

JAMAICA

1. Discrimination in the family

a) Overarching legal framework for marriage

Women and men are regarded equally under the provisions of the Constitution with respect to marriage (Jamaica Constitution 1962, s. 18). Equal marriage rights are also conferred through the Marriage (Amendment) Act 1979 and the Muslim Marriage Act 1957, and the Hindu Marriage Act 1957. The Marriage (Amendment) Act 1979, s. 31 further stipulates the requirement of registration of all marriages. There are no legal provisions for forced marriage, but there is no documentation to suggest that this is a regular practice. Harmful practices against widows are prohibited through the provisions of the Marriage (Deceased Wife's Sister or Brother's Widow) Act 1914. It explicitly states that marriages to the deceased wife's sister or brother's widow will be deemed void.

Though registration is not required, informal and de-facto unions are partially regulated through various legislation. These include the Maintenance Act 2005, and the Property (Rights of Spouse) Act 2006, s. 2 (1) in which the definition of a spouse includes, a single woman, who has cohabited with a single man as if she were in law his wife for a period of not less than five years; (b) a single man who has cohabited with a single woman as if he were in law her husband for a period of not less than five years.

b) Child marriage

The minimum legal age of marriage varies according to different laws. The Muslim Marriage Act 1957 s. 7, and the Hindu Marriage Act, s. 8, both state a legal age of 16 for both women and men. With respect to the Marriage (Amendment) Act 1979, the legal age is 18 for both women and men, however, exceptions are allowed for marriage as early as 16, subject to the necessary consent (The Marriage Act 1979, section 24). Notably, consent is required from the father or legal guardian, and if no such guardian the mother, if unmarried. The judge of the Supreme Court may also issue consent, if neither parents nor guardians are able to do so.

Child marriage, defined as solemnization between persons in which either is under the age of 16, is void and prohibited through provisions of The Marriage (Amendment) Act 1979, s.3(2).

c) Household responsibilities

There is no existing legislation that differentiates sex regarding the head of the household, and there is no formal law requiring obedience of a wife.

The Maintenance Act (2005), Part IV, outlines equal rights and obligations of parents. The Children (Adoption of) (1958) Act, s. 15, outlines the rights and duties of parents and capacity to marry. Both Acts also provide for the equal rights of women to have custody of their children irrespective of marital status. Within the 2005 Act, the definition of spouse is extended to de-facto or informal

unions (Maintenance Act Part 2005 IV, s. 8 (1).) The Children (Adoption Of) 1958, s. 15 and 16, also legislates the equal rights and duties of parents within the context of adoption.

Men and women are afforded equal rights to choose where to live, regardless of marital status. These rights are enshrined in the constitution, which explicitly state the right to freedom of movement, including the right to enter and leave the country and to move about and reside in the country (The Constitution of Jamaica 1962, Section 13, (3 f)).

Notwithstanding the above legal provisions, the CEDAW Committee in its 2012 report noted the prevalence of traditional stereotypes of women in relation to their role in the family. While both parents are legally responsible for the maintenance of their child/children, mothers (particularly single mothers) were reported to have a disproportionate burden of care for children, credited to cultural factors as well as the legal and administrative inadequacies concerning child maintenance. Also of concern to the Committee, was the inadequate participation by men and the disproportionate number of female headed households (CEDAW 2012, p.11).

d) Divorce

Men and women have equal rights to initiate and finalize a divorce, noting that a petition for the dissolution of marriage may be filed, and made absolute, by either party to the Court. This may be done on the ground that the marriage has broken down irretrievably (The Matrimonial Causes (Amendment) Act (2005), s. 5 (1) and s. 17 (2) respectively). With respect to the custody, maintenance and responsibilities of shared children thereafter, the Act remains gender neutral (The Matrimonial Causes (Amendment) Act (2005), s. 23 (1)).

The CEDAW committee notes with concern however, that the parties must be married for a minimum of two years and de facto separated for one year. Additionally, the final decision regarding divorce is subject to proof of irreparable rupture, after a minimum period of six months (CEDAW Report, 2012). The implications of these procedures include not only the reluctance of women to initiate divorce, but also risks compelling women to remain in vulnerable or dangerous situations.

e) Inheritance

All children, as well as female and male surviving spouses, share equal rights to inheritance of both land and non-land assets (Provisions for Family and Defendants) Act 1993 s. 4 (2 a & b)). The Act which is gender neutral also states beneficiaries to include, parents; former wives and husbands; and persons in de-facto or informal unions, who would have cohabitated with the deceased for a minimum period of five years (Provisions for Family and Defendants) Act 1993 s. 4 (2c-e)). According to the FAO Gender and Land Rights Database, family land in Jamaica is normally inherited equally between the sexes without issue.

Disinheritance by surviving spouse is not prohibited, but every will made by a man, or woman, shall be revoked by his, or her, marriage (Wills (Amendment) Act 1979, s. 13). Women and men are also afforded equal rights to make a will, under the aforementioned Act.

2. Restricted Physical integrity

a) Violence against women

Jamaica acceded to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para), becoming binding as of 2006. Regional and international conventions however do not take precedence over domestic legislation, and must be incorporated to be fully enforced.

The Domestic Violence (Amendment) Act 2004 and the Sexual Offences (Amendment) Act 2011 are the two key pieces of legislation addressing violence against women.

With respect to a national policy, Jamaica operationalized its National Policy for Gender Equality (NPGE) in 2011 (UPR Report, 2015, p.5). Additionally, the National Strategic Action Plan to eliminate Gender-based Violence in Jamaica (NSAP-GBV) 2017-2027 was approved by the Human Resources Committee of the Cabinet on Tuesday June 27, 2017. Strategic Priority Areas of the Plan include: Prevention; Protection; Investigation, Prosecution and Enforcement of Court Orders; Enforcement of Victim's Rights to Compensation, Reparation and Redress; and Protocols for Coordination of NSAP and Data Management Systems. The Bureau of Gender Affairs is responsible for implementation of both policy and plan. Additionally, they entered a Memorandum of Understanding (MOU) with the Ministry of National Security in September 2013, with the main objective to harmonize data categories to facilitate a proper assessment of the prevalence of gender-based violence (UPR Report, 2015). Other programmes facilitated by the Bureau of Gender include collaborative efforts with NGOs to conduct social outreach programmes, including the Schools Education Programme (SEP), to end gender based violence (UPR Report, 2015). The UPR Report also notes other government programmes to include, but not limited to: The Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA); Counselling and Therapy; Domestic Violence Interventions; Legal Aid; Hotlines; and programmes for children and youth. The National Policy also states the involvement of various ministries in implementing some aspects of gender mainstreaming throughout their policies, plans and programmes.

According to the most recent CEDAW report, gender-based violence is a widespread phenomenon in Jamaica, and is often underreported due to social and cultural norms. Harmonisation of national data from various agencies is ongoing, to better assess prevalence, and will be executed by a Crime Observatory in collaboration with the Bureau of Gender Affairs (UPR Report, 2015).

There remain some challenges, including a reported lack of understanding and insufficient training by law enforcement personnel such as police officers and judges. Furthermore, that the delayed judicial process and fear of reprisals, continue to serve as a deterrent to reporting and prosecution (CEDAW Combined Report 2012).

With respect to so-called honour crimes, there is no evidence to suggest that this is practiced in Jamaica.

b) Domestic violence

Within the provisions of the Domestic Violence (Amendment) Act 2004, s. 4(2), the definition includes the use of, or threat to use, violence causing physical or mental injury, and the likelihood to repeat. Acts that result in physical injury for example assault or wounding may be subject to criminal law and may be prosecuted under the Offences against the Person Act and under the Common law. In accordance with section 3 of the Act, the law is also extended to former partners and members within the family. The revised Domestic Violence act therefore widened the range of persons who may be protected, and also enacted provisions for investigation and prosecution of perpetrators.

There are presently no government established shelters, though the National Policy objectives include such establishments island-wide. A 24-hour toll free hotline is provided through a national NGO, Woman Incorporated. Generally, the Government supports several women's NGOs and their work on domestic violence, including the funding of income generating activities (UPR Report 2015).

c) Rape

A man commits the offence of rape if he has sexual intercourse with a woman without the woman's consent and knowing that the woman does not consent to sexual intercourse or recklessly not caring whether the woman consents or not (Sexual Offences Act 2011, Part II, section 3 (1.)). A person found guilty of such an offence is liable to life imprisonment, or any other term deemed appropriate by the court (Sexual Offences Act 2011, s. 6). The law also makes provisions for marital rape, which is defined as a man having sexual intercourse with his wife without her consent, or is reckless as to whether she consents. However, the law becomes applicable only within certain circumstances, and is not always criminalized. Such circumstances include: separation or where proceedings to dissolve the marriage or have it annulled have begun; orders by the court for a husband not to molest or cohabit with the wife; or where the man has sexual intercourse with his wife knowing that he suffers from a sexually transmitted infection (Sexual Offences Act 2011, Part II, section 5 (1 & 3)).

The law also provides for increased penalties for aggravated assault. Violation of children under the age of 16 is punishable by life Sexual Offences Act 2011, s. (10) and 16).

d) Sexual harassment

There is presently no legislation relating to sexual harassment, and the CEDAW Committee notes concern of the high incidence of sexual harassment in the work place. As of 2015, Cabinet has issued instructions to the Office of the Chief Parliamentary Counsel to prepare a draft Bill (UPR Report, 2015).

e) Female genital mutilation

There is no evidence to suggest that Female Genital Mutilation is practiced in Jamaica. There is no law addressing female genital mutilation.

f) Abortion

Abortion is illegal in Jamaica. The Offences against the Persons Act, s. 72 stipulates that every woman who intentionally procures her own miscarriage shall be punishable by life imprisonment. Section 73 goes on further to state, that anyone who aides or facilitates an abortion is also subject to

three years imprisonment, with or without hard labour. According to the U.N., exceptions to this law are observed only in cases where preservation to the mother's physical or mental health or threat to her life is of concern.

The CEDAW Committee is concerned that due to the illegality of abortion including cases of rape and incest. Also of concern is the lack of data on the incidence of unsafe abortion and its linkages to high infant and maternal mortality rates (CEDAW Report, 2012).

3. Restricted Access to productive and financial resources

a) Secure access to land and assets

Women face no legal restrictions regarding ownership, use, decision-making power, and use as collateral over land and non-land assets, irrespective of marital status, and are ensured the right to property. Also, corresponding legislation does not make distinction on the basis of sex, notably the Jamaica Constitution (1962) and The Land Acquisition (Amendment) Act (1976). Property and non-land assets apply to all groups of women, and the definition of spouse is extended to de-facto and informal unions (Property (Rights of Spouse) Act 2006, s. 10 (9)). The Property (Rights of Spouse) Act 2006, s. 10 (9) also now affords men and women the right to acquire or hold property jointly. The National Policy reports however, that women may be affected differently by trade due to social and cultural discrimination, which limits their access to land, amongst others assets.

b) Secure access to formal financial resources

Women and men enjoy equal legal rights and access to financial services though not explicitly subject in legislation. The CEDAW Committee does however include in their recommendations, the need for Government to improve women's access to microcredit (CEDAW Report, 2012). The Gender National Policy for Gender Equality also references women's limited access to credit, again due to social and cultural discrimination.

c) Workplace rights

The Employment (Equal Pay for Men and Women) Act, 1975 prohibits discrimination in the workplace on the basis of sex. Beyond this, there is limited provision for discrimination against women at work, explicitly stated in legislation. The CEDAW Committee notes "that the definition of discrimination does not encompass both direct and indirect discrimination and does not cover discrimination by both public and private actors, in accordance with articles 1 and 2 of the Convention" (CEDAW Report, 2015, p.3).

Jamaica has been recognized however, for its outstanding achievement in public representation. Of 128 countries recently surveyed, Jamaica ranked first as having a higher proportion of women managers than men (ILO 2015).

The Maternity Leave Act 1979 mandates paid maternity leave covered 100% by the employer. The employer of a qualified worker who has been granted maternity leave shall pay to that worker sums, to be known as maternity pay, in respect of the first 8 weeks of her 12 week leave (The Maternity Leave Act 1979, s.5 (1)). With regard to domestic workers, they receive paid leave through the National Insurance Scheme if they are active contributors (National Insurance (Amendment) Act

2008, s. 20 A). Additionally, employment security is enacted in section 7 (2), noting that an employer who without reasonable cause terminates the employment of a worker wholly or partly because of her pregnancy, shall be guilty of an offence and shall be liable to a fine not exceeding 1 000 Jamaican dollars, or imprisonment for a term not exceeding six months.

According to the National Gender Equality Policy, men are unable to access paternity leave, and there is no legislation regarding this benefit. Additionally, there is no legislation regarding parental leave. Restrictions on women's participation in jobs performed at night have been revoked.

4. Restricted Civil liberties

a) Citizenship rights

Women and men are afforded equal rights with respect to the acquisition, retention and changing of citizenship, in accordance with the Constitution of Jamaica (1962) Chapter 2, s. 3. and the Jamaican Nationality (Amendment) Act 1999. This is applicable to all groups of women, irrespective of marital status. Additionally, women are equally entitled as men to pass their nationality onto their children who are born outside of Jamaica. Legislation also provides equal rights for men and women to register the births of their children (Registration (Births and Death) (Amendment) Act 1982). The provisions of the constitution remain equal with respect to the application of passports, and the right to travel outside the country (The Constitution of Jamaica (1962) Chapter 3, section 13, (3 f)). It further prohibits discrimination, and expresses the right to freedom from discrimination on the grounds of gender, race, place of origin, social class, colour, religion or political opinions. However, it does not yet cover sexual orientation or recognize intersectional discrimination.

b) Voting

The Constitution of Jamaica (1962) Chapter 3, section 13 (3) (m ii) states "every citizen has the right to vote in free and fair elections." There is no evidence to suggest discriminatory practices in this regard.

c) Political voice

There are no legal barriers to women's political participation. There are presently however, no quotas or special temporary measures in place to address the issue. The CEDAW committee also made calls for strengthened measures to address barriers to participation. However, progress has been observed within the public decision making, noting that women account for 59% of workers in the public sector and 41% in the private sector (UPR Report 2015). Jamaica has also in recent history, elected its first female Prime Minister. Other noteworthy achievements include, the Chief Justice of Jamaica, Director of Public Prosecutions, Solicitor General, Auditor General, Head of the Jamaica Defence Force Coast Guard, Children's Advocate, Chief of State Protocol, and Deputy Commissioner of Police all being women, during the UPR 2015 reporting period. Also according to the 2015 UPR Report, Joint Select Committee has been established to address female underrepresentation in Parliament, local authorities and other areas of public and political leadership.

d) Access to justice

Generally speaking, there are no legal impediments or customary, religious or traditional practices that discriminate a woman's right to sue or be sued. Additionally, there is no evidence to suggest that a woman's testimony in court, is any less or more weighted than a man's. Additionally, procedural rules within court do take into account the special interest of women and girls. One example is the power of the court to hear proceedings via camera or to exclude persons from the court (The Domestic Violence Act 2004, s. 14 (1)).

The Legal Aid Act (2000) is one of the measures enacted to increase women's access to the justice system. It is further provided by Government, through agencies such as the Bureau of Gender Affairs, which is tasked with the national monitoring of gender equality.

CEDAW 2012, Combined 6th and 7th Report
www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-C-JAM-CO-6-7.pdf

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