

Jamaica Under Pressure: A Caribbean nation faces mounting demands by international actors to change its abortion laws

By Rebecca Oas, Ph.D.

INTRODUCTION

For decades, countries with pro-life laws have faced increasing pressure to liberalize their laws, both by direct pressure by international expert bodies and other governments and through attempts—thus far unsuccessful—to establish an international human right to abortion. In recent months, Jamaica has become the target of a well-organized and well-funded campaign to remove legal protections from the unborn and ensure that abortion is not only broadly legal but also readily accessible.

Like a previous *Definitions* focusing on Kenya¹, this article examines the debate around abortion in a specific country—Jamaica—to inform our understanding of how the abortion debate is occurring in other countries as well as at the international level.

An issue of the moment

The issue of abortion has risen to greater prominence in Jamaican politics recently for several reasons. According to

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Reuters, “Debate over the 157-year-old ban has been reignited on the island following Argentina’s landmark December decision to legalise abortion and U.S. President Joe Biden’s order to restore billions in funding for abortion services worldwide.”² But prior to those events, Jamaican lawmaker and former Olympic sprinter Juliet Cuthbert-Flynn introduced a motion to repeal the relevant sections of the Offenses Against the Person Act in 2018. While the motion failed to receive a vote during that parliamentary session, Cuthbert-Flynn is working on a new policy to present to Parliament in the future.

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In Jamaican law, the Offenses Against the Person Act prohibits abortion without exception, and while Minister of Health Dr. Kenneth McNeill recommended that it be changed in 1975, this was never taken up by Parliament. Jamaica is mistakenly frequently listed as a country with life and health exceptions because it operates under a legal system based on English common law where an exception to save the life of the mother had become an established principle. The 1938 British court decision *Rex v. Bourne*, which interpreted a blanket abortion ban as containing an exception for the health of the mother, drew this exception from a 1929 UK law, the Infant Life Preservation Act, which was cited in that case but was never introduced and is not in force in Jamaica. Jamaica’s law continues to state that abortion is the unlawful taking of unborn human life.³

A 2018 poll of 1,000 Jamaicans conducted by Johnson Survey Research Limited was characterized as finding “massive support for a woman’s right to have an abortion.”⁴ However, the actual findings were more nuanced, and illustrated the enormous impact the phrasing of the question has on survey findings. While close to 70% of Jamaicans expressed discomfort with the Government determining women’s pregnancy outcomes, a similar percentage firmly opposed changing the law to allow for abortion on demand. While views were somewhat mixed on the role of the law, the belief that abortion is immoral, legal or otherwise, appeared to be strong among Jamaicans, both men and women.

Nevertheless, the framing of the survey’s findings as “massive support” for abortion as a right is part of a coordinated campaign to convince Jamaicans that their neighbors support a

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right to abortion, and to convince politicians that taking a stand in favor of abortion will be popular among their constituents.

Bill Johnson, the same veteran Jamaican pollster who conducted the 2018 survey, was commissioned by the Jamaica Observer to conduct new polls in March and July of 2020 on the question of whether the abortion law should be changed to “to make it easier for a woman to have a legal abortion in the event of rape, or incest, or if her life is in danger?” In March, 54% of respondents said no and 40% said yes. In July, opposition to changing the law had risen to 59% and the “yes” vote had fallen to 35%.⁵ Even in the most extreme cases, popular opinion among Jamaicans favored retaining pro-life protections in the law.

International pressure: the CAPRI report

In January 2021, a report co-funded by the European Union titled “Coming to Terms: The Social Costs of Unequal Access to Safe Abortions” was launched by the Caribbean Policy Research Institute (CAPRI).⁶ This think tank was originally launched with funding from the International Development Research Centre, established by an act of the Canadian Parliament.⁷ In collaboration with the European Union, CAPRI invited civil society organizations to collaborate on specific projects including one on “decriminalization of termination of pregnancies.” This project proposal was very clear in its objectives:

The action will play a role in advocating for the review of the policy to terminate pregnancies and the empowerment of women through having control over their reproductive health through access to safe, affordable and legal procedures to terminate pregnancies and ensure that the policy dialogue and development process are informed. In addition, it will assess the socio-economic benefits of legal access to abortion, both in special cases, and on demand, to inform policy change in this particular area of reproductive health. An advocacy strategy based on the findings of this research, including partnerships with other CSOs, seeks to further inform a more progressive public outlook on an issue which, in Jamaica, involves a complex set of legal, moral, religious, social and cultural aspects.⁸

The finished report’s recommendations were in line with this approach: the Jamaican parliament should vote to repeal the relevant sections of law outlawing abortion and replace them

with “a law permitting medical termination of pregnancy upon request.” This was further expanded to stipulate that no reason should be required for the procedure, and there should be no mandatory waiting periods or counseling prior to the abortion, no spousal or parental notification or permission required, and abortions should be publicly funded.

The report does not attempt to engage with the moral dimension of abortion itself at all, and characterizes religious groups as being opposed to abortion without even acknowledging the essential reason: the deliberate taking of a human life.

The recommendations called for the vote to be secret “to protect elected parliamentarians from fear of retribution by religious groups, some of whom have expressly stated their intention to mobilize against any elected official who votes to legalize abortion.” While the CAPRI report does not cite any specific instances where violent retribution was threatened, it is probable that religious leaders would be able to mobilize their congregations to vote against politicians that support abortion on demand. This call for a secret vote would allow politicians to cave to pressure from the European Union and its allies in Caribbean-based think tanks while being protected from pressure—or electoral consequences—from the very people they are tasked with serving: the voters who elected them to Parliament in the first place.

The CAPRI report acknowledges that “Apart from medical considerations, the abortion question in Jamaica is largely debated as a religious, moral, and human rights/women’s rights issue.” However, the report does not attempt to engage with the moral dimension of abortion itself at all, and characterizes religious groups as being opposed to abortion without even acknowledging the essential reason: the deliberate taking of a human life. Instead, sidestepping the morality of abortion *per se*, it catalogues a list of costs to society it attributes to the illegality and inaccessibility of abortion. The collective cost of these ills, one is led to assume, is meant to somehow outweigh the moral issue entirely.

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The homicidal pessimism of “unwantedness”

The CAPRI report devotes a significant amount of space to arguing that unwanted children—whose births could be prevented by abortion—are costing Jamaica a considerable amount, including poor life outcomes, increased crime, health expenses, and other societal ills. This argument has multiple problems, both philosophically and technically, but has been used in many contexts globally to promote abortion, and warrants examination.

The report states: “Being unwanted during pregnancy can have long-term negative consequences on the children’s lives.” Therefore, the unstated part implies, it would be better for these

children never to be born at all. Indeed, it would be better for their siblings, their parents, and for Jamaica as a whole.

It is true that the circumstances of a child's conception, gestation, and birth have a profound impact on his or her entire life. As the CAPRI report notes, unintended pregnancies are more likely to occur among poorer women and among women who experience domestic violence. Substance abuse among adolescents as well as adult women has also been identified as a risk factor for unplanned pregnancy.⁹ These same factors—poverty, violence, and substance abuse—contribute to worse outcomes for children regardless of their parents' pregnancy intentions, a fact that has complicated the scientific literature studying the potential impact of pregnancy intentions on children's long-term outcomes.

Further complicating the statistical picture is the fact that while researchers—especially those with an ideological bent toward promoting contraception and abortion as the solution to social problems—are much more eager to label conceptions, pregnancies, births, and children themselves, as unwanted than those children's parents. The CAPRI report notes that “Parents are likely to be reluctant to openly admit to not wanting their children.” Researchers in the UK found that women were reluctant to use the term “planned” to describe their pregnancies unless rigorous criteria were met, while the word “unwanted” was “positively disliked” and associated with the idea of children who were homeless, orphaned, or deserted by their parents.¹⁰

It is well established that not all children are born into equally stable, healthy, or affluent circumstances, and, as the CAPRI report points out, adolescent mothers suffer greater challenges due to their inexperience and immaturity, and children without fathers actively present in their lives also tend to fare worse than their peers. The CAPRI report also suggests that children born in less-than-optimal situations may have more propensity toward criminal activity, citing some research that proposed a link between legalization of abortion and a subsequent drop in crime. The question of whether this link is real, or whether it is driven by a decrease in the number of young people committing crimes or the absence (due to abortion) of those most likely to be criminals is disputed. But what remains unsaid is the fact that in any population there are individuals who for reasons of statistical probability may be more likely to commit future crimes, yet no just system of law would incarcerate, let alone put to death, those individuals based on their potential for future misdeeds.

It is notable that the CAPRI report does not once mention adoption, which provides a way for adolescent parents to provide a loving family to their child without having to take on the full responsibility of parenting before they are ready to do so.

Nevertheless, the CAPRI report proposes just such a “solution” for future crimes yet to be committed by suggesting abortion on demand as a remedy for problems that could be prevented or responded to by nonlethal means. The CAPRI report cites a variety of studies that have attempted to determine whether legalizing abortion causes a reduction in crime, a question that remains disputed by scholars. This technical question, whether legalized abortion is correlated—or even causally linked—to reduced crime by virtue of eliminating future criminals from the population, does not address a crucial broader question. Could other legal or policy interventions more effectively reduce crime without sacrificing the lives of an entire population of young and innocent individuals for crimes they never lived to commit?

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The CAPRI report uses the words “unwanted” and “unwantedness” 107 times in 72 pages—almost one and a half times per page on average. But not all “unwantedness” is created equal. In the multiple scholarly reports they cite, the term has very different meanings. In modern demographic surveys, such as the Demographic and Health Survey (DHS) headed by the United States Agency for International Development (USAID), pregnancies are split into three categories:

A pregnancy reported as wanted now is classified as ‘wanted’, one wanted later is classified as ‘mistimed’ and one not wanted at all is classified as ‘unwanted’.¹¹

“Unintended” pregnancies include those designated as either “unwanted” or “mistimed.” However, these categories, and the survey questions that produce them, have been revised over the years, making some studies difficult to compare to each other.¹² But not all the studies cited by the CAPRI report rely on this methodology. Multiple pages are dedicated to describing a few longitudinal studies that followed a small cohort of children across decades of their lives. Those designated as “unwanted” fit a very specific criterion: their mothers had sought abortions and were denied, often due to gestational limits. In one study, the mothers had sought abortion twice and been denied both times. This is a far more specific and rigorous definition of “unwantedness” than the DHS definition, and applies to far fewer children. And yet, in the study where women had been twice denied an abortion for the same pregnancy, 38% of those mothers later denied they had ever sought to abort (not knowing

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that their request for abortions were how they were recruited into the study in the first place.)¹³ The lead author of that study, Dr. Henry P. David, made no secret of the fact that his Prague-based longitudinal study was intended to impact the discourse around abortion. When asked about the impact of the study, he said:

Well, I can tell you right now. It's been cited in all kinds of [American Civil Liberties Union] cases around the country. It's been cited in other countries. Even in Czechoslovakia, the government, after they heard of our results, discontinued the abortion commissions. Abortion became free on request of the woman. And it's been used in other countries, in South Africa even, to liberalize their legislation. It's been closely tied to the rights of women. That's where it's been most effective—that women should not be forced to bear a child they don't want to have.¹⁴

Yet between the lines of the multiple articles David and his colleagues wrote about the Prague study a hidden truth exists. It may be true that the “unwanted” children—whose mothers were so pessimistic about their futures that they sought to abort them twice—were less likely to perform above average than their “wanted” peers in school and sought psychiatric services more often. But every year of school they completed, and every challenge they overcame, with or without mental health assistance, the families they founded, and the contributions they made in the workforce—all these things were more than they could have achieved if they were never born, and more than those of the study's unmentioned control group: their counterparts whose mothers' requests for abortion had been granted.

As a side note, the fact that the “unwanted” children ended up seeking mental health services more than those in the control group might be put into context by the findings of another study that examined how exposure *in utero* to maternal stress impacts the mental health of children as they grow to adulthood. The study, based on Swedish administrative data, found that mothers whose close relatives died during their pregnancies were more likely to have children who use medication to treat anxiety later in their lives.¹⁵ A description of the paper's findings in *Vox* said:

The suggestion, of course, isn't that expectant mothers can stop their relatives from dying. Instead, the paper has a broader conclusion: that prenatal exposure to stress can have effects that last decades after birth.¹⁶

One of the key catchphrases of the SDGs is “leave no one behind”—an emphasis on the fact that those most vulnerable must be prioritized in order for global progress to be equitable and based in human rights.

According to the CAPRI report, “unwantedness” is a highly unusual thing in the context of human rights: an apparently immutable trait that can lead to increased hardships in life, yet rather than entitling the individual who bears it to special protection, it is used to justify having even the most basic protections stripped away.

Vox’s Matt Yglesias, describing the study in a podcast, said that it “obviously has no policy implications,” but that it illustrated the fact that stress has a physical impact, and when a pregnant woman experiences extreme stress, it changes the womb environment in ways that can have a long-term impact on her child. Nevertheless, it is noteworthy that the “policy implications” of “unwantedness” are treated very differently despite obvious similarities in their projected long-term results.

A blind spot in international human rights discourse

The Sustainable Development Goals (SDGs) were launched with great fanfare at the United Nations to eliminate poverty of all kinds, establish gender equality, and fifteen other goals by the year 2030. One of the key catchphrases of the SDGs is “leave no one behind”—an emphasis on the fact that those most vulnerable must be prioritized in order for global progress to be equitable and based in human rights.

This discourse about equality and equity focuses on those who are poor, marginalized, disabled, and otherwise disadvantaged, those at risk of becoming criminals, those whose family and community structures have not provided adequate support: in other words, those that society has historically regarded as “unwanted.”

The modern family planning movement had as its early leaders people like Marie Stopes and Margaret Sanger, both of whom were linked to the eugenics movement and its efforts to discourage procreation among people deemed “unfit,” including people with disabilities and racial and ethnic minorities. The organizations both women founded have taken steps in recent years to distance themselves from the legacy of their founders.¹⁷ Yet that legacy lives on in the message of the CAPRI report, as it attempts to paint Jamaica’s “unwanted” children as better left behind.

As discussed earlier, “unwantedness” in the context of the CAPRI report is loosely defined. To the extent that one might propose a unified definition, it might be described as a quality that is affixed to a person at the moment of conception based on the desire (or lack thereof) by the parents to conceive a child. It then becomes an incurable property that persists despite the parents’ potential acceptance and even subsequent delight at the pregnancy and birth and love for the child, despite potentially difficult circumstances.

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It is important to consider the parents as well in this context. In the longitudinal studies that examined the outcomes for children whose mothers had been denied the abortions they requested, there is no indication that, upon being denied, the mothers were offered any alternative forms of help for them and their unborn children. It is understandable that a woman who perceives her situation with regard to her unborn child as zero-sum will not experience an immediate change of heart toward that child after the being denied what she saw as the best solution to her problem.

In the context of Jamaica, the CAPRI report makes much of the fact that the women and girls at greatest risk of unintended pregnancy are already more likely to be suffering from poverty, domestic abuse, and other problems that internationally-negotiated documents like the SDGs have committed to solving. The European Union, which helped to fund the CAPRI report, is a leading donor in international aid, and could do a great deal to help lift Jamaican women out of poverty, address complications of botched abortions, and reduce the economic and social pressures that make them desperate enough to seek them in the first place. Again, it is noteworthy that this document that carefully details the difficulties for young adolescent girls raising children before they are ready makes no mention at all of adoption.

No help from international human rights mechanisms

Jamaica has ratified seven of the nine UN core human rights treaties. Three of the treaty monitoring bodies associated with those treaties have pressured Jamaica to liberalize its abortion laws. The Human Rights Committee, which monitors compliance with the International Covenant on Civil and Political Rights, asked Jamaica in 1981 whether “a woman could voluntarily terminate her pregnancy and if so, in what circumstances.”¹⁸ In 2011, the Human Rights Committee told Jamaica to “amend its abortion laws to help women avoid unwanted pregnancies and not to resort to illegal abortions that could put their lives at risk,”¹⁹ a recommendation that was repeated in 2016.²⁰

The Committee on Economic, Social, and Cultural Rights also expressed concern about dangerous abortions in Jamaica and

urged the country to pass legislation that eliminates “the practice of dangerous abortions that place the lives of women and girls at risk.”²¹

The greatest pressure on Jamaica to liberalize its abortion laws came from the Committee on the Elimination of Discrimination against Women (CEDAW), which asked Jamaica to detail “the measures taken to legalize abortion in cases of rape, incest, severe fetal impairment and risk to the health of the pregnant woman, and to decriminalize it in all other cases” in advance of its forthcoming review.²² This was a reiteration of recommendations made in 2012.²³

Although the recommendations from treaty bodies are not binding, and the treaties monitored by these bodies of independent experts do not mention abortion at all, even euphemistically, treaty body recommendations have formed the basis of the promotion of abortion as a right within the UN system, despite the fact that there exists no internationally-agreed mandate to do this.

These treaty body observations are, perhaps surprisingly, not mentioned in the CAPRI report. However, pro-abortion activists, including parliamentarians in Jamaica, are quick to cite them. Alando N. Terrelonge, an attorney and minister of state in the Ministry of Culture, Gender, Entertainment and Sport, wrote in an editorial in the *Jamaica Observer*:

Women’s organisations across the world have fought for the right to access safe and legal abortions for decades, and increasingly international human rights law supports their claims. In fact, international human rights legal instruments and authoritative interpretations of those instruments compel the conclusion that women have a right to decide independently in all matters related to reproduction, including the issue of abortion.²⁴

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He notes that fellow Caribbean nations Cuba, Barbados, and Guyana had “respected this position” and liberalized their abortion laws in the past, as well as making note of the recent repeal of pro-life laws in Ireland and Argentina.

Terrelonge insists that “no one is advocating abortion on demand,” although the CAPRI report does precisely that: calling for “a law permitting medical termination of pregnancy upon request.” Furthermore, Terrelonge “lauds” Minister Juliet Cuthbert-Flynn, who introduced the 2018 pro-abortion motion in Jamaica’s parliament. Carole Bridge of Jamaica Coalition for a

Healthy Society pointed out in an open letter to Cuthbert-Flynn:

The motion which you brought to Parliament does not restrict abortion on demand to 22 weeks only, but can be used to support performing abortions at any stage of pregnancy. This is exactly what can happen now in New York, where full-term babies can be aborted up to the time of delivery because of a similar wording in their legislation.²⁵

Because of the high level of public disapproval of abortion “on demand” among Jamaican citizens, pro-abortion politicians are quick to distance themselves from that language. Nevertheless, as the CAPRI report makes clear, nothing short of that will satisfy abortion advocates, including those in donor countries or international institutions.

The way forward

Pro-life advocates in Jamaica and the greater Caribbean region are taking action to refute the CAPRI report and inform the public about the harms of abortion, including by using webinars²⁶ and editorials. The abortion lobby, which is well-funded, is seeking to bypass the ultimate issue of the value of human life—including of those not yet born—by pessimistically framing some lives as not worthy of being lived. For all their public advocacy in favor of liberalizing Jamaica’s abortion laws, they argue that those who would ultimately vote on such a motion should be able to do so in secrecy, unaccountable to their constituents. While the arguments in the CAPRI report can—and should—be rebutted based on the facts, the most important argument in the debate is the one the CAPRI report entirely sidesteps: depriving innocent human beings of life, for any reason, is morally wrong and a violation of the most fundamental human right.

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Endnotes

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or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour. Section 73: Whosoever shall unlawfully supply or procure any poison or other noxious thing, or any instrument or thing whatsoever, ' knowing that the same is intended to be unlawfully used or employed with intent to procure the miscarriage of any woman, whether she be or be not with child, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding three years, with or without hard labour.”

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