliged to maintain a wife who has been guilty of adultery or unjustified desertion.<sup>236</sup> A man also does not have any legal responsibility to maintain his common-law wife. Although women in permanent, nonmarital relationships have no legal right to obtain support or maintenance, they may claim maintenance for their children. Under the Married Women's Property Act of 1887 (the "Married Women's Property Act"),<sup>237</sup> a woman has an obligation to support her husband if he is destitute and she has property.<sup>238</sup>

Spouses are financially responsible for each other and for their children. Pursuant to the Maintenance Act of 1881, a man is required to maintain his children and any of his wife's minor children who are living at the time of their marriage.<sup>239</sup> He is also required to maintain the children of any woman with whom he is cohabiting.<sup>240</sup> Although men have the principal responsibility for maintenance, women are also required to maintain their children and must do so if the father either fails or is unable to maintain them.<sup>241</sup>

Jamaican law enables women to obtain support for children from the fathers. Because 42% of Jamaican women are heads of households, more than 80% of Jamaican children are born out of wedlock.<sup>242</sup> The Affiliation Act of 1926<sup>243</sup> provides for procedures enabling single women to initiate legal proceedings against the putative fathers of their children and to obtain judgments ordering such fathers to make payments for the maintenance and education of their children.<sup>244</sup> Legislative reforms in the 1970s and 1980s aimed at preventing legal discrimination against children on the basis of their parents' marital status and encouraged men to take financial responsibility for their offspring.<sup>245</sup> For example, the Status of Children Act of 1976<sup>246</sup> eliminated the ceiling previously placed on child-support payments and linked such payments to the father's income.<sup>247</sup> When inflation is considered, however, actual child support awards have not significantly increased.<sup>248</sup> The Jamaican legislature has only recently begun to draft laws that grant to common-law spouses the same custody and inheritance rights as those enjoyed by spouses in marriages solemnized under the Marriage Act.<sup>249</sup>

## B. ECONOMIC AND SOCIAL RIGHTS

### *Property rights*

Jamaican women were first allowed to own and control individual property in 1887, when the Married Women's

Property Act<sup>250</sup> was enacted. Later amendments to the act permitted married women to sign contracts, incur debts, and sue or be sued.<sup>251</sup> This statute also allows married women to bring criminal proceedings for the protection of their property.<sup>252</sup> The Married Women's Property Act is now mainly used in situations where the husband and wife own property jointly and wish a court to determine the extent of each of their interests or where even though the property is registered to only one of them, they are each claiming an interest in it.<sup>253</sup> The beneficial interest of married partners in jointly owned property is determined by examining the intention of the parties at the time of acquisition of the property, and their direct or indirect contribution to the purchase.<sup>254</sup> If a husband purchases property and transfers it into his wife's name, it is presumed to belong to her alone unless he can bring evidence to rebut that presumption.<sup>255</sup> Similarly, if he puts the property in both their names, there is a rebuttable presumption that he made a gift of one half-share to her. If both parties contributed to the purchase of the property, the presumption is usually that they each own an interest in proportion to their contribution.<sup>256</sup>

Inheritance rights are governed primarily by the Intestates' Estates and Property Charges Act of 1937.<sup>257</sup> Under the provisions of this act, beneficiaries of both sexes have equal rights to inheritance.<sup>258</sup> The rules of testamentary freedom permit a person to write a will that disinherits his or her spouse and children.<sup>259</sup> However, under the Inheritance (Provision for Family and Dependents) Act of 1993,<sup>260</sup> a spouse, child, or parent may apply to the Supreme Court for an order for maintenance out of a deceased's assets.<sup>261</sup> The court, in deciding whether to grant such an order, will consider all relevant circumstances including the size of the estate; the applicant's resources and needs; the deceased's reasons for not making provision for the applicant in his or her will; and the conduct of, and relationship between, the applicant and the deceased during the deceased's lifetime.<sup>262</sup> Pursuant to the Inheritance Act, a common-law spouse has the same rights as a legal spouse.<sup>263</sup>

### *Labor rights*

Because the Jamaican Constitution does not prohibit discrimination on the basis of sex, it permits discriminatory legislation. For example, the Women (Employment of) Act of 1942 (the "Women's Employment Act")<sup>264</sup> provides, with certain exceptions, that "no woman shall be employed in night work"<sup>265</sup> and that the total permitted hours of employment per twenty-four hours is ten hours.<sup>266</sup> The statute provides no exception to the stated maximum hours of employment. Certain occupations are exempt from the prohibition on nighttime employment: nurses or healthcare workers; management; theater or cinema workers; workers in hotels, bars, restaurants,

and clubs; pharmacists; workers in fresh fruit preparation, packing, and shipment; and workers in certain specified unavoidable situations.<sup>267</sup> The Women's Employment Act further gives the Minister of Labor the power to restrict or prohibit, the employment of women in industrial undertakings<sup>268</sup> and to restrict, prohibit or regulate the employment of women before or after childbirth.<sup>269</sup>

Since the 1970s, legislation to prevent discrimination against women in the workplace has been in place. The Employment (Equal Pay for Men and Women) Act of 1975<sup>270</sup> makes it an offense for an employer to pay persons of different sexes at different rates for the same work where they have the same qualifications and are working under similar conditions.<sup>271</sup> This law sets out a mediation procedure, and the employer may only be prosecuted if no settlement is reached at the end of such mediation.<sup>272</sup> The employer must keep records in relation to rates of pay and any other matter that the Minister of Labor may by order prescribe, and ministry officials may examine these records.<sup>273</sup> A court has the power to order arrears of remuneration to be paid to an employee who has suffered from a discriminatory payment practice.<sup>274</sup> The agreement of the employee to a lower wage is no defense to prosecution pursuant to the statute.<sup>275</sup>

The Maternity Leave Act of 1979 (the "Maternity Leave Act")<sup>276</sup> allows women eight weeks of paid maternity leave during the time of their pregnancy<sup>277</sup> or after giving birth and another four weeks of unpaid leave if required due to pregnancy or confinement.<sup>278</sup> If the woman can provide evidence in the form of a medical certificate that she requires additional leave because either she or her child is ill, she may get another fourteen weeks of leave.<sup>279</sup> Another extension may be granted if her doctor indicates that it is necessary.<sup>280</sup> However, when an extended period of leave is recommended, the employer may require that the medical examination be carried out in consultation with, or in the presence of, a doctor named by the employer.<sup>281</sup> Two conditions apply to the maternity leave entitlement: the employee must advise the employer in advance of the expected time of her confinement,<sup>282</sup> and she must provide a medical certificate if her employer requests one.<sup>283</sup> To qualify for maternity leave, an employee must have been continuously employed with the employer for at least fifty-two weeks prior to the date of the leave.<sup>284</sup> Women under 18 years old and domestic workers do not qualify for maternity leave with pay.<sup>285</sup> A woman who has received paid maternity leave for three pregnancies is not entitled to more maternity leave from the same employer.<sup>286</sup>

The Maternity Leave Act requires employers to allow women to return to work when their leave is over.<sup>287</sup> When a woman returns from leave, she must be employed in the

same place and capacity, to do the same type of work, on the same terms and conditions.<sup>288</sup> If the job has been eliminated during her absence, she should be offered a similar job if possible, and if it is not possible, unemployment payments must be made to her.<sup>289</sup>

#### ***Access to credit***

Jamaican law provides men and women with equal access to credit. However, certain discriminatory practices persist. For example, where a husband and wife apply for a loan together, the wife is almost invariably required to get written confirmation from a lawyer that she has received legal advice as to her rights. This is done to rebut the legal presumption of undue influence of a husband over a wife.<sup>290</sup> The practice is controversial, as is the question of whether this requirement works against women or in their favor. Another discriminatory practice, which has no basis in law, is the practice by financial institutions of requiring married women to obtain their husbands' written consent prior to approval of a loan.<sup>291</sup>

#### ***Access to education***

During the 1994-1995 academic year, 21,500 teachers were employed in public education at the early childhood, primary, and secondary levels, while 650 full-time lecturers served at the tertiary levels. Seven hundred thousand students were enrolled at all levels.<sup>292</sup> The allocation for the Ministry of Education, Youth and Culture accounted for 8.5% of the national budget, and additional funds were provided through the national cost-recovery program and through contributions to foundations and development and endowment funds at the tertiary level.<sup>293</sup>

Men and women in Jamaica have an equal right to education. In fact, girls outnumber boys in most of the school system.<sup>294</sup> While male students slightly outnumber female students at the primary-school level, female students outnumber male students at the secondary and university level.<sup>295</sup> Some students attend all-female or all-male schools; others attend coeducational schools.<sup>296</sup> Attendance at government schools is in principle free, but a recently introduced cost-sharing program has enabled the government to recover more than 5% of its budget in fees paid by students. A welfare fund assists students who are unable to pay their fees in full.<sup>297</sup> As of 1992, although women predominated among university students in the fields of education, the social sciences, medicine, dentistry, and law, they were underrepresented in the fields of agriculture, mathematics, architecture, theology, and engineering.<sup>298</sup> Women were also underrepresented among academic staff at the University of the West Indies in Kingston. However, women accounted for 63% of university enrollment in the year 1992-1993.<sup>299</sup>

### **Women's bureaus**

The Bureau of Women's Affairs was formed in 1975 as an agency under the Ministry of Labor, Social Security and Sports to promote the full integration of women into the country's development process.<sup>300</sup> The Bureau seeks to address issues confronting women such as lack of economic opportunity; violence against women; and discriminatory laws, regulations, and policies.<sup>301</sup> This bureau, in collaboration with other government agencies and private organizations, trains community leaders and educators in gender sensitivity. The bureau also seeks to improve the health and nutritional status of low-income women through training in those areas, and to encourage women to participate in business through workshops and training in the areas of business management, marketing, and entrepreneurship.<sup>302</sup>

### C. RIGHT TO PHYSICAL INTEGRITY

#### **Rape**

The law relating to rape is governed by the Offences Against the Person Act. Pursuant to this legislation, rape is punishable by life imprisonment.<sup>303</sup> While the crime of rape is not defined in the Offences Against the Person Act, it is clear from recent attempts to reform that act that only vaginal intercourse is considered rape.<sup>304</sup> An attempt to commit rape is punishable by seven years' imprisonment,<sup>305</sup> but if a weapon is used in the attempt, the sentence is a maximum of ten years' imprisonment.<sup>306</sup> The act also prescribes sentences for other sexual offenses, such as indecent assault, and offenses against minors, such as carnal abuse, which is defined as sexual intercourse with a girl under 16 years of age.<sup>307</sup>

There is currently a draft bill to amend the Offences Against the Person Act,<sup>308</sup> which seeks to change the law. The amendment would make the offense of rape gender-neutral;<sup>309</sup> prohibit the publication of a rape complainant's identity;<sup>310</sup> and specify that rape includes penetration of the vagina or anus by any object or part of a person's body.<sup>311</sup> In addition, the amendment would abolish the common-law presumption that a 14-year-old boy is incapable of rape<sup>312</sup> and allow wives to prosecute their husbands for rape in certain circumstances.<sup>313</sup>

The draft bill to amend the Offences Against the Person Act defines "rape" as "sexual intercourse with another person (a) without that other person's consent and (b) knowing that the other person does not consent to sexual intercourse or recklessly not caring whether that other person consents or not."<sup>314</sup> Consent is deemed not to exist where the "apparent agreement is (a) exhorted by threats or fear of bodily harm to the complainant or to a third person; or (b) obtained by false and fraudulent representations as to the nature of the act or the identity of the offender."<sup>315</sup>

The common law already recognizes that a wife is not deemed to have consented to have sexual intercourse with her husband in the following circumstances: during a separation, or when divorce proceedings are underway or there is a separation agreement or restraining order in place; when sex is accompanied by threat of, or actual, physical attack or injury; and when the husband has a sexually transmitted disease.<sup>316</sup> These common-law rules governing the circumstances under which a spouse can bring a charge of marital rape are incorporated into the bill to amend the Offences Against the Person Act.<sup>317</sup>

#### **Sexual harassment**

There is no specific law penalizing sexual harassment in Jamaica. None is being contemplated at this time, although there is a draft Caribbean Community ("CARICOM") Sexual Harassment Act that could serve as a model for future legislation in Jamaica.<sup>318</sup>

#### **Domestic violence**

In Jamaica, there are two statutes that protect spouses from domestic violence, the Domestic Violence Act and the Matrimonial Causes Act. Pursuant to these statutes, abused spouses may apply to the court for orders to exclude an abuser from the home in which both parties had been living or from going to or near to the workplace, school, or any other specified location where the abused spouse or child may be found.<sup>319</sup> The Domestic Violence Act applies equally to persons in marital and nonmarital relationships.<sup>320</sup> In the Domestic Violence Act, "spouse" includes a woman who cohabits with a man as if she were his wife . . . .<sup>321</sup> Applications under the Matrimonial Causes Act, however, which are brought in the Supreme Court, may only be brought by married persons.<sup>322</sup> Proceedings under the Domestic Violence Act are brought in the Resident Magistrates Court and are intended to be speedy and to require minimal legal assistance.<sup>323</sup> As a result, this process is expected to be inexpensive and to increase the access of poor women to the protection of the courts. The proceedings are not public,<sup>324</sup> and publication of the results is prohibited.<sup>325</sup>

The Domestic Violence Act also provides for occupation orders to be made, allowing an abused person to continue to occupy the home until other arrangements for accommodation can be made.<sup>326</sup> Usually a protection order excluding the abuser from the home will accompany an occupation order. Where an occupation order is entered, the court may also make an ancillary order for use of the household furniture and appliances.<sup>327</sup>

Sexual-offense-investigation units have recently been established within the police forces of six parishes, and female officers have been trained to encourage victims of sexual offenses to report those crimes.<sup>328</sup>

## IV. Analyzing the Rights of a Special Group: Adolescents

The needs of adolescents are often unrecognized or neglected. Given that nearly one-third of Jamaica's population is under the age of 15, and given that nearly one-fourth of all births are to women aged 12 to 19,<sup>329</sup> it is especially important to meet the reproductive health needs of adolescents. The effort to address issues of adolescent rights, including those related to reproductive health, is important for women's rights to self-determination, as well as for their health.

### A. REPRODUCTIVE HEALTH AND ADOLESCENTS

The government provides few reproductive health programs or services specifically geared towards adolescents. Neither the National Family Planning Act nor the Revised Population Policy Statement specifically targets adolescents or articulates a policy for promoting reproductive health and education among adolescents. Hence, the government does not provide contraceptives to schools, and contraceptives thus are not available in such locations. However, beginning at approximately age 15, a girl can get condoms free of charge from the Family Planning Board, the Ministry of Health, and clinics.<sup>330</sup> Although no information is available on unmet need for reproductive health services, there are indications that many adolescents who need contraception are unable to access it. A 1987 survey showed that 76% of all first births to young women aged 15 to 24 were unintended, and, of these, 15% were to mothers under 16 years of age.<sup>331</sup>

Independent women's organizations attempt to supplement the government's efforts in the areas of family planning and reproductive health, sometimes in coordination with the Ministry of Health. The Women's Center of Jamaica Foundation (the "Foundation") focuses on continued education for mothers under the age of 16; delaying or preventing teenage pregnancy; and improving job opportunities for young women.<sup>332</sup> The Foundation has also established a center for adolescent girls, operated by the Ministry of Health, which assists pregnant schoolgirls with continuing their education and learning parenting and vocational skills. This center also encourages "baby-fathers" to care for the children.<sup>333</sup> Since its creation in 1978, the Foundation's Adolescent Mothers Programme has assisted nearly 20,000 young mothers, and more than half of them have returned to the school system.<sup>334</sup>

### B. MARRIAGE AND ADOLESCENTS

Marriages between persons under 16 years of age or within the prohibited degrees of consanguinity are void under English law.<sup>335</sup> Marriages between persons under 18 years of age are void unless the consent of the person's parent or legal guardian has first been obtained.<sup>336</sup>

### C. SEXUAL OFFENSES AGAINST ADOLESCENTS AND MINORS

Jamaican law recognizes numerous sexual offenses against minors. These include incest;<sup>337</sup> procuring a girl under 18 years old "to have illicit carnal connection with any man";<sup>338</sup> "unlawful carnal knowledge" of a girl between the ages of 12 and 16;<sup>339</sup> inducing or encouraging "defilement" of a young girl on one's own premises;<sup>340</sup> and causing, encouraging, or favoring the "seduction" or prostitution of a girl under 16 years of age.<sup>341</sup> In addition, it is a criminal offense to procure any woman under 18 to have "unlawful carnal knowledge" within or outside of Jamaican territory; become a common prostitute; leave Jamaica to become a prostitute or an inmate of or to frequent a brothel; or leave her usual place of abode for the purposes of prostitution.<sup>342</sup> Abduction of a girl under 18 with intent to have "carnal knowledge"<sup>343</sup> and unlawful detention with intent to have carnal knowledge are also criminal offenses.<sup>344</sup>

Carnal abuse of a girl who is over 12 but under 16 years old is punishable by seven years' imprisonment,<sup>345</sup> while carnal abuse of a girl under 12 is punishable by life imprisonment.<sup>346</sup> Where the victim is over 12 but under 16, the Offenses Against the Person Act provides a special statutory defense for a man under 23 years of age who reasonably believed that the girl was over the age of 16.<sup>347</sup>

The Incest (Punishment) Act of 1948 (the "Incest Act")<sup>348</sup> prohibits sexual intercourse between a man and his granddaughter, daughter, sister, or mother.<sup>349</sup> A man who commits incest with a female under 12 years of age is liable to ten years' imprisonment at hard labor. Where the woman is over 12 years of age the maximum sentence is five years.<sup>350</sup> A female aged 16 years or over is guilty of incest if she "with consent permits" her grandfather, brother, father, or son to have sexual intercourse with her. On conviction she is liable to imprisonment for a maximum period of five years.<sup>351</sup> The Incest Act does not define the term *consent*. An amendment to the Incest Act has been proposed which would extend the prohibition to sexual intercourse between stepparents and their stepchildren, guardians and wards, as well as between uncles or aunts and their nieces or nephews.<sup>352</sup> The amendment would create a single, gender-neutral felony incest offense by persons over the age of 16<sup>353</sup> and would amend the definition of sexual intercourse to

conform to the new definition provided in the proposed amendment to the Offences Against the Person Act.<sup>354</sup>

#### D. SEXUAL EDUCATION

There is as yet no formalized sex-education program in schools, but the Revised Population Policy Statement proposes that the Ministry of Education, Youth and Culture coordinate programs and projects in the formal education system in order to implement the population policy.<sup>355</sup> The Revised Population Policy Statement also stresses the importance of community involvement to the successful implementation of the policy.<sup>356</sup>

#### ENDNOTES

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4. WORLD ALMANAC, *supra* note 1, at 786.
5. ENCYCLOPEDIA BRITANNICA, *supra* note 3, at 751.
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7. *Id.*
8. U.S. DEPARTMENT OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1996, 490-491 (February 1997).
9. JAMAICA (CONSTITUTION) ORDER IN COUNCIL (1962), Ch. IV, §27 [hereinafter JAM. CONST.].
10. *Id.*, Ch. VI, §§68-96.
11. *Id.*, Ch. V, Pt. 1, §§34-67.
12. *Id.*, Ch. VII, Pt. 1, §97-113.
13. *Id.*, Ch. VI, §68.
14. LLOYD G. BARNETT, THE CONSTITUTIONAL LAW OF JAMAICA 37 (1977) [hereinafter BARNETT].
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16. *Id.*, Ch. VI, §70(1).
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18. JAM. CONST., Ch. VI, §70(1).
19. *Id.*, Ch. VI, §79.
20. *Id.*, Ch. VI, §90; BARNETT, *supra* note 14, at 142.
21. JAM. CONST., Ch. VI, §90.
22. *Id.*, Ch. VI, §83.
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25. BARNETT, *supra* note 14, at 172.
26. *Id.*
27. *Id.*, at 63.
28. JAM. CONST., Ch. VI, §71(2),(3).
29. BARNETT, *supra* note 14, at 64, 113.
30. *Id.*, at 65.
31. JAM. CONST., Ch. V, Pt. 1, §34.
32. *Id.*, Ch. V, Pt. 1, §35.
33. *Id.*, Ch. V, Pt. 4, §66.
34. The Constitution of Jamaica is attached as the second schedule to the Jamaica (Constitution) Order in Council, laid before English Parliament on July 24, 1962.
35. JAM. CONST., Ch. V, Pt. 4, §67(1).
36. *Id.*, Ch. V, Pt. 2, §48(1).
37. *Id.*, Ch. V, Pt. 3, §64(2).
38. *Id.*, Ch. V, Pt. 3, §64(1,5).
39. *Id.*, Ch. V, Pt. 3, §64(3).
40. *Id.*, Ch. V, Pt. 1, §41(1)(a).
41. *Id.*, Ch. V, Pt. 3, §65(1).
42. BARNETT, *supra* note 14, at 337.
43. JAM. CONST., Ch. VII, §§97-110; BARNETT, *supra* note 14, at 301. The drafters of the Jamaican Constitution decided to vest the original and appellate jurisdictions of the former superior courts in these two separate courts with different personnel. *Id.*
44. Judicature (Resident Magistrates) Act (1928) [hereinafter Resident Magistrates Act, 1928].
45. Judicature (Family Court) Act (1975) [hereinafter Family Court Act, 1975].
46. JAM. CONST., Ch. VII, Pt. 2, §103.
47. Judicature (Appellate Jurisdiction) Act, 1962, Pt. II, §§ 3(c), 5 [hereinafter Judicature (Appellate Jurisdiction) Act, 1962].
48. JAM. CONST., Ch. VII, Pt. 3, §110.
49. *Id.*, Ch. VII, Pt. 3, §110(1).
50. *Id.*, Ch. VII, Pt. 3, §110(2); Judicature (Appellate Jurisdiction) Act, Pt. VIII, § 35 (1962).
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57. BARNETT, *supra* note 14, at 309.
58. JAM. CONST., Ch. VII, Pt. 1, §97(2).
59. Jurisdiction established in the Resident Magistrates Act, 1928.
60. BARNETT, *supra* note 14, at 304–305.
61. Resident Magistrates Act, 1928, §3.
62. Jurisdiction established in the Family Court Act, 1975, §4, schedule.
63. Domestic Violence Act (1995) [hereinafter Domestic Violence Act, 1995].
64. *Id.*, Pt. I, §2.
65. BARNETT, *supra* note 14, at 130.
66. *Id.*, at 134.
67. Parish Councils Act, §3(2) (1901).
68. *Id.*, §8.
69. BARNETT, *supra* note 14, at 134.
70. *Id.*, at 25–26.
71. JAM. CONST., Ch. I, §2.
72. *Id.*, Ch. V, Pt. 2, §§49–50.
73. *Id.*, Ch. V, Pt. 2, §49(4)(7)(a).
74. *Id.*, Ch. V, Pt. 2, §49(5–6).
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77. *Id.*, Ch. III, §24(4)(b).
78. *Id.*, Ch. III, §25(1)(3),(4).
79. *Id.*, Ch. III, §25(2).
80. R v. Howard, 16 West Indian Reports 67, 73 (Ct. of Appeal of Jamaica, 1970); see generally, Geoffrey Gilbert, *The Legal System of the British Commonwealth in 3 MODERN LEGAL SYSTEMS CYCLOPEDIA* 3.270, 3.270.9 (Kenneth Robert Redden, ed., 1994).
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82. *Id.*
83. *Id.*, at 287.
84. *Id.*
85. International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature March 7, 1966, 660 U.N.T.S. 195 (entry into force Jan. 4, 1969) (ratified by Jamaica June 4, 1971).
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92. Draft Report on Jamaica from Mrs. Margaret May Macaulay, Esq., coordinator of the Association of Women’s Organizations in Jamaica (“AWOJA”), and Portia Nicholson Clarke, Esq., Chairperson of the Legal Committee, AWOJA, 18 (on file at the Center for Reproductive Law and Policy) [hereinafter AWOJA Draft Report], based on interview with Dr. Alafia Samuels, senior medical officer for the South-East Region, Jamaican Ministry of Health.
93. JAMAICA NATIONAL PREPARATORY COMMISSION, NATIONAL REPORT ON THE STATUS OF WOMEN IN JAMAICA, PREPARED FOR THE FOURTH WORLD CONFERENCE ON WOMEN, BEIJING: SEPTEMBER, 1995, 49 ¶6.41 (1994) [hereinafter NATIONAL REPORT].
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103. AWOJA Draft Report, *supra* note 92, at 18, citing information provided by Dr. Alafia Samuels.
104. *Id.*, at 17, based on interview with Dr. Alafia Samuels.
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107. ECONOMIC AND SOCIAL SURVEY 1995, *supra* note 101, at 22.1–22.2.
108. NATIONAL REPORT, *supra* note 93, at 53 ¶6.4.19.
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110. The Medical Act (1976) [hereinafter Medical Act, 1976].
111. The Nurses and Midwives Act (1966) [hereinafter Nurses and Midwives Act, 1966].
112. The Pharmacy Act (1975) [hereinafter Pharmacy Act, 1975].
113. Medical Act, 1976, §3.
114. *Id.*, §4(a–c).
115. *Id.*, §7.
116. *Id.*, §14(2).
117. *Id.*, §14(3).
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120. *Id.*, §11.
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135. *Id.*, Pt. IV, §18(1).
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142. *Id.*, at 3.
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145. REVISED POPULATION POLICY STATEMENT, *supra* note 141, at 4.
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147. STATE OF WORLD POPULATION 1997, *supra* note 2, at 72.
148. PLANNING INSTITUTE OF JAMAICA, NATIONAL PLAN OF ACTION ON POPULATION AND DEVELOPMENT JAMAICA 1995–2015 (1995) [hereinafter NATIONAL PLAN OF ACTION ON POPULATION].
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157. *Id.*, §4(3)(c–d).
158. *Id.*
159. *Id.*, §5.
160. NATIONAL REPORT, *supra* note 93, at 51, ¶6.4.8.
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164. ECONOMIC AND SOCIAL SURVEY 1995, *supra* note 101, at 22.4.
165. *Id.*, at 22.5.
166. *Id.*, at 22.4.
167. NATIONAL REPORT, *supra* note 93, at 50–51, ¶6.4.8.
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186. *Rex v. Bourne*, 1 Law Reports 687, 691 (K.B. 1938).
187. *Id.*, at 692–694.
188. See *supra* note 80, and accompanying text.
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192. McNeill, Statement of Abortion Policy, 1975, *supra* note 189, at ¶4.
193. See *supra*, note 183.
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195. Eulalee Thompson, *Call for legal abortion*, THE GLEANER, June 7, 1994, at 1; The Medical Termination of Pregnancy Act, 1983, §§4(2),5 (Barbados).
196. AWOJA Draft Report, *supra* note 92, at 32.
197. *Id.*, at 33.
198. The following information is provided in MAJ *Position Paper*, *supra* note 179, at 2–3.
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211. NATIONAL HIV/STD CONTROL PROGRAM, MEDIUM-TERM PLAN 1997–2000, 11–12 (n.d.) (on file at the Center for Reproductive Law and Policy).
212. AWOJA Draft Report, *supra* note 92, at 38, based on interview with Dr. Alafia Samuels.
213. The Marriage Act, (1897) [hereinafter Marriage Act, 1897].
214. The Hindu Marriage Act, (1957).
215. The Muslim Marriage Act (1957).
216. Marriage Act, 1897, §3(1).
217. *Id.*, §§5–7.
218. *Id.*, §20.
219. *Id.*, §§21–23.
220. *Id.*, §§31–34.
221. *Id.*, §64.
222. *Id.*, §§62–63.
223. *Id.*, §60.
224. *Id.*, at 14–15.
225. SUZANNE LAFONT, THE EMERGENCE OF AN AFRO-CARIBBEAN LEGAL TRADITION: GENDER RELATIONS AND FAMILY COURTS IN KINGSTON, JAMAICA 14 (1996) [hereinafter LAFONT, AFRO-CARIBBEAN LEGAL TRADITION].
226. The Matrimonial Causes Act, §5(1), (1989) [hereinafter Matrimonial Causes Act, 1989].
227. *Id.*, §5(2).
228. *Id.*, §6.
229. *Id.*, §§3,8(1).
230. *Id.*, §8(2).
231. *Id.*, §11,16.
232. *Id.*, §23.
233. *Id.*, §20.
234. *Id.*, §10(1)(a).
235. The Maintenance Act, §§9 20 (1881) [hereinafter Maintenance Act, 1881].
236. *Id.*, §12.
237. The Married Women's Property Act (1887) [hereinafter Married Women's Property Act, 1887].
238. *Id.*, §22.
239. Maintenance Act, 1881, §2(a).
240. *Id.*, §2(b).
241. *Id.*, §3.
242. Although there are no statistics on out-of-wedlock births for the 1990s, the proportion has been over 60% throughout the 20th century, and in 1985, 84% of all births were to unmarried women. In 1981, the proportion of births to unmarried women was 89%. NATIONAL REPORT, *supra* note 93, at 6, ¶3.9; LAFONT, AFRO-CARIBBEAN LEGAL TRADITION, *supra* note 225, at 30.
243. The Affiliation Act (1926).
244. *Id.*, §§3, 5(2).
245. LAFONT, AFRO-CARIBBEAN LEGAL TRADITION, *supra* note 225, at 58.
246. Status of Children Act (1976).
247. *Id.*, §16.
248. LAFONT, AFRO-CARIBBEAN LEGAL TRADITION, *supra* note 225, at 11, n.4, 82.
249. See The Inheritance (Provision for Family and Dependents) Act, §4(2)(e) (1993) [hereinafter Inheritance Act, 1993]; The Intestates' Estates and Property Charges Act, §2(d) (1937), as amended in 1988 [hereinafter Intestates' Estates and Property Charges Act, 1937]; The Status of Children Act, §3(1) (1976).
250. See *supra*, note 237.

251. Married Women's Property Act, 1887, §2.
252. *Id.*, §13.
253. AWOJA Draft Report, *supra* note 92, at 42.
254. *Pettitt v Pettitt*, 1970 App. Cas. 777 (appeal to the House of Lords taken from the Court of Appeal); *Gordon v Gordon*, Supreme Court Civil Appeal #76 (Jamaica 1987).
255. *Pettitt v Pettitt*, 1970 App. Cas. at 815.
256. *Harris v Harris*, Supreme Court Civil Appeal #1 at 8 (Jamaica 1981).
257. See *supra*, note 249.
258. The operative word in the Intestates' Estates and Property Charges Act, 1937 is always the gender-neutral "spouse." See, e.g., §§2(d), 4(1).
259. The Wills Act, §4 (1840).
260. See *supra*, note 249.
261. Inheritance Act, 1993, Pt. II, §4.
262. *Id.*, Pt. III, §7.
263. *Id.*, Pt II, §4(2)(e)(i).
264. The Women (Employment of) Act (1942).
265. *Id.*, §3(1).
266. *Id.*, §3(2).
267. *Id.*, §3(1)(a-h).
268. *Id.*, §6(2)(a).
269. *Id.*, §6(2)(b).
270. The Employment (Equal Pay for Men and Women) Act (1975).
271. *Id.*, §§2(1), 3(1).
272. *Id.*, §3(4) and Schedule.
273. *Id.*, §8.
274. *Id.*, §3(3).
275. *Id.*, §6(2).
276. The Maternity Leave Act (1979).
277. *Id.*, §5.
278. *Id.*, §3(2).
279. *Id.*, §3(3).
280. *Id.*, §3(4)(a).
281. *Id.*, §3(4)(b).
282. *Id.*, §3(1)(a).
283. *Id.*, §3(1)(c).
284. In the case of a seasonal worker the total period of employment over a five-year period must add up to at least 52 weeks. *Id.*, §3(1)(b).
285. *Id.*, §5(5).
286. *Id.*, §5(2)(c).
287. *Id.*, §4.
288. *Id.*, §4(1)(b,c).
289. *Id.*, §4(5-7).
290. For a discussion of the modern status of the legal doctrine of undue influence as it pertains to wives, see *Barclays Bank PLC v. O'Brien*, 4 All England Reports 417 (House of Lords, 1993).
291. AWOJA Draft Report, *supra* note 92, at 47-48.
292. ECONOMIC AND SOCIAL SURVEY 1995, *supra* note 101, at 201.
293. *Id.*
294. STATE OF THE WORLD POPULATION 1997, *supra* note 2, at 69; NATIONAL REPORT, *supra*, note 93, at 45.
295. NATIONAL REPORT, *supra* note 93, at 45.
296. AWOJA Draft Report, *supra* note 92, at 56.
297. ECONOMIC AND SOCIAL SURVEY 1995, *supra* note 101, at 2010.
298. NATIONAL REPORT, *supra* note 93, at 46, ¶6.2.5.
299. *Id.* at 46-47, ¶¶6.2.2, 6.2.6.
300. *Id.* at 24, § 2.1.1; Memorandum and attachments from Portia Nicholson Clarke of AWOJA to the Center for Reproductive Law and Policy regarding the Bureau of Women's Affairs (August 21, 1997) (on file with the Center for Reproductive Law and Policy).
301. *Id.*
302. ECONOMIC AND SOCIAL SURVEY 1995, *supra* note 101, at 248.
303. Offences Against the Person Act, 1864, §44(1).
304. See the Bill Entitled An Act to Amend the Offences Against the Person Act, §2, published in THE JAMAICA GAZETTE SUPPLEMENT, Vol. CXVIII, No. 39 (October 10, 1995) [hereinafter Act to Amend the Offences Against the Person Act, 1995].
305. *Id.*, §44(2)(b).
306. *Id.*, §44(2)(a).
307. *Id.*, §53.
308. See *supra*, note 303.
309. *Id.*, *passim*.
310. *Id.*, §4(44c).
311. *Id.*, §2(43A(3)(b)).
312. *Id.*, §2(43C).
313. *Id.*, §2(43B).
314. *Id.*, §2(43A(1)).
315. *Id.*, §2(43A(2)).
316. R v. R, 4 All England Reports 481 (House of Lords, 1991).
317. Act to Amend the Offences Against the Person Act, 1995, §2(43B(2)).
318. Commonwealth Secretariat, Caribbean Community Secretariat, Commonwealth Fund for Technical Cooperation, Model Legislation with regard to Sexual Harassment: An Act to Provide Remedies in Respect of Acts of Discrimination Involving Sexual Harassment (N.d) (on file at the Center for Reproductive Law and Policy).
319. Matrimonial Causes Act, 1989§10(1)(b,c); Domestic Violence Act, 1995, §4(1).
320. Domestic Violence Act, 1995, §3(2).
321. *Id.*, §2.
322. Matrimonial Causes Act, 1989, §10.
323. "In this Act . . . 'Court' means the Resident Magistrate's Court or the Family Court . . . ." Domestic Violence Act, 1995, §2.
324. *Id.*, §14.
325. *Id.*, §16.
326. *Id.*, §7.
327. *Id.*, §12.
328. NATIONAL REPORT, *supra* note 93, at 8, ¶2.5.
329. *Id.*, at 15, ¶1.3; 50, ¶6.48. These figures are from 1992.
330. AWOJA Draft Report, *supra* note 92, at 56.
331. REVISED POPULATION POLICY STATEMENT, *supra* note 141, at 19.
332. ECONOMIC AND SOCIAL SURVEY 1995, *supra* note 101, at 248-249.
333. NATIONAL REPORT, *supra* note 93, at 4, ¶2.10. "Baby-father" and "baby-mother" are the Jamaican terms for parents of children born out of wedlock.
334. ECONOMIC AND SOCIAL SURVEY 1995, *supra* note 101, at 249.
335. Marriage Act, 1897, §3(2-3).
336. *Id.*, §24.
337. The Incest (Punishment) Act, §2(1) (1948) [hereinafter Incest Act, 1948].
338. Offences Against the Person Act, 1864, §45.
339. *Id.*, §50.
340. *Id.*, §51(b).
341. *Id.*, §64.
342. *Id.*, §58(1).
343. *Id.*, §60.
344. *Id.*, §61.
345. *Id.*, §50. "Carnal abuse" is defined as sexual intercourse with a girl under 16 years of age. See *supra* note 307 and accompanying text.
346. *Id.*, §48.
347. *Id.*, §50.
348. See *supra* note 337.
349. Incest Act, 1948, §2(1).
350. *Id.*, §2(1).
351. *Id.*, §3.
352. An Act to Amend the Incest (Punishment) Act, §2(1), published in THE JAMAICA GAZETTE SUPPLEMENT, Vol. CXVIII, No. 39 (October 10, 1995).
353. *Id.*, §§2(3), 5.
354. *Id.*, §2(7).
355. REVISED POPULATION POLICY STATEMENT, *supra* note 141, at 12.