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AMENDED SUBMISSIONS

BY
THE LEGAL AND ETHICAL SUB-COMMITTEE
NATIONAL AIDS COMMITTEE

ON THE CHARTER OF RIGHTS AND FREEDOMS (CONSTITUTIONAL
AMENDMENT) BILL

SUBMISSIONS

PRESENTLY BEFORE THIS HONOURABLE HOUSE is a Bill Entitled “*An Act to Amend the Constitution of Jamaica to provide for a Charter of Rights and Freedoms and for connected matters.*” Annexed to the Bill, is a Memorandum of Objects and Reasons, which, among other things, states that “*the Government has decided that, pending more comprehensive amendments to the Constitution, it is desirous at this time to give effect to the proposals emanating from the Final Report in 1994 of the Constitutional Commission relating to the Fundamental Rights which would constitute a guarantee by the State to preserve and protect those rights.*”

It is our considered view that the right of everyone to enjoy the highest attainable standard of health (including good mental health), the right to health care and the right to freedom from discrimination on the basis of disability or on the basis of one’s health status (primarily through being afflicted with a communicable disease such as HIV) are fundamental rights and freedoms. As such, they deserve immediate protection. Given the nature of these rights and freedoms, we believe that they should be included in the Charter of Rights Bill **at this time**; not sometime in the future when, according to the Memorandum of Objects and Reason, there are likely to be “*more comprehensive amendments to the Constitution.*”

The Right to the highest attainable standard of Health:

The last few years have seen some remarkable developments in the field of international human rights. For some decades, the international community focused on classic civil and political rights such as – the prohibition against torture, the right to a fair trial, freedom of speech and so on. However, since the late 1990s, the international community has begun to devote more attention to economic, social and cultural rights such as the right to education, food, shelter as well as the right to the highest attainable standard of physical and mental health (Yamin 2005).

The right of everyone to enjoy the highest attainable standard of health (“the right to health” for brevity) is codified in numerous legally binding international and regional human rights treaties. The full name of the right is the “right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹ While the right to health includes the right to health care, it goes beyond health care to encompass the underlying determinants of health such as safe drinking water, adequate sanitation and access to health-related information². The right includes freedoms such as the right to be free from discrimination and involuntary medical treatment. It also includes entitlements such as the right to essential primary health care, child health, maternal health and access to essential drugs.³ Like other human rights, it has a particular concern for the disadvantaged, the vulnerable and those living in poverty. The right thus requires of a government that it provides an effective, inclusive health system of good quality. It is however recognized internationally, that the right is subject to both progressive realization and resource availability. Although qualified in this way, the right nonetheless imposes some obligations of immediate effect, such as non-discrimination. It also requires indicators and benchmarks to monitor the progressive realization of the right. It also encompasses the active and informed participation of individuals in the health decision-making that affects them.

1 The African Charter on Human and Peoples’ Right (1981), Art 16; The Additional Protocol to the American Convention on Human Rights in the Area of Social and Cultural Rights (1988), Art. 10

2 **The human right to the highest attainable standard of health: new opportunities and challenges**
Transactions of the Royal Society of Tropical Medicine and Hygiene, Volume 100, Issue 7, July 2006, Pages 603-607; Paul Hunt

3 Ibid.

Article 25.1 of the Universal Declaration of Human Rights affirms: *“Everyone has the right to a standard of living adequate for the health of himself and of his family, including food, clothing, housing and medical care and necessary social services.”*

The **International Covenant on Economic, Social and Cultural Rights** provides the most comprehensive provision on the right to health in international human rights law. In accordance with Article 12.1 of the Covenant, States Parties recognize *“the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”* while Article 12.2 enumerates by way of illustration, a number of *“steps to be taken by the States parties... to achieve the full realization of this right.”* Among this illustrative list is *“(d) the creation of conditions which would assure to all, medical service and medical attention in the event of sickness.”* **This Covenant was ratified by Jamaica on December 19, 1996.**

Additionally, Jamaica undertook to guarantee the right to health in the following International Instruments:

1. **The International Convention on the Elimination of All Forms of Racial Discrimination of 1965**, ratified by Jamaica on August 14, 1966. The Convention entered into force on July 4, 1971. Article 5 reads:

“In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour or natural or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:(c) Economic, social and cultural rights in particular: (iv) the right to public health, medical care, social security and social services;”

2. **The Convention on the Elimination of All Forms of Discrimination against Women of 1979**, ratified by Jamaica with the signature date of July 17, 1980 and entered into force on November 18, 1984. Article 12 reads:

State Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.”

3. **The Convention on the Rights of the Child of 1989**, signed by Jamaica on January 26, 1990 and entered into force on June 13, 1991: Article 24(1) provides:

“States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”

Several regional human rights instruments also recognize the right to health, such as:

- **The European Social Charter of 1961 as revised (art. 11):** “Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.”
- **The African Charter on Human and Peoples' Rights of 1981 (art. 16):** – “1. Every individual shall have the right to enjoy the best attainable state of physical and mental health. 2. State Parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.”
- **The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 (art. 10):** “1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well being. 2. In order to ensure the exercise of the right to health, the State Parties agree to recognize health as a public good and particularly, to adopt the following measures to ensure that right:.....d. Prevention and treatment of endemic, occupational and other diseases; ...”

The UN Committee on Economic, Social and Cultural Rights in its General Comment 9 has emphasised that it is up to states how they give effect to the rights contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR), including the right to health, but whatever arrangements they choose they must be effective :

“..[T]he central obligation in relation to the Covenant is for States parties to give effect to the rights recognized therein. By requiring Governments to do so "by all appropriate means," the Covenant adopts a broad and flexible approach which enables the particularities of the legal and administrative systems of each State, as well as other relevant considerations, to be taken into account. But this flexibility coexists with the obligation upon each State party to use all the means at

its disposal to give effect to the rights recognized in the Covenant. In this respect, the fundamental requirements of international human rights law must be borne in mind. Thus the Covenant norms must be recognized in appropriate ways within the domestic legal order, appropriate means of redress, or remedies must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.” [Paras 1 and 2]

Based on the foregoing, the government of Jamaica is under a duty to ensure that appropriate means of redress or remedies are available to an aggrieved individual. Traditionally, health issues when they reach the courts (particularly in those jurisdictions where there is no explicit guarantee to the right to health) have tended to be dealt with from a negative civil liberties perspective rather than consideration of the positive state obligations to provide adequate resources or access to treatment for effective enjoyment. This is particularly the case in relation to mental health where judgments have tended to focus on the restrictions placed on patients rather than their right to adequate treatment. In the South African case of **Moore v. Gambia (241/2001)** the African Commission on Human and Peoples’ Right stated that the state was under an obligation to realise the right to health of mental health patients to the maximum of available resources. In the Jamaican situation, the government is under an obligation to realise the right to health for all persons, particularly those most vulnerable to infections such as HIV. We believe that the most appropriate means of doing this is by giving the right to health constitutional protection.

Regional Constitutional Protection of the Right to Health

1. **Article 25 of the Guyana Constitution** provides: “Every citizen has the right to free medical attention and also to social care in case of old age and disability.”
2. **Article 19 of the Haitian Constitution** provides: “The State has the absolute obligation to guarantee the right to life, health, and respect of the human person for all citizens without distinction...”

3. **Article 23 of the Haitian Constitution** provides: “The State has the obligation to ensure for all citizens in all territorial divisions appropriate means to ensure protection, maintenance and restoration of their health by establishing hospitals, health centers and dispensaries.”

In the Ecuadorian case of **Mendoza and others v. Ministry of Public Health and the Director of HIV-AIDS National Programme** (*Resolucion No. 0749-2003-RA, 28 January 2004*), the applicants were four persons living with HIV-AIDS. In May 2003, the public hospital where they were receiving treatment stopped providing them with one of the three drugs of the required triple therapy (tri-therapy). In September 2003, the hospital further reduced the therapy to only one of the three drugs. Because this was potentially more damaging to their health than not taking any of the drugs at all (as patients may develop drug resistance, while deriving no therapeutic benefit, if the drugs are not used in the correct combination), the plaintiffs were forced to abandon the treatment, thereby putting their health at serious risk. The plaintiffs filed a ‘constitutional amparo’ (writ of protective injunction) against the Ministry of Public Health and the Director of the HIV-AIDS National Programme. They complained that the defendants had suspended the provision of the tri-therapy medication, and demanded the immediate restitution of such provision. They also demanded that the Government conduct various medical tests required to update their medical prescriptions. Their writ alleged violations of, inter alia, the Constitution of Ecuador, specifically Article 42 (guaranteeing the right to health) and Article 43 (guaranteeing that public health programmes, services and actions be provided free of charge to all), as well as of Article 6 of the ‘Law for the Prevention of, and Integral Assistance for, HIV-AIDS’.

Confirming the decision of a lower civil court, the Constitutional Court ordered that the State of Ecuador must ensure the right to health of its people – a right contemplated in Article XI of the American Declaration of the Rights and Duties of Man, and in Article X of the Protocol of San Salvador. The Court held that although the right to health is an autonomous right, it also forms part of the right to life. The right to health entitles citizens not only to take legal action for the adoption of policies, plans and programmes related to the general protection of health (for example, in cases of disease or epidemic), but also to demand that appropriate laws be enacted, that the Government

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undertake the necessary research, that it develop public policies in the area of health care, and that it provide the necessary entities to ensure that the general public benefits from such policies, plans and programmes.

The Court found that the Ministry of Public Health had committed an omission in failing to meet its obligation to provide an immediate, diligent and effective solution to the problem outlined in the writ. This greatly harmed the conditions of life of those living with HIV-AIDS and amounted to a violation of their rights. Such an omission was a violation of rights guaranteed by the Constitution and by international instruments that Ecuador has ratified and, under Article 163 of the Constitution. These rights include ‘positive’ social rights — immediately enforceable legal rights that are binding upon the ‘public powers’, who thereby have corresponding obligations. The Court stated obiter dictum, that such ‘social’ rights are also to be implemented by courts such as this one, for which the protection of human beings is one of the basic tenets of contemporary constitutional development.

The Court concluded that, in this case, the right to health is an economic right, directly enforceable by the plaintiffs since they had previously had this right fulfilled by receiving a medically necessary treatment. Hence, the Court held, the omission by the Ministry of Public Health violated the plaintiffs’ fundamental rights to life and to health.

WHAT WILL THE ROLE OF THE JAMAICAN COURTS BE, AND DOES THE RIGHT TO HEALTH MEAN THAT THE GOVERNMENT OF JAMAICA MUST PROVIDE ONGOING MEDICAL TREATMENT?

Of those countries that do provide constitutional recognition of a right to health and other rights, arguably one of the best known and most widely celebrated in the Commonwealth (if not beyond) is South Africa, reflecting the values of the pluralist, egalitarian and democratic state that replaced apartheid in 1994. Health rights, together with housing rights, have provided the most significant constitutional rights cases considered by the South African courts to date. In *Soobramoney v Minister of Health KwaZulu Natal 1997 (12) BCLR 1696* the Constitutional Court was faced with not merely one of its first rights cases but potentially difficult moral questions to consider. The applicant, S had chronic kidney failure which was terminal. However, costly dialysis treatment would have prolonged his life for a short period, but the local health authority refused it on the grounds of lack of resources. In his claim S relied on section 27 of the South African Constitution which provides:

“(1) Everyone has the right to have access to (a) health care services, including reproductive health care; (b) sufficient food and water; and (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights. (3) No one may be refused emergency medical treatment.’

In the alternative, S argued that the right to life should be interpreted to mean a right to medical treatment. The Court held there was no need to infer a right to medical treatment from the right to life since it was directly protected by s 27. However, it went on to rule that *a request for ongoing treatment* could not come under emergency medical care and therefore the case fell to be decided under the access to medical services provisions. On this point the Court found no breach since, within the context of the limited resources available, the health authority had acted reasonably and applied its guidelines rationally and fairly in the case of S given (a) the expensive nature of the

treatment and (b) the fact that it would only have prolonged S’s life for a short period. For the Court this has been the crucial test in considering all rights claims – **has the State done all it could reasonably do in the circumstances?** By adopting this approach the Court recognized that it is not in a position to assume the role of the state in making decisions about resource allocation but is instead there to act as an impartial arbiter.

This process is similar in format to the existing remedy of judicial review although it will often extend beyond the decision-making process to examine all the actions taken by the state. Indeed in *Soobramoney* the Court was very explicit about the large margin of discretion it would give to the state to set budgetary priorities stating that the court “*will be slow to interfere with rational decisions taken in good faith by the political organs and medical authorities*” [para 29]. Sachs J went further stating that : “*In open and democratic societies based upon dignity, freedom and equality, the rationing of access to life-prolonging resources is regarded as integral to, rather than incompatible with, a human rights approach to health care*” [para 52]. To admit S’s case would have been to open the floodgates to other claimants in a similar position placing an unbearable strain on medical resources.

The second significant health case considered by the Constitutional Court and one of the most widely known due to the issues involved. That case is *Minister of Health v Treatment Action Campaign (TAC) (2002) 5 SA 721 (CC)* or the TAC case. The Court was required to determine whether the state’s failure to provide comprehensive anti-retroviral drugs to prevent mother-child HIV transmission constituted a breach of Article 27(1). The state argued that the drugs could only be distributed through a few centres designated for research which were able to provide the necessary complementary services such as counselling, new obstetric practices and education of mothers in alternative methods to breast feeding. The Court held that whilst research was important this was not a sufficiently good reason for delay in rolling out the programme to other centres : “*This does not mean....that until the best programme has been formulated and the necessary funds and infrastructure provided for the implementation...the drug must be withheld from mothers and children who do not have access to the research and training sites. Nor can it reasonably be*

withheld until medical research has been completed” [para 68].

An important factor for the Court was the fact the drug (unlike the treatment in *Soobramoney*) was costless to the government and therefore arguments centered on lack of resources did not carry any weight. However, by requiring that the programme should include reasonable measures for counselling and testing, the Court did make orders with some (albeit limited) financial implications. Beyond this and unlike the approach often taken by the Indian Supreme Court and the Inter-American Court of Human Rights, the Court refrained from discussing detailed modes of implementation. Arguably, this created subsequent problems regarding the implementation of the judgment since it took several months of campaigning and lobbying by TAC and others to force the authorities to act and start supplying the drugs. The lessons from the TAC case demonstrate that obtaining a positive judgment, particularly in relation to rights is only half the story, and that ensuring effective implementation is often a greater challenge.

The third case, *B & Ors v Minister of Correctional Services* [1997] ICHRL 37, considered by the High Court, also concerned the supply of anti-retroviral drugs and whether they should be provided to HIV prisoners at the state's expense. The Court, in finding a breach of a prisoner's right to adequate medical care noted that unlike free persons, prisoners have no access to other resources to gain medical treatment and that HIV positive prisoners are more exposed to opportunistic viruses because of overcrowded accommodation. In these circumstances the extension of life expectancy and enhanced quality of life provided by anti-viral therapy required the treatment to be provided to sufferers of HIV if at all affordable. In particular, the Court held that where anti-viral therapy has been prescribed to a prisoner on medical grounds then it should be provided at the state's expense and failure to do so amounted to an infringement of the prisoner's rights.

However, the Court also continued to proscribe the limits of the judiciary's role in health cases by stating that the question of whether the applicants and other HIV patients who fell within certain grounds were entitled to *a prescription of a particular combination* of anti-viral treatments was a medical question and it was not the court's function to make an order dictating to doctors when they

must prescribe anti-viral treatment without discretion. Moreover, it recognized that in deciding what 'adequate medical treatment' constituted in terms of s 27 the court could and should be aware of budgetary constraints.

Submission 1: *Health is a fundamental human right; being a requisite for the exercise of other human rights, as contained in various International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health. At the 10th International Conference on Women and Health held in New Delhi, India in September 2005, UN Rapporteur for Human Rights, Paul Hunt of New Zealand noted that the “right to health is coming of age and that the international community is on the threshold of a new era for the right to health and that soon, the right to health will be viewed as no less of a universal human right than freedom of speech or the right to a fair trial.”*

We therefore submit that inclusion of the right to enjoy the highest attainable standard of physical and mental health would not only fulfill Jamaica’s obligation under these various international instruments, but also strengthen the Government’s legally binding commitment to respect, protect and fulfill all human rights of its citizens. Using the Constitution to make health care policy and placing individual and community well being at the centre of policy making (particularly in the context of HIV and AIDS) is the first steps to be taken in the direction toward ensuring that all Jamaicans fully realize the benefits of the rights or freedoms proposed by the Charter of Rights Bill.

Given that among the stated objectives of the Government in the Memorandum of Objects and Reasons, annexed to the Charter of Rights Bill, is the desire to meet the needs of post-independence Jamaica, there is strong justification for including the right to enjoy the highest attainable standard of health in the Charter, particularly in the context of HIV and AIDS. As Thomas Jefferson once noted, "If we're going to have a successful democratic society, we have to have a well educated and healthy citizenry". We therefore submit that the right to free tuition at the primary level, which is contained in Article 13(3)(k)(ii) of the proposed Charter, is a sufficiently analogous model to include in the Charter, the Right to enjoy the highest attainable standard of health as well.

**FREEDOM FROM DISCRIMINATION BASED ON HEALTH STATUS OR
DISABILITY:**

We are aware that the Final Report of the Constitutional Commission (1994) did not raise any issue in relation to or recommend the inclusion in the Charter of Rights, a guarantee of protection against discrimination on the ground of disability. We are also aware that Minister of State in the Ministry of Local Government, Senator Floyd Morris had previously made representations to this Committee on behalf of the disabled, for the Charter of Rights to be amended along one of the the lines now being proposed (that is, the right not to be discriminated against based on disability).

In the December 2001 Report, this Committee advised that it could not recommend the inclusion in the Constitution the guarantee against discrimination on the grounds of disability, citing as reasons, the fact that policies are being developed with a view to the enactment of legislation for the protection of the disabled. Some five years later (2006), we are still without that protection, since the National Disabilities Act has not yet been passed. While there is a National Policy in place, in the absence of regulatory legislation, the common law position will continue to obtain, especially where the provider of the goods or service is a private entity. As such, the parties will be free to determine the terms of a contract and one party may impose a term for the other to accept or reject. If there is no acceptance, then the contract does not materialize and no action for discrimination can be pursued.

Mr. Chairman, this position is untenable. Our considered view is that inclusion of the right not to be discriminated against based on health status or disability in the Charter would be in keeping with the spirit and intendment of the Final Report of the Constitutional Commission and the Memorandum of Objects and Reasons annexed to the Charter of Rights Bill. No individual or entity should be allowed to deny health care or access to essential services to those most in need, with impunity. We are not amused by the fact that it took some thirty (30) years for the Road Traffic Act to be amended to allow deaf persons to drive and even now, the amendment violates those persons' inherent right to dignity, by requiring a Senior Police Officer to be present at the driving test; a requirement not applicable to other persons seeking to obtain a driving permit. Thus, Mr. Chairman,

while we applaud the fact that Jamaica is on the cutting edge in providing services for the disabled in terms of education and in ensuring that they can access information under the Access to Information Act, we believe that the government has a responsibility to normalize the status of the disabled in the society. By including a guarantee against discrimination on the grounds of disability or health status in the Charter, the government will send a strong message that it is serious when it comes to protecting the rights of all persons. We cannot afford to wait another 30 years for the status of persons who are disabled to be normalized in the Jamaican society. We run this risk by seeking to implement specific National Disabilities Legislation, which will take effect only after being gazetted, unlike a constitutional provision.

In a 2006 Situation Analysis on Excluded Children in Jamaica by UNICEF, it was noted that:

“In Jamaica there is inadequate services and opportunities for children with disabilities, and high levels of stigma and discrimination. More than 37,000 Jamaican children live with one or several forms of disabilities including sight, hearing, speech, physical disability, mental retardation and learning disability, (3.86% of children). While the majority of the children are in the 5 – 14 age groups and thus are of school-age, only 10% of children with disabilities are enrolled in formal school-based and other programmes receiving funding from the Government. Yet, in the Convention on the Rights of the Child, [to which Jamaica is a party] State Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self reliance and facilitate the child’s active participation in the community” (Article 23). The level of stigma facing persons with disabilities continues to be a major contributor to exclusion. A UNICEF-supported study found that some parents viewed the birth of a disabled child as having supernatural connections: 40 % said the child was “sent by God” while 18% thought the disability was due to an evil spirit, punishment for a sin, or looking at a disabled person during pregnancy.”

In addition to this, one cannot help but observe that in a 2006 Jamaica, persons with disability generally have a difficult time accessing public buildings and other places to obtain essential

services; they have difficulty accessing transport and are hardly factored into the job creation equation. Mr. Chairman, we cannot realize the full potential of our peoples if any of them are segregated, isolated and mistreated on account of disability (or for that that matter, for health reasons). In dealing with this issue, the **South African Constitution sets out in Chapter 2: Bill of Rights at sections 9(3) and 27** the following:

“EQUALITY

*9(3) – The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, **disability**, religion, conscience, belief, culture language and birth.*

HEALTH CARE, FOOD, WATER AND SOCIAL SECURITY

27. (1) Everyone has the right to have access to-

- a.) healthcare services, including reproductive health care;*
- b.) sufficient food and water; and*
- c.) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.*

(2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights

(3) No one may be refused emergency medical treatment.”

We commend to your Committee’s consideration, the South African Constitution’s approach to non-discrimination on the basis of disability. **For the purposes of the Jamaican Charter of Rights, we**

would further propose that health status should be an express criterion for equality of treatment.

Based on the foregoing we submit that:

1. The right to enjoy the highest attainable standard of physical and mental health;
2. The right to healthcare; and
3. The right to freedom from discrimination due to one's health status or because of one's disability...

...are basic and fundamental rights and liberties and no circumstance may be used as a pretext for belittling them. If the constitution of Jamaica is to conform to the commonly recognized principles and norms of international law, these rights and liberties must be included in the Charter of Rights Bill.

Recommended Text for Inclusion in the Charter of Rights Bill

The Legal and Ethical sub-committee of the National AIDS Committee suggests that the Charter of Rights and Freedoms should make provision for:

1. Enshrining the right to enjoyment of the highest attainable standard of health and health care by including in the charter, a specific clause along the following lines:

“Everyone has the right to enjoy the highest attainable standard of physical and mental health and to have access to the highest standard of healthcare services. The state must take reasonable legislative, administrative, judicial and other measures within its available resources to achieve the progressive realization of this right to health.”

2. Enshrining the right not to be discriminated against on the basis of disability or due to one's health status, along the following lines:

Clause 13(3)(i) be amended by inserting the words "*mental or physical disability and health status* (including HIV and AIDS) (or words of similar effect) so that the amended clause

13(3)(i) would read:

..... (i) The right to freedom from discrimination on the ground of-

(i) Sex, that is to say, male or female;

(ii) Race, place of origin, social class, colour, religion, *mental or physical disability or health status (including HIV and AIDS).*”

CONCLUSIONS:

In conclusion, we feel compelled to restate that an individual’s health is the key to their ability to achieve the inalienable rights of life, liberty, and the pursuit of happiness. We must ensure that everyone – regardless of their age, income, health status, class or education; whether he/she is disabled or not – can access health care of equal, high quality.

It must also be noted that other countries – both developed and undeveloped – recognize the importance of health care and have guaranteed the right to health care through their constitutions, including Afghanistan, the European Union, Iran, Libya, Saudi Arabia, Somali, and South Africa. Even the provisional constitution of Iraq – written in part by the current Bush Administration – guarantees health care as a right. It would be shameful, if Jamaica, the pearl of the Caribbean and the shining example of democracy, still leaves so many people on their own when it comes to health care, especially in relation to matters related to HIV and AIDS.

Until all people have an equal right to high-quality health care guaranteed through the Constitution, their interests will continue to be ignored. The Legal and Ethical sub-committee is therefore introducing this amendment today to extend a specific right to all people, which is the purpose of such amendments. Our nation’s most sacred document must never be amended to set aside certain rights for select groups, while barring others from ever realizing these rights. It is our submission that the rights and freedoms mentioned herein, are fundamental human rights which all citizens of Jamaica are entitled to enjoy and that they must be protected by the state through their enactment in the Constitution of Jamaica, through the Charter of Rights.

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We remain yours faithfully,

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