

# FEMINISM AND CRIMINAL LAW

## INTRODUCTION

1. Lynne Goodstein begins her article entitled "*Women, Crime and Criminal Justice - An Overview*" with the following:

" We live in a gendered world. By being born as a boy or a girl, in virtually all locations on the planet our life courses will be to some extent differentially determined. These differences in the lives of females and males are shaped to some extent by biological differences between the sexes - hormone level, body types, body size and specific roles in the process of reproduction. Yet by far the larger influence on life-course differences comes from how society inscribes sex differences with broad-scale meaning through the social construction of gender."

2. Feminist thinkers generally believe that gender is both central and relevant to all social relations, institutions and processes; that gender relations are characterized by patterns of domination, inequalities, oppressions; and that gender relations do not emerge naturally from biology - they are constructions, the product of socio-cultural and historical conditions.

3. Julie Annas, in her article *The Quality of Life* (Oxford University Press, 1993) puts in this way:

" the biological sex differences between men and women bring with them, in all known societies, enormous cultural division. To a greater or lesser extent, the shape of men's lives is in all societies different from that of women's. And not only do social institutions and attitudes everywhere divide up kinds of activity between the sexes, but women and men see their own lives, from the inside, very differently."

4. In the Criminal justice system, the discussion of gender cannot be avoided; it affects what we do, how we do it and how others regard that work. Criminology as a discipline has traditionally focused on male offenders. What does feminist criminology mean? Several answers come to mind:
  - Women's issues in the criminal justice system;
  - Making women visible in criminology;
  - Work by and for women;
  - Critical understanding of women, crime and the system;
  - How to treat with women and girl offenders and victims.
5. It begins with the central issue being women and takes a critical view of stereotypical images of women and their roles.
6. This discussion of feminism and criminal law will look at women from three positions: women as offenders, women as victims and women as practitioners.

### **WOMEN AS OFFENDERS**

7. Most theories of crime explain why men commit crime with little focus on the different dynamics that might affect women as offenders. Male behaviour is the norm around which criminal jurisprudence, law and practice have evolved and women are shoe-horned into this male model. There is a substantial body of literature about women offenders which has long shown that their patterns of offending are different from men's. Women are around two and a half times less likely to offend than men; they commit more minor offences; have shorter criminal careers and pose little threat to public safety.
8. It is accepted worldwide that women commit substantially less crime than do men in virtually every crime category, save prostitution. There are several social factors that account for this lower rate of involvement in crime by women, including:



- compared with men and boys, mechanisms of social control keep women and girls more restricted in terms of freedom of movement;
- increased surveillance by parents and greater restriction to the home reduces access to criminal settings;
- the fact that women have the primary responsibility for child rearing makes their attention more likely to be diverted from public settings to those of the home and family;
- men are valued in society for their dominance and risk-taking ability, attributes compatible with criminal activity; while women are not socialized toward these behavioral attributes and therefore are less inclined toward criminal activity.

9. In many cases, women committing the most serious offences (such as murdering their spouses) do so believing that their lives or their children's lives are in danger. Studies have shown that when women do commit violent crimes, there is a higher probability that the targets of their violence will be family members and the violence is generally a reaction to current or previous abuses or maltreatment of that woman or of her child by the offender. It must also be admitted that women sometimes commit violent crimes against other women over questions related to their male partners. The numbers of such women offenders are however much smaller when compared to male offenders of like crimes.

10. In 2004, the Fawcett Society in the UK reported on its year-long Commission on Women and the Criminal Justice System. It concluded that female offenders, victims and workers are still expected to conform to a system "made for men". The report outlined the situation with respect to offenders in this way

- There are over 4,500 women in prison, (in the UK), an increase of 194 per cent in the last ten years.
- Most women are convicted of non-violent offences, such as shoplifting. More women are sent to jail for shoplifting than for any other crime.

- More than half of women in jail have suffered domestic abuse and about 25 % have been in local authority care during their childhood.
- Most women in jail are mothers.

11. The statistics in Jamaica can be found in the Annual Report of the Department of Correctional Services, a study on Women in Prison, prepared by Dr. Aldrie Henry-Lee and data from the Jamaica Constabulary Force.

Numbers of Persons Arrested for Major Crimes by Gender, 2002

Type of Crime	Male	Female	Total
Murder	549	17	566
Shooting	613	11	624
Robbery	860	10	870
Breaking In	780	21	780
Rape	408	-	408
Carnal Abuse	175	-	175
<b>Total</b>	<b>3364</b>	<b>59</b>	<b>3423</b>

Source: *Planning Institute of Jamaica* (2005).

Drug-Related Arrests of Jamaicans by Gender, 2002

Drug	Male	Female	Total
Ganja	3803	244	4047
Cocaine	540	194	698
<b>Total</b>	<b>4343</b>	<b>438</b>	<b>4781</b>

Source: *Planning Institute of Jamaica* (2005).



Length of Sentence by Sex January to December 2002

Length of Sentence	Female	Male	Grand Total
Less than 1 Month	1	20	21
1-3 Months	49	468	517
4-6 Months	52	454	506
7-9 Months	35	209	244
10-12 Months	36	224	260
12-24 Months	122	317	439
25-36 Months	45	181	226
37 Months-10 Years	25	292	317
10 Years	2	48	50
Life	-	10	10
Death	-	-	-
G.C's Pleasure	-	-	-
Indefinite	<b>368</b>	<b>2331</b>	<b>2699</b>
<b>Total</b>			

Source: *Planning Institute of Jamaica* (2005).

Actual Population as at December 31<sup>st</sup> 2005 and Ideal Capacity of Adult Institutions

Institution	Actual Population as at December 2005	Ideal Capacity
Tower Street A.C.C.	1628	850
St.Catherine A.C.C.	1258	850
FortAugusta A.C.C.	175	250
RichmondFarmA.C.C.	226	300
TamarindFarm A.C.C.	233	350
South Camp A.C.C.	240	250
New Broughton	26	50
Total	3786	2900

Length of Sentence by Institution and Sex January-December 2005

Length of Sentence	ST.C.A.C.C.	T.S.A.C.C.	Male Total	F.A.A.C.C. Female	Grand Total
Less than 1 month	104	4	108	14	122
1-3 months	355	19	374	41	415
4-6 months	231	32	263	35	298
7-9 months	109	18	127	15	142
10-12 months	81	57	138	20	158
13-24 months	117	90	207	19	226
25-36 months	41	62	103	8	111
37 months-10 years	108	142	250	2	252
10+ years	33	48	81	1	82
Life	11	25	36	3	39
Death	2	0	2	0	2
G.G's Pleasure	0	0	0	0	0
Indefinite	0	0	0	0	0
<b>TOTALS</b>	<b>1192</b>	<b>497</b>	<b>1689</b>	<b>158</b>	<b>1847</b>

Source: Department of Correctional Services *Annual Report 2005*



### Prison Population by Sex and Rated Capacity 1983-2002

Year	Female Prison Population	Male Prison Population	Prison Population Total	Rated Capacity	Female Prison Capacity
1983	200	3153	3353	2861	-
1984	112	3269	3381	2861	-
1985	63	3528	3591	2861	-
1986	66	3468	3534	2861	-
1987	226	2647	3681	2861	-
1988	212	2483	3697	2861	-
1989	169	2086	3516	2781	-
1990	238	3372	3610	2781	-
1991	366	3339	3705	2781	-
1992	258	3121	3379	2781	-
1993	176	3108	3284	2781	-
1994	171	3221	3392	2781	-
1995	136	3153	3289	-	-
1996	146	3225	3371	2720	280
1997	148	3068	3216	2771	300
1998	159	3109	3268	2771	300
1999	181	3308	3489	2771	300
2000	218	3179	3397	2514	250
2001	265	3488	3753	-	250
2002	303	3444	3747	-	-

Source: *Planning Institute of Jamaica* (2005).

12. These statistics show that the percentage of women in prison in Jamaica over the years has ranged from the international average of 5% to as high as 9 % in 2002. In 2002 almost half of the women incarcerated were serving sentences of 12 months or less and over 80% were serving sentences of less than 2 years. This supports the statement that most women are committing less serious offences.
  
13. The reason for this phenomenon, which is accepted worldwide, is poverty. Women and children make up the largest number of the worlds poor. Women receive the lowest wages and have more familial responsibilities and the majority of female-headed households live in poverty.
  
14. Fort Augusta is the only woman's prison in Jamaica. Dr. Henry-Lee describes it in the study entitled " Women in Prison":

“ Fort Augusta ...was built as a fort by the British in the 1800s. It is situated on a long promontory in Kingston Harbour, and is bordered on three sides by water. It was previously used as a medium security prison for men but when St. Jago women's prison was closed, the women were moved to Fort Augusta. The prison consists of some administrative buildings; several cell blocks of the dormitory variety; a number of small hut-type buildings, a concrete structure that contains two punishment cells and a chapel that serves as a library. There is a large centre where a number of sheep graze.”

15. Most of the women in Fort Augusta have dependent children and have the additional stress of worrying about their care from the point of arrest through their period of incarceration. The study referred to above "Women In Prison" addressed the impact of imprisonment on mothers and children. The following are two extracts from that study:



“ Apart from the depression because of their own incarceration, the mothers were deeply distressed over the impact of the imprisonment on their children. They worried about where the children were, what was happening to them at school, the children’s physical security (since most lived in violence-prone areas – a mark of poverty) and the possibility for delinquent behaviour. They claimed that the incarceration had not affected the relationship with their children and that when there was contact, the bonding was the same. There is limited access to counseling and therefore the stress may manifest itself in the squabbles that they engage in over trivialities.”

The children also revealed high levels of depression and silent resentment and anger. ....The children missed their mothers and crying was a frequent activity. There was evidence of child shifting as one relative after another tried to take over the maternal duties. Of course, these surrogate mothers are themselves in highly impoverished circumstances and the presence of these added “children” aggravated the situation. There was evidence of physical and emotional abuse.”

“ The research found that upon the incarceration of mothers, children are taken care of by either older siblings or grandparents. Many children exhibit ‘out of control’ behaviour, emotional trauma, and problems with schoolwork and in one stance, suicidal tendencies. There problems are more common among children of those incarcerated locally, as there is no sustained follow-up of these children compared with those dependents of overseas inmates who are followed by Hibiscus.

It is recommended that under the Child Development Agency, children of incarcerated women be investigated and specially targeted for emotional and psychological support, anger management and economic protection, the latter to be supported by law. Assigned Social Workers should maintain contact with dependents especially in light of the fact that there is evidence of school dropouts, emotional instability and anger in children of inmates. If these are not dealt with than they will present at some other time as anti-social behavior. Care and protection must be ensured.”

## **WOMEN AS VICTIMS**

16. Crime generates violence in varying degrees, both against the victim and the State. Gender violence is a problem of significant proportions that affects all societies to a greater or lesser extent. Yet, most people are unaware of the magnitude, causes and consequences of gender violence.

17. Violence against women is defined in Article 1 of the *Declaration on the Elimination of All Forms of Violence Against Women* as:

“Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”

18. Article 2 of the *Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women* has a fuller definition:

“ Violence against women shall be understood to include physical, sexual and psychological violence:

- a. that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among other, rape, battery and sexual abuse;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution. Kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs.

This Convention was ratified by Jamaica in December, 2005.



19. Every year thousands of women in Jamaica are the victims of violence, many at the hands of those they are most intimate with. Many of these crimes were only recently reported, investigated and taken seriously as they occurred primarily in the private sphere and did not fit traditional conceptions of “real” crime – crimes committed by criminals who were strangers to the victims.

20. Attached to this paper are one report and two tables:

- *Jamaica Injury Surveillance System Violence Related Injuries 2004 – Preliminary Data – Gender Analysis* – The summary and tables set out in this report show the breakdown of violence -related injuries in 2004
- One of the tables breaks down the *Age Group Victim For Major Crimes For Year 2005* and also separates the sexes in each age group.
- The second table sets out the number of sexual offences reported (Rep) to the police per year from 2000-2005 and those that were cleared-up (C/Up)

21. Strategies for ensuring safety and preventing crime include improved locks and protection of property, learning self-defense tactics, walking in well-lit areas at night. These have limited utility in preventing the type of crime to which many women fall prey – crimes by intimates – nor in the location where many women are in danger – the home. Domestic violence, sexual assault, wife battering, trafficking, harassment and other offences, which have yet to be clearly recognized, e.g. marital rape, have only recently been adequately acknowledged and attended to by the police and the courts For the offense of incest, presently the most under-reported, the means must be found to ensure that it is taken more seriously both legally and socially.

22. Girls are much more likely to be victims of child sexual abuse than are boys. Women are more likely to be sexually assaulted and to be victims of domestic violence than men. Even prostitution functions as part of a cycle of victimization. Many women enter into prostitution as a means of livelihood in an effort to escape abuse at home.

23. Many women become prostitutes for a combination of three main reasons – the lack of any skills to obtain employment, sexual abuse in childhood and because of poverty. Many prostitutes are victims of physical violence, threats and intimidation which they learn to accept as an unavoidable occupational hazard.

24. Gender violence may occur throughout the life cycle of a woman. The table below was produced for a United Nations Development Programme study and illustrates the various forms that violence may take:

Gender Violence throughout the Life Cycle

Phase	Type of Violence
Pre-Birth	Sex selective abortion; battering during pregnancy (emotional and physical effects on woman; effects on birth outcome); coerced pregnancy; mass rape in war.
Infancy	Female infanticide; emotional and physical abuse; differential access to food and medical care.
Girlhood	Child marriage; genital mutilation; sexual abuse by strangers and family members; differential access to food and medical care; child prostitution.
Adolescence	Dating and courtship violence; economically coerced sex; sexual abuse in the workplace; rape; sexual harassment; forced prostitution; trafficking in women.
Reproductive Age	Abuse of women by intimate male partners; marital rape; dowry abuse and murders; partner homicide; psychological abuse; sexual abuse in the workplace; sexual harassment; abuse of women with disabilities.
Elderly	Abuse of widows; elder abuse affects mostly women.



25. This study found that sexual abuse in childhood or adolescence is reported by one-third of women in Barbados, Canada, Netherlands, New Zealand, Norway and the United States. In the Caribbean 30% of married women surveyed stated that they have been battered.
26. The principal characteristic of gender violence is that it occurs against women precisely because of their womanhood. Gender-based violence involves power imbalances where, most often, men are the perpetrators and women the victims. It is also recognized that the power relations between men and women that produce gender violence also reproduce gender violence.
27. While women are the immediate victims, the consequences of gender violence extend beyond the victim to the society and threaten family structures. Children suffer emotional damage when they watch their mothers and sisters being battered. The psychological scars often impede the establishment of healthy relationships in the future.
28. Women victims of gender violence often vent their frustrations and anger on their children, thereby transmitting and intensifying the negative experiences. Children come in the future to accept violence as an alternative means of conflict resolution and of communication.
29. The problem, however, is not exclusively a woman's concern. The cause and consequences of gender violence affect men's perceptions of women, women's perceptions of men and their respective perceptions of themselves. Ultimately it also influences the development of nations and regimes. Gender violence impacts on all of society and therefore the solutions to this concept must be of concern to us all.
30. The 'costs' of domestic violence are devastating for both the individual victim and the wider society. The costs can be broken down into several areas:

The Justice System – this includes police, prosecution, courts, probation, prison and legal aid.

Health Care – the costs involved in treatment of injuries and mental health care; including doctors, hospitals and health care personnel.

Social Services – Including the services for children caught up in incidents of domestic violence and abuse.

Housing – Emergency shelters and assistance to remove from a violent setting.

Civil Legal Action – Domestic violence complaints, dissolution of marriages and custody actions

Economic Output – Lost economic output because of time off work due to injuries, absences from work, even the loss of employment.

Human and Emotional cost – Domestic violence leads pain and suffering that can not be counted in dollars.

31. Laws are passed to prosecute and prevent crimes including the eradication of gender violence. Laws also should be passed to protect possible victims against crimes of violence and incidents of abuse. Local legislation and regional and international treaties and UN resolutions exist concerning gender violence.

## **INTERNATIONAL LAW**

### **Convention on the Elimination of all forms of discrimination against women (CEDAW)**

32. This Convention was adopted by the General Assembly of the UN on December 18, 1979, and entered into force on Sept 3, 1981, following ratification by 20 State Parties. The Articles of the Convention make no provision for violence against women. However in the course of the CEDAW Committee's application of the Convention it was recognized that violence against women and girls was an act of discrimination against them, and General Recommendation #19 on violence against women was established by the Committee.



33. This Recommendation realizes that “ gender-based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, is discrimination within the meaning of Article 1 of the Convention.” In comments on the Convention in the Recommendation the following statement is outstanding:

“ Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence, and coercion. These forms of violence put women’s health at risk and impair their ability to participate in family life and public life on a basis of equality.”

#### **The Declaration on the Elimination of Violence Against Women**

34. The Declaration on the Elimination of Violence Against Women was adopted in 1993 by the UN General Assembly and is the first international human rights instrument to deal exclusively with violence against women. The Declaration also provides the first comprehensive definition of violence against women.
35. The Declaration is also well known for the recognition in its scope of the concept that violence is as much a socio-cultural issue as it is a legislative one. It recognizes that violence against women occurs in all social strata, cultures, peoples, nations and regions, and explicitly refers to the urgent need to extend and ensure rights and principles of equality, liberty, integrity and dignity, as they apply to all women and to all individuals.
36. Eight rights of women are specified in Article three of the Declaration:
- The right to life;

- The right to liberty and security of person;
- The right to equal protection under the law;
- The right to the highest standard attainable of physical and mental health;
- The right to just and favourable conditions of work;
- The right not to be subjected to torture or other cruel, inhumane or degrading treatment or punishment;
- The right to equality;
- The right to be free from all forms of discrimination.

37. The Declaration also requires specific state actions. Article ( c ) demands that States exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons. Article 4 ( k ) requires that States collect, compile and make public certain statistics and data. The Declaration of course does not impose legal obligations on State Parties. It however clearly establishes the principles accepted by the UN for dealing with violence against women.

### **The Beijing Declaration and Platform for Action**

38. The Beijing Conference was held in 1995. It holds the record as the largest UN conference. The Declaration made at the conference deals explicitly with the subject of violence against women. It declares that violence against women is an obstacle to the achievement of the objectives of equality, development and peace and it urges all nations to recognize and address the problem. The Declaration recognizes that violence against women may occur within the family or be committed by either the general community or the State. It condemns specific types of violence, such as forced sterilization and forced reproduction, that have affected women in situations of armed conflict and/or women belonging to minority and other persecuted groups.



39. The Beijing Declaration recognizes that violence against women manifests the historically unequal power relations between men and women that have led to domination over and discrimination against women and to the prevention of women's full advancement. While recommending a multidisciplinary approach to the problem, the Declaration urges governments and other actors to promote an active and visible policy of mainstreaming a gender perspective in all policies that affect women and men.

### **The Universal Declaration of Human Rights**

40. Adopted unanimously by the General Assembly of the United Nations on December 10, 1948, the Universal Declaration of Human Rights declares in Article 1, that "all human beings are born free and equal in dignity and rights..." Articles 2,3 and 5 further establish that:

- Article 2 - "Every one is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."
- Article 3 - " Everyone has the right to life, liberty and security of person."
- Article 5 - "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

41. The non-discrimination clause, combined with Article 3 and 5, indicates that any form of violence against women –which may include threats against life, liberty or security, torture, or cruel, inhumane or degrading treatment –does not conform to the principles of the Declaration and therefore constitute a violation of the international obligation of member states.

## REGIONAL LAW

### The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women

42. The Inter-American Convention on the prevention, punishment and eradication of violence against women of the Organization of American States (OAS) constitutes the central piece of regional legislation on gender violence in Latin America and the Caribbean. The definition of gender violence in Article two has already been referred to above as having the widest definition.
43. The Inter-American Convention has three main objectives:
- To recognize that the *de jure* and *de facto* elimination of discrimination against women and the strict respect of all women's rights as an indispensable condition for the creation of a just, solid and peaceful society.
  - To prove that violence against women is a generalized situation and constitutes a grave threat to human rights.
  - To provide an Inter-American mechanism to protect the rights of women and make States internationally responsible for their ambivalence to this problem.
44. Article 7 of the Convention urges signatory parties to condemn all forms of violence against women and to adopt policies directed toward preventing, punishing and eradicating violence in the following manner:
- ( c ) include penal, civil and administrative norms – as well as any others deemed necessary – in internal legislation to prevent, punish and eradicate violence against women and adopt appropriate administrative measures;*
- ( d ) adopt juridical measures that will threaten the aggressor with punishment if he fails to abstain from assaulting, intimidating, threatening, harming or placing a woman's life in danger in any way that jeopardizes her integrity or threatens propriety;*



*(e) take all appropriate measures including legislative action to modify or abolish any existing laws, rules or juridical or customary practices that support the maintenance or tolerance of violence against women;*

*(f) establish just and efficient legal procedures for women who have suffered violence that include, among others, protection, fair opportunity and effective access to said procedures;*

*(g) establish the necessary juridical and administrative mechanisms to ensure that victimized women have effective access to indemnification, reparations and other just and efficient means of compensation; and,*

*(h) adopt any legislative or other measures that are necessary to effect the principles of this convention.*

## **NATIONAL LAW**

45. Latin America and the Caribbean was the first region in the world in which all countries ratified the Convention on the Elimination of All Forms of Discrimination Against Women. This does not mean however, that the nations have adapted their national legislation to the demands of the Convention, implemented policies and taken positive actions to eliminate discrimination or met their obligations to report on advances in these areas.
46. In Jamaica, while the laws provide some degree of legal remedy for one or more forms of gender violence, these remedies are generally inadequate. Many forms of gender violence are not addressed at all in our legislation such as sexual assault and harassment in the workplace, educational institutions, prisons, health centres or other places.
47. The treatment of rape and statutory rape under existing legislation is insufficient to deal with the myriad of variations that gender violence can take in this area. The recent amendments proposed to the Offences Against the Person Act seek to deal with rape within marriage and other matters.
48. The Domestic Violence Act, passed in 1995, provides measures for protection for women and their children through the use of orders for protection and occupation, but does not address or establish sanctions or punishment for intra-familial violence. Its purpose is protective not punitive.

49. Statistics from the Ministry of Justice concerning the use of the Act interestingly show an increase in the use of the provisions by men.

NUMBER OF COMPLAINTS FILED:

Kingston/St. Andrew Family Court:  
2003 - 115 males / 762 women  
2004 - 105 males / 862 women

St James/Hanover/ Westmoreland Family Courts:  
2003 - 123 males / 1029 women  
2004 - 168 males / 842 women

50. In December, 2004, amendments were made to the Act which allow persons other than the abused woman to bring a complaint and anyone on behalf of a child; 'visiting' relationships are now covered by the provisions of the Act; damaging property and acts to prevent the use of property are now considered 'abusive conduct' which can lead to a protection order and the court can make a maintenance order without a separate claim being made to it.
51. Women not only suffer as victims of rape and domestic violence, they are often victimized again by the process and procedures of the criminal justice system. This is illustrated by a brief examination of the following:

REPORTING THE OFFENCE:

52. For many victims of crime the biggest decision they will make is whether or not to report an offence to the police. They are often treated unsympathetically by the police and/or medical personnel; many fear that the police will not believe them – particularly where the offender is not a stranger, but someone known to the victim and the incident involves coercion and/or the use of drugs or alcohol. They fear they will be blamed for the attack because of what they were wearing or the fact that they were drinking. They may be humiliated by the questioning and feel that they will not be considered as a credible witness.



53. Amnesty International in its recent report on women's issues in Jamaica put it this way:

*“ One of the main problems in Jamaica, as elsewhere in the world, is that on-one wants to report sexual assault. For reasons that are research in depth elsewhere, most of the women spoken to by Amnesty International had not reported the sexual assaults or harassment that they experienced to the authorities. They also reported witnessing high levels of unreported sexual assaults in the community.*

*Officially reported rates of violence are high enough-suggesting that 0.18 per cent of women are sexually assaulted every year. But sexual assault investigation units in Jamaica estimate that only 25 per cent of sexual violence is reported. Health facilities report slightly higher rates of rape and sexual assault than the police, suggesting that women are reluctant to approach the police.*

*This under reporting is directly related to discrimination against women, and the trivialization of sexual violence perpetrated by an acquaintance as “just a little sex”.*

54. The response by the police must be of the highest standard of a professional investigative quality. The key to securing convictions in rape cases has been said to be “ good victim care” from the moment of the report. In Jamaica, the Centre for the Investigation of Sex Offences and Child Abuse was formed with this objective in mind, but there are still numerous reports of “mis-treatment’ at the hands of the police by victims of rape and domestic violence.

55. Rape and domestic violence have particularly low reporting rates. According to a 2003 report from the Home Office, a woman is assaulted in England, on average 35 times before she makes a report. While there has been no similar study in Jamaica, there also is no reason to believe that woman here would be any more inclined to report more frequently.

## REPRESENTATION

56. The relationship between women and those she instructs to represent her often also suffers from misunderstanding and a lack of sympathy. To those trained in the law there can be a failure to understand now baffling the legal system is to someone who has not previously come into contact with it.

## TESTIFYING IN COURT

57. Victims and witnesses in sexual abuse cases are often surprised and shocked at being confronted by the defendant and/or his family in and near the courtroom. This possibility should be explained beforehand and some way to enter a courtroom without intermingling with others found. Facing the defendant when giving evidence can also be a very disturbing situation. In some cases the use of a screen or a video link should be allowed. Child victims must be separated and allowed to wait in a private area away from the public.
58. The proposed amendments to the Offences Against the Person Act presently before Parliament contain provisions that would effect the collaboration rule and in certain cases, prohibit the victim's sexual history from becoming an issue in the trial.
59. The length of time cases can take is not only very traumatizing it can also cause concerns relating to work and child care that must be addressed. Information is key – the victim must be told all of the procedures in court and given an opportunity to raise concerns personal to her and to have these concerns addressed.



## **WOMEN AS PRACTITIONERS**

60. Policewomen, women correctional officers, female attorneys and judges also must contend with the gendered nature of the criminal justice system. It was only in recent years that women have been able to assume roles in the police force and correctional centers. Even today, their involvement is most often narrowly defined to fit traditional stereotypes regarded as appropriate roles for women.
61. The judiciary performs a key function in any legal system. While the statistics below show a dominance of women Resident Magistrates and Registrars, this does not extend to the higher courts or to the positions of power: the offices of the Chief Justice, the President of the Court of Appeal, the Attorney-General, the Director of Public Prosecutions and the Public Defender.

### **Judiciary:**

Court of Appeal Judges – 5 males / 2 women

Supreme Court Judges - 19 males / 12 women

Resident Magistrates - 8 males / 30 women

Administrative – (Registrars & Deputies)

Supreme Court - 7 women

Court of Appeal - 2 women

### **The Attorney-General's Chambers:**

Administrative staff – 9 males / 25 women

Attorneys - 12 males / 26 women

### **Parliament:**

Members of the House of Representatives – 53 males / 7 women

Senate - 16 males / 5 women

In the Cabinet - 9 males / 3 women

62. Though women have obviously made great progress, there are still positions that are jealously guarded by men for men only. These are positions for which "the old boys' network" still operates. There is no doubt that in time these will and must fall under the practice of going to the best qualified person, which will ensure that women would at last fill these positions. The practice of placing the woman at the top of some business, institution or agency, and pointing to her as an example of equality in appointments, is merely, and has long been recognized, as a device of tokenism. This, it must be recognized, is being whittled away; and ability and qualification are being accepted as the test for such appointments instead of the biological sex of the person. Until this test is accepted universally, the glass ceiling preventing women's ascendancy will continue to exist.

**MARGARETTE MAY MACAULAY**

**NANCY MAE ANDERSON**

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