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**Sectoral Debate Contribution**  
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## **Disorderly Housing Developments**

Mr. Speaker

I represent a constituency, very much like my colleague from North East St. Andrew that has a very high number of gated communities. Many single dwelling homes are being demolished to develop apartments and townhouses. That in itself is not a bad thing. However, how it is being done and the appropriate recognition of the rights of residents who live in close proximity to these developments, leaves a lot to be desired.

The granting of permission for these developments is one thing but the effective monitoring and ensuring adherence to approvals is another. In some of these communities, roads and sidewalks are being damaged and in most cases it is the public purse that is tapped to effect repairs. Noisy construction activities often run late into the nights and on Saturdays and Sundays. Residents are sometimes forced to pursue legal action against these developers, when all efforts at finding amicable solutions fail.

It is essentially a public order issue that requires our attention and action.

Picture below shows the degradation of the road surface caused by 5 construction projects taking place on that road at the same time. A section of the road has collapsed due to the heavy weight of the trucks carrying materials to the construction sites.



## **The Cybercrime Act of 2015**

Mr. Speaker

There has been much public debate in recent times about a particular provision in the Cyber Crime Act of 2015 as it relates to Malicious Communications. That Act repealed a 2010 law which by 2015 was outdated and illequipped to deal with rapidly expanding cyberspace.

Many of us in this room remember how important handwritten letters were to our lives and even a few remember how central the postmistress or master was in our communities (jobs my grandmother, greatgrandfather and grant aunt had).

In a short space of time we have moved from accessing the Internet and the use of email to facebook, whatsapp, snapchat etc. our lives, connections with each other and expression of ourselves is highly dependent on cyberspace, even as we recognise the risks of potential harm it introduces. My guess is that during a sitting of this House, almost every member has connected at least once with a virtual space. Turn of the wifi in this House and see ....

Access to the Internet is generally a good thing and indispensable for life and work. An important part of the work of the Government is to democratise its access and use to ensure it can strengthen national development and youth development.

I am pleased that all of the initiatives started by the previous administration, aimed at expanding access to the Internet, have been continued by the current administration and I commend them for seeking to further improve access for all Jamaicans, through their Wifi hotspots initiatives.

But even valuable resources come with risks. The reforms in 2015 were in part a response to the obselence of the criminal laws in responding to the new wave of serious crimes—what we call the lotto scamming. The exponential increase in the use of computers and the Internet has changed the way traditional crimes are committed.

Another major concern has been cyberbullying and harassment—a global phenomenon especially impacting young people. In a neighbouring Caribbean country a judge recently gave damages for breach of confidence to a woman whose former partner distributed private sexually explicit photos with her.

Laws dealing with cyberbullying or what section 9 terms ‘malicious communications’ have been amongst the most difficult to formulate in order to protect freedom of expression and the rights and freedoms of others affected by that expression. Even though you will find consensus that some regulation of Internet speech is desirable, there is no global consensus on *how* to regulate.

Knowing full well the rapidly changing nature of cyberspace, and that the law on paper is often different from the law in action, section 25 of the Act provides that the Cybercrime law should be reviewed by a Joint Select Committee of the Houses of Parliament after the expiration of three years from the date of commencement of the Act.

Even though we are half way through that 3 year period, like so many parliamentarians around the world, it is becoming clear that our law can be further refined in the interests of justice.

## **Section 9: The use of the computer for malicious communications**

The Cybercrime Act of 2015, including section 9, therefore sought to bring Jamaica's legislation up to date and consistent with other jurisdictions around the world.

Section 9 makes it an offence for a person to use a computer to send data that meets two main criteria.

First, the data must be ***“obscene, constitutes a threat or is menacing in nature.”*** ***These terms are not defined by the 2015 legislation.***

Second, the data was sent ***with the intention*** to harass any person or cause harm or the apprehension of harm, to any person or property.

An exception is provision for communications relating to industrial disputes. This crime carries a maximum sentence: on summary conviction before the Parish Court, up to \$5M and a term of imprisonment of up to 5 years; and before the Circuit Court a fine or term of imprisonment up to twenty years for repeat offenders.

1) A person commits an offence if that person uses a computer to send to another person any data (whether in the form of a message or otherwise)-

(a) that is obscene, constitutes a threat or is menacing in nature; and

(b) with the intention to harass any person or cause harm, or the apprehension of harm, to any person or property,

but (for the avoidance of doubt) nothing in this section shall be construed as applying to any communication relating to industrial action, in the course of an industrial dispute, within the meaning of the Labour Relation and Industrial Disputes Act.

## **2015 Law an improvement**

Unlike for example the St. Vincent and the Grenadines law, section 9 does not recriminalise defamation.

**Criminal defamation, no**

**St. Vincent and the Grenadines**

Cybercrime Act 2016

Harassment utilizing means of electronic communication

16. (1) A person who uses a computer system to cyberbully, intentionally or recklessly, another person commits an offence.

(2) A person who uses a computer system to disseminate any information, statement or image, knowing the same to be false, and who –

***(a) damages the reputation of another person; or***

(b) subjects another person to public ridicule, contempt, hatred or embarrassment, commits an offence.

(3) A person who, intentionally or recklessly –

(a) uses a computer system to disseminate any information, statement or image; and

(b) exposes the private affairs of another person, thereby subjecting that other person to public ridicule, contempt, hatred or embarrassment, commits an offence.

(4) A person who commits an offence under this section is liable on –

(a) summary conviction to a fine of one hundred thousand dollars or to imprisonment for two years or to both;

(b) conviction on indictment to a fine of two hundred thousand dollars or to imprisonment for five years or to both.

(5) For the purpose of this section, “cyberbully” means to use a computer system repeatedly or continuously to convey information which causes –

(a) fear, intimidation, humiliation, distress or other harm to another person; or

(b) detriment to another person’s health, emotional well-being, self-esteem or reputation.

By virtue of the Defamation Act, 2013 of Jamaica defamation is a strictly civil matter as **section 7 of the said Act indicates that criminal libel has been abolished in Jamaica**. Furthermore “the distinction at law between slander and libel is abolished” (by virtue of section 6 of the said Act).

In Jamaica, unlike threats and obscene publications, it is **NOT** a crime to defame a person regardless of the medium used. **What does it mean to defame?** At common law, the concept of defamation included slander and libel. Where one uses words, “John is a gunman/ bad man/ dishonest man”, which are false, these words may have the effect of defaming John by lowering his reputation amongst right-thinking members of society generally. If these statements are proven to be untrue, John may succeed in a civil claim against this person for defamation.

During the Joint Select Committee of Parliament that reviewed the Cybercrime Act of 2010, there were recommendations that there be criminal sanctions for those who defame and libel persons in cyberspace. The Committee flatly rejected those recommendations and adopted the position that since criminal libel was abolished in Jamaica, no new provisions with respect to “cyber defamation” would be entertained. To be explicit, Section 9 of the Cybercrime Act of 2015 does not seek to recriminalize defamation.

### **Lower criteria excluded**

The 2015 law also represents an advance on earlier legislation for example in Barbados. Our law does not have the notion of annoyance, inconvenience, distress or anxiety as giving rise to a crime.

### **Computer Misuse Act, 2005**

14. Where a person uses a computer to send a message, letter, electronic communication or article of any description that (a) is indecent or obscene; (b) is or constitutes a threat; or (c) is menacing in character, and he intends to cause or is reckless as to whether he causes annoyance, inconvenience, distress or anxiety to the recipient or to any other person to whom he intends it or its contents to be

communicated, he is guilty of an offence and is liable on summary conviction to a fine of \$10,000 or to imprisonment for a term of 12 months or to both.

### Heavier criminal penalties in Jamaica

Though it should be noticed that the maximum penalties in Jamaica are heavier than most of our neighbors.

### Antigua and Barbuda

#### Electronic Crimes Act 2013

#### Harassment utilizing means of electronic system

13. A person shall not intentionally, without lawful excuse or justification intimidate, coerce or harass another person using an electronic system commits an offence and is liable on – (a) summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years, or to both; or (b) on conviction on indictment to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding five years, or to both.

### Broader issues of cyberspace and human rights

The questions raised in recent weeks about section 9 are part of a healthy democracy in which ordinary citizens ask us as parliamentarians to reflect on laws we have made or laws we have not reformed (as in the recent case with a 100 dollar fine).

More important, as parliamentarians we are required to ensure that the laws we enact adequately protect the right to freedom of expression and other rights, and to the extent we limit those rights it should be demonstrably justifiable in a free and democratic society according to section 13(2) of the Constitution.

### UK Prosecution of Paul Chambers, author of "airport bomb tweet"

In the UK there was a storm of protest when Paul Chambers was charged and convicted (his conviction was ultimately overturned) under the UK Communications Act 2003, section 127 of sending a "public electronic message that was grossly offensive or of an indecent, obscene or menacing character". In 2010, Paul Chambers tweeted ***"Crap! Robin Hood airport is closed. You've got a week and a bit to get your shit together otherwise I'm blowing the airport sky high!!"*** Many complained that the law was being used to stifle free speech. Soon after Chambers' successful appeal, the DPP, Keir Starmer issued guidelines for prosecutions under the Act, indicating that prosecutions must meet a high threshold and there must be a public interest in prosecuting.

Our DPP has already indicated that she plans to issue guidelines in cases like these. This is highly commendable but it does not take Parliament off the hook.

Ultimately many other legal questions about cyberspace and the law have emerged that will require our attention including: cyber security, surveillance, and duties and rights of social media intermediaries.

Developing tailored laws that do not unduly restrict freedom of expression is an essential and an ongoing dialogue involving legislatures, executives and judiciaries.

We don't have a bad law, but one that can be further refined. I am therefore making the following recommendations

- Provide some definition of key terms used like 'menacing'. Those definitions will provide greater legal certainty to all of us who use the Internet as to what is allowed and not permitted.
- Consider whether there is a need for any further exceptions/defences beyond that which applies to labour disputes.
- Contemplate including a provision that 'No proceedings may be instituted except by or with the consent of the DPP'. This could very well only be necessary in the short term, but could play an important role in effective application of the law.

### **International Parliamentarians' e-Handbook on Cybersecurity & Cybercrime**

Mr. Speaker,

Just last month, I had the privilege to serve on a committee of international parliamentarians that reviewed the content of an e-Handbook on Cybersecurity and Cybercrime, which has been developed by the Commonwealth Parliamentary Association. I commend its reading to all parliamentarians and invite you to watch this short animation introduction.



<https://www.uk-cpa.org/ehandbooks/ehandbook-on-cybersecurity-cybercrime/>