

NON-GOVERNMENTAL
ORGANISATIONS
REPORT TO THE UN
COMMITTEE ON THE
RIGHTS OF THE CHILD

PREPARED AND SUBMITTED BY: JAMAICANS FOR JUSTICE LTD. (JFJ)

JAMAICA

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Contributing Organizations

Jamaica Civil Society
Jamaican Association on Intellectual Disabilities (JAID)
Jamaica Coalition on the Rights of the Child
Mustard Seed
Youth Opportunities Unlimited (Y.O.U)
Independent Jamaican Council for Human Rights (IJCHR)
Hear the Children's Cry

RISE
Children First
SOS Children
Hope for Children
Help JA Children
Griffin Trust

List of Abbreviations

ATI:	Access to Information Act/Request
CaPRI:	Caribbean Policy Research Institute
CARICOM:	Caribbean Community
CCPA:	Child Care and Protection Act
CDA:	Child Development Agency
CLU:	Child Labour Unit
CRC:	Convention on the Rights of the Child
CSEC:	Caribbean Secondary Education Certificate
DCS:	Department of Correctional Services
ECC:	Early Childhood Commission
FPA:	Foster Parent Association
GOJ:	Government of Jamaica
ILO:	International Labour Organisation
JCF:	Jamaica Constabulary Force
NEI:	National Education Inspectorate
OCA:	Office of the Children's Advocate
OCR:	Office of the Children's Registry
PATH:	Programme of Advancement Through Health and Education
UNICEF:	United Nations Children's Fund
UPR:	Universal Periodic Review
WHO:	World Health Organisation

Introduction

The government of Jamaica recently submitted their Third and Fourth Periodic Report under article 44(1) (b) of the Convention on the Rights of the Child (CRC). This report addresses specific thematic areas under the Convention. It will highlight relevant information to provide a more holistic vision of child rights in Jamaica.

General Overview: Legal framework and socio-economic situation of Jamaica

Legal Framework

The 1962 Constitution of Jamaica is the supreme law governing the nation. Jamaica is a dualist state based on the English Common Law system. International and national law do not operate in the same sphere. In order to be able to claim the Convention before a court, it has to be transposed into domestic laws. This presents problems to the successful implementation of all tenets of the Convention. The State is responsible for implementing the necessary legal and administrative mechanisms to adequately reflect its international obligations.

In 2011, Jamaica enacted a Charter of Fundamental Rights and Freedoms. Although the Charter is a step in the right direction, there are many gaps within the provisions. Most notably, the Charter (1) does not include the right to health care or health facilities; (2) fails to protect citizens from discrimination on the grounds of sexual orientation, mental or physical disability, language or medical health. With the flawed provisions in the Charter of Rights and the failings of the current system of justice, the State is failing to provide equal protection of the law to all persons under Jamaican jurisdiction. It is particularly worrying that the most vulnerable elements of society are currently the least protected (including women, children, the disabled and individuals from socio-economically depressed communities).

Socio-Economic Framework

Jamaica is a small island developing state and has been classified by the World Bank as Upper-middle Income, with a Gross National Income of US\$3,976 to \$12,275. The population is estimated at 2.7 million. Resource constraints have posed challenges to government initiatives. In addition to this, the lack of prioritization of resources on structures to safeguard the rights of children is a systemic problem that has inhibited the government's ability to adequately meet its obligations both under domestic law and the Convention.

According to UNICEF, 41.7% of Jamaica's poor are children, compared with 46% for those 18-59 years old, and the elderly (60+ years), at 12.3%. This equates to one of every four children

living in poverty. In a context in which children represent 33% of the population¹, these figures reveal that many people are living in harsh conditions. This severe economic hardship has a direct impact on the livelihood and rights of children. In fact, economic difficulties signify that children are more at risk of violence, declining social conditions, weak communal and familial supports.

Theme 1: General Measures of Implementation (Art. 4, 42, 44.6)

Legislation

On March 25th, 2004 the Child Care and Protection Act (CCPA) came into force. It enshrined the cardinal principle that the best interests of a child are a paramount consideration in the administration of the laws relating to children. The principle of the best interest of the child maintains that all actions affecting a child shall be taken with his or her best interest foremost in mind. Key factors to be taken into account in determining this are: the safety of the child; the child's physical needs, emotional needs and level of development; the importance of continuity in the child's care; and whether the child is capable of forming his or her own views in terms of age and maturity, etc. The CCPA does not comprise the entirety of the legislation targeting children. Other legal protections include: The Child Pornography Act (2009), Trafficking in Persons Act (2007), Children's Home Regulations (2007), Victims Charter (2006) and Maintenance Act (2005).

The primary problem facing child rights in Jamaica is not a lack of legislation, but rather a lack of meaningful implementation. Government agencies have, for years, acted contrary to legislation and government policy, resulting in disastrous outcomes. At this juncture, meaningful implementation of legislation, existing policies and the multitude of recommendations made from both government agencies and civil society must be a priority.

Theme 3: General Principles (Art. 2, 3, 6, 12)

Non-discrimination

The Government has failed to take sufficient legislative steps to combat discrimination in Jamaica. In 2003, The Committee, recognizing the urgent need for far-reaching action at the legislative level, expressed concern that:

- “(a) The Constitution of Jamaica does not fully reflect the provisions of article 2 of the Convention and, in particular, does not specifically prohibit discrimination on the grounds of the child's or his or her parents' or legal guardian's language, religion, ethnic or social origin, or property, disability, birth or other status;
- (c) Children with disabilities are de facto discriminated against by the absence of specific guarantees for their integration into regular schools and are hindered,

inter alia, by limited access to facilities;

(d) Children who are known to be infected with HIV/AIDS are discriminated against at school by some teachers.”

The committee recommended that:

“the State party amend its legislation, including the Constitution, to ensure that it fully corresponds to the provisions of article 2 of the Convention and to ensure the full implementation of non-discrimination provisions, giving special attention to children infected or affected by HIV/AIDS, children with disabilities, equality between boys and girls and racial discrimination.”

Unfortunately, the Government has failed to meaningfully address this. The Jamaican Constitution does not reflect the provisions of Article 2; the 2011 Charter of Fundamental Rights and Freedoms does not protect citizens from discrimination on the grounds of disability, language, health status or sexual orientation. Because of this, many Jamaicans who are discriminated against, many of whom are children, lack a path of legal recourse. This has had the dangerous effect of legitimizing open discrimination against marginalized groups such as homosexuals and the disabled. The lack of fundamental principles ensuring non-discrimination produces the worst outcomes for the most vulnerable Jamaicans.

Discrimination based on disability is disturbing, affecting a substantial number of Jamaican children. The Government has failed to offer adequate protection to children with disabilities, especially those with severe disabilities. The CCPA does not directly protect children with disabilities. These children, who usually need the greatest, most costly care, oftentimes live in extreme poverty and are uneducated. Though Jamaica ratified the Convention on the Protection of the Rights of Persons with Disabilities – which it has never reported on – many schools lack infrastructure such as ramps to assist children and many teachers lack the requisite skills to deal with them. Far too many children in state care who have disabilities continue to be lumped together with other children, robbing them of specialized care. Just as problematic, many caregivers are untrained to offer special care.

Discrimination based on sexual orientation adversely affects children. It a well-known fact, that homosexuals in Jamaica are the victims of pervasive discrimination and violent attacks. This extends equally to children, who are a dependent population. Children, who identify as anything other than heterosexual or are suspected of such, may be subject to discrimination and abuse at all levels of society. Many children live in fear and denial; others face life on the street after being kicked out by their families. In a society in which homosexual intercourse is criminalized and carries a prison sentence, various forms of discrimination are commonplace, and many times endorsed. The Government must take steps to end this discrimination that acutely affects children – who oftentimes lack the socio-economic means to survive.

Discrimination based on health status persists and harms vulnerable children. Jamaica's children continue to be discriminated against in their schools and the wider society due to health status – particularly their own HIV/AIDS status or that of their close family. Since discrimination is not prohibited under the law, parents oftentimes fear losing their jobs or not being hired if they disclose their status. Moreover, the adverse social consequences dissuade people from seeking help. Although the National Policy for HIV/AIDS Management in Schools (2004) exists, the CCPA completely neglects to offer specific provision for children infected with and affected by HIV/AIDS – despite many instances of discrimination. Measures – preventative, punitive and restorative – need to be included in legislation to protect affected persons from ill-treatment due to the HIV/AIDS status.

Recommendations:

1. Amend the Jamaican constitution, the CCPA and other legislation to ensure protection against discrimination based on disability, health status, language and sexual orientation,
2. Amend the Education Regulations to ensure that children with disabilities are protected from discrimination and are provided with a high standard educational instruction. This should be a legal requirement, not a policy directive.
3. Recognize that current services for disabled children and children who are victims of abuse are grossly inadequate and work towards providing adequate physical infrastructure and services for these children.
4. Establish through legislation, educational standards for children with disabilities.

Theme 4 Civil Rights and Freedoms (Art. 7, 8, 13, 14, 15, 16, 17, 19, 37(a))

Child Protection

The protection of children from violence, abuse and exploitation in all its forms is one of the biggest challenges facing the nation. The high rate of crime and violence plaguing the Jamaican society has had a devastating impact on children. While the problems facing Jamaica's children have been well known for years, the Government has not sufficiently addressed the major issues. Primarily, the various policies and initiatives championed by the Government have not been effectively implemented.

Abuse and neglect of Jamaica's children has become so widespread that for many, it is no longer shocking. In June 2013, UNICEF spoke out against the “unrelenting violence” against children in Jamaica, lamenting that 16 children had been murdered in the first four months of 2013. In 2012, 40 children were murdered. According to UNICEF Representative Robert Fruderich, "The killing of several children, in close succession, is a tragic reminder of the violence being meted

out to children on a daily basis.”² Data from the OCR painted a disturbing picture of pervasive child neglect that showed no signs of abating. In 2012, 8741 cases of child abuse were reported, almost a 1000 case increase from 2011. Neglect was the most commonly reported form of abuse, at 51%³. The OCR revealed that the data on child abuse was part of a national pattern, stating in a 2012 publication that it received over 5000 reports on average each year.⁴ Similarly, The OCA received more than 8000 reports of child abuse between January and August of 2013. The reports primarily involved neglect, missing children and physical, sexual and emotional abuse.⁵

According to UNICEF, every day, 20 children and adolescents were treated in emergency rooms for intentional violence-related injuries between January and October 2010. This included over 19,000 injuries related to sexual assault, stab wounds, gunshots and blunt force attacks. Over the same period, boys and girls aged 10-19 years accounted for 25.3% of all intentional injuries; 27% of all stab wound cases, 42% of all attempted suicides; and 68% of all sexual assault reports – most of them being girls.⁶

As will be discussed in the section on state care, many reports of abuse and neglect affect children in the care of the state and come from within both government and privately-run child care facilities. These deeply disturbing accounts from within the alternative care institutions over an extended period of time, call into question the Government's commitment to protecting vulnerable children. The problem is not a shortage of policies or task-forces, but a lack of implementation. The translation of policy into results is the true test of the Government's commitment to child welfare – a test it is failing.

As will be discussed in the section on child labour, poverty and neglect have led to a growing number of street and working children in Jamaica. The widespread nature of child labour has been met by a lethargic, ineffective response by the Government; leaving some critical legislation languishing for two decades. Also, high rates of migration, have contributed to weaker family and community support systems. Many children are left in the care of older siblings or alone, under the informal supervision of family members or neighbours who do not live with them. As a result, there is often no adult supervision or guidance for these children and the only parental support is through cash remittances and packages of food and clothing sent from overseas⁷.

Corporal Punishment

Corporal Punishment is still highly prevalent in Jamaica. Reports of child abuse are alarmingly common, yet there has been insufficient action at the legislative and policy level to combat this. Article 19 of the Convention stipulates that children have the right to be protected from all forms of violence. In 2003, the Committee urged the GOJ to:

“strengthen considerably its efforts to address and condemn violence in society, including violence against women and children, particularly in the context of the family, as well as

in schools and other environments...by, inter alia:

(b) Taking *all legislative measures to prohibit all forms of physical and mental violence, including corporal punishment...*” (Italics added)

To date, the government has failed to address this. There have been commendable measures adopted with the passage of the CCPA, but corporal punishment in the home and in schools – where it is most prevalent – still awaits legislative action. Also, though the CCPA outlaws corporal punishment in child care facilities, disturbing reports of abuse continue to surface. The section on state care presents these.

Progress on Corporal Punishment

<i>Location</i>	<i>Legal Status</i>	
Homes	Not prohibited	The right to inflict “reasonable and moderate” punishment is accepted under Common Law. The CCPA does not address corporal punishment.
Public Schools	Not prohibited	Corporal punishment is lawful in schools, with the exception of “basic schools” (schools providing education for children up to six years old). There is no provision for it in the Education Act 1965 or in the Education Regulations 1980, but a teacher is justified in administering “moderate and reasonable” corporal punishment under common law. The Government has stated its intention to abolish corporal punishment in schools and has informed all public schools not to use it. There have been no meaningful legislative developments.
Children’s Homes	Prohibited	The CCPA and CCCPA (Children’s Homes) prohibit corporal punishment in children’s homes. Reports of abuse are unfortunately still very prevalent. See the section on children’s homes for more details.

Problematic Trends

In a 2004 study involving 1,720 children, 86% of children reported slapping, grabbing and pushing as the most common methods used by adults to resolve conflicts with children in the home. The second most common method was the use of an object to carry out beatings, at 84.2%. Children reported being beaten with belts, rulers, garden hoses and boards. 46% of parents admitted that physical assault was the most frequently used method of discipline in their homes. The report stated:

“In a study involving six focus groups with 60 children aged seven to twelve in Jamaica, reported in 2008, children expressed their anger and hurt at physical

punishments and revealed their struggle to understand the idea that their parents “beat them because of love.”⁸

The overwhelming majority of politicians openly embrace the “spare the rod and spoil the child” philosophy. According to the National Family Planning Board (2012), over 55% of Jamaican women believe that physical punishment is necessary to raise children. The Office of the Children’s Advocate has not issued a clear opinion on this issue.

Despite the Government’s assertion in the *Country Report* that corporal punishment is limited to specific levels of the Jamaican school system, reports of abuse continue to be widespread. Reports include: the taping of children’s mouths, forcing children to perform demeaning acts such as standing on one leg in the sun for prolonged periods of time and violent beatings with belts, rulers, canes or other objects. Though the Ministry of Education’s policy bulletin was commendable, it is insufficient. Until meaningful legislative and policy changes take place, Jamaica will continue to disregard its obligations under the Convention and its duty to act in the best interest of the child.

Theme 5 Family Environment and Alternative Care (Art. 5, 9, 10, 11, 18, 20, 21, 25, 27.4)

Adoption

Adopting a child in Jamaica is a cumbersome process. If streamlined and reformed, the adoption system in Jamaica has the ability to provide stable homes for many children and assist in the deinstitutionalization of alternative care. The lengthy process, backlog of cases and inefficient administration are significant hurdles.

In Jamaica, a child between six weeks and 18 years old is eligible for adoption. An application to the court must be made and the process is controlled by the Adoption Board. For the adoption of children in state care, the CDA’s officers must provide approval. There is currently a shortage of officers to handle adoptions, conduct investigations and prepare the necessary files. The delays in the court system prolong requests and adoption officials leave prospective parents waiting for months. Numerous prospective parents have become frustrated with the system. Moreover, the current system, which has operated under the same legislation for over half a century – The Adoption Act (1958), has resulted in a significant backlog.

In January 2014, requests from as far back as 1999 were still pending. The backlog of applications came to public attention when the Jamaica Gleaner reported that there were 311 unresolved requests in 2014. The chairman of the Adoption Board stressed that “the investigations and paperwork involved is necessary and is in the best interest of the child.” Considering that delays leave children in the system for years and make prospective parents less

inclined to adopt, it is unclear how the current system serves the best interests of the child.

While due diligence and thorough fact-checking is critical, it is misguided to believe that this lengthy procedure is beneficial to children. Many parents opt out of adopting after realising that their dream of having a child may be many years away. Children pass the preferred ages of adoption and are left with little to no hope of having a family. This results in an under-resourced, overburdened child care system that is unable to provide the same level of care these children so desperately need and deserve.

Below is a summary of Adoption Orders and licences¹ granted by various courts from 2008-2012.

YEAR	Adoption Orders	License	Total
2008	155	37	192
2009	172	39	211
2010	152	38	190
2011	162	68	230
2012	144	43	187

The Adoption Act is presently under review by an Adoption Board Review Committee, with the aim of bringing the adoption process more in line with international norms and making the process less cumbersome. According to Child Protection Specialist at the United Nations Children's Fund (UNICEF), Consultant, Janet Cupidon Quallo, has been brought on board to work with the process.⁹ It is critical that the authorities allocate the necessary resources and engage in a speedy and far-reaching reform process.

¹ Adoption Orders provide for the orphan to be adopted in Jamaica. Adoption Licenses allow for a Jamaican citizen orphan to be adopted and transferred to a foreign country.

Recommendations:

1. Review the Adoption Act and procedures to allow for a thorough yet speedier process.

Foster Care

Foster care is an alternative means of providing care for children aged zero to 18 years in Jamaica. Like adoption, foster care could significantly bolster efforts to de-institutionalize child care in Jamaica. Though foster parents across the country have made considerable sacrifices over the years, the Government continues to commit scant resources to foster care. The most common reasons for placing children in foster care are abandonment, neglect, physical, sexual and emotional abuse. In some parishes, some cases have been attributed to poverty and overcrowding in child care facilities. Serious concerns exist regarding the foster care system. Parents report: a lack of psychological support, inadequate financial support, lack of sufficient communication between the CDA officers and the parents, cheques not being received on a timely basis, and extended delays in receiving children¹⁰

Structural Shortcomings

Foster families receive monthly stipend of \$4000 (US\$36.70) to care for children. This paltry sum is grossly insufficient to meet the needs of foster children. Considering that foster parents are oftentimes facing financial challenges themselves, the current financial assistance from the Government – which has not changed for roughly a decade – is problematic. According to the 2012-2013 CDA Budget, “Foster Care allows families to receive children in their homes, and provide for their total development. A monthly subvention is provided to take care of approximately 1,381 children. Funds provided are used to **defray the cost of school fees, books and other incidental education expenses for children who are in foster care and those who have been reunited with their families**” (bold added). It is unclear how US\$36.70 per month could come close to ever achieving this. Moreover, Jamaica’s lethargic economy and sliding

Sub Programme 22-Foster Care						
Activity 1110-Maintenance Grants to the Foster Parents						
30	Grants and Contributions	-	75,358.0	73,901.0	77,551.0	71,597.0
	Total Activity 1110-Maintenance Grants to the Foster Parents	-	75,358.0	73,901.0	77,551.0	71,597.0

Foster Care allows families to receive children in their homes, and provide for their total development. A monthly subvention is provided to take care of approximately 1,381 children. Funds provided are used to defray the cost of school fees, books and other incidental education expenses for children who are in foster care and those who have been reunited with their families.

exchange rate have placed monumental constraints upon working class Jamaicans. The current assistance to foster parents does not encourage parents to continue in the program and

discourages others from enrolling.

In 2009, the OCA published a damning study of the foster care system in Jamaica. The office made several recommendations that remain unheeded. In the study, the OCA noted, “Both the quantitative and qualitative research carried out for this study revealed that fostering is a small and under-resourced child protection programme provided by the Jamaican Government.” The report provided the “estimated yearly expenditure for a 15 year old male foster child attending high school (Urban Area).” The details are below.

Expenditure	Itemized Cost (J\$)
Lunch Money	60,000
Transportation (School)	15,000
Barber	8,400
Clothing	15,000
Dental Services	12,000
Shoes	10,000
Toilet Articles	5,000
Total*	125,400.00

*This total cost excludes money spent on food at home, leisure and medical expenses.

Considering that the cost of living in Jamaica has increased yearly due to inflation and low economic growth, it is highly problematic that the stipend has remained the same. It is not surprising that the primary complaint of foster parents, as reported by the OCA has been the inadequacy of the financial assistance. This shortcoming must be urgently addressed by the CDA, which has claimed that de-institutionalization is a primary goal. Its meagre allocation to Jamaica’s foster families, however, is not only the lowest stipend provided for any of the CDA’s major programmes, but makes a formidable home-based alternative care system even harder to achieve.

The OCA’s study also revealed other problems faced by foster parents. Based on interviews with foster parents and children across the country, the report revealed that the monitoring of the foster families was unsatisfactory. 16.1% of the parents complained of the lack of visits by the CDA officers and 53.1% of the children revealed that there was limited or no contact with the CDA officers.¹¹ Though the CDA protocol requires that there be frequent reports on the foster families, some families reported that they had not seen their child care officers for a very long time. The primary grievances of foster parents that were interviewed are below.

Problem	Percentage (%)
Lack of visits/communication	16.1
Limited support	6.5
Lack of psychological support for children	29.0
Placement process took too long	19.4
Monetary support (cheques not received on a timely basis)	29.0
Total	100.0

In recent years, there has been a decline in the number of foster parent applications. In 2011, the CDA cited economic hardships as a factor in the decline. It also blamed pervasive misperceptions about the type of children found in children's homes.¹² In 2013, the Foster Parent Association stated that the foster care system was failing.

Recommendations:¹³

1. Increase the level of financial assistance to parents
2. Provide support systems for children who turn 18
3. Provide adequate monitoring of children and psychosocial support to foster families.
4. Enrol in and provide coverage and benefits under the National Health Fund to foster children through the provision of health cards
5. Provide extra assistance for education
6. Provide assistance for tertiary education

Children in State Care Facilities

A child may be taken into custody if they are deemed in need of “care and protection.” The reasons for this designation vary: the child could be identified as a victim of neglect; of physical or sexual abuse; display behavioural problems; or present with other challenges.¹⁴ In these

situations, the State takes custody of the child and is charged with ensuring that they are placed in a safe environment

This situation is not uncommon. As of March 31, 2013, 5,034 children were recorded as being under the care of the State. Their placements are categorized below:

Population of Children in State Care as of March 31, 2013														
	Foster Care		Family Reintegration		Children's Home		Places of Safety		Supervision Orders		Other		Total	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F
		435	515	379	430	893	635	163	199	439	680	109	157	2418
Total	950		809		1528		362		1119		266		5034	

It is an unfortunate reality that many of these children remain at risk of harm after their removal to state-run facilities. Children in the custody of the State may be subjected to inhumane and degrading treatment, be at risk of physical, psychological, emotional and sexual abuse and be deprived of their basic rights to protection and care¹⁵. The failings of the state child care system have not escaped public attention. The Committee's recommendations for State party activity in this domain stated:

“Expedite the work of the review committee and take all necessary measures as a matter of urgency to improve the quality of care in children’s homes and to protect children living in such homes against all forms of abuse, seeking assistance from, among others, UNICEF.”

The CCPA mandates that the CDA bring a child in need of care and protection to a Children’s Court, which should then place the child with a “fit person” or in a place of safety until he/she is assessed. Afterwards, the child is to be brought to an appropriate children’s home. This directive is often not respected. Recent Access to Information Requests have shown that numerous children are kept in police lockups and juvenile facilities for extensive periods of time without being properly assessed.

Even in cases in which children are placed in homes, there is cause for serious concern. The quality of children’s homes and places of safety and their staff is at best inconsistent, and requires far stricter monitoring and oversight. A 2012 UNICEF Report outlined some severe shortcomings in the capacity of the main oversight body, the CDA:

“The CDA does in fact face many challenges, including issues of sexual abuse in its institutions. The accepted ratio for the agency is 1:15, however ratios of up to 1:25 have been found in some

facilities; the international standard is 1:15...[c]ase loads for the 60 CDA Children’s Officers can be over 200 children, although this differs by region. Because of the shortage of technical staff such as Clinical psychologists, Children’s Officers and Investigation Officers, the agency’s ability to provide the requisite services to its children within the ideal timeline...is considerably hampered.”¹⁶

There is also documented evidence of abuse within facilities themselves. An examination of critical incident reports, by Jamaicans for Justice, from 2006-2010 displays a disturbing pattern of abuse of children in state care. The number of reported cases over the five-year period totalled 500, with 271 instances occurring in state run institutions and 229 in private facilities. The table below displays the number of incidences of staff-inflicted physical abuse documented in both government and private children’s homes over the five-year period.

Documented Incidences of Physical Abuse (by Staff) for 2006 – 2010

Year	Physical Abuse of Child by staff		
	<i>Government</i>	<i>Private</i>	<i>Total</i>
2006	5	6	11
2007	26	22	48
2008	15	28	43
2009	9	16	25
2010	12	22	34
Total	67	94	161

The inadequate and inhumane conditions have led to wards of the state running away from facilities and many children who abscond are incarcerated.

The Keating Report

In December 2002, the then Prime Minister of Jamaica, P.J. Patterson, mandated a review of all Children’s Homes and Places of Safety. To this end, then Minister of Health, the Honourable John Junor, convened a Review Committee in January 2003, to carry out the examination. The resulting summary became known as the Keating Report.

In November 2011, the United Nations Human Rights Committee voiced concerns about the government’s follow-up action to the Keating Report. While noting the progress made in some reforms, it was stated that a full **40%** of these recommendations had not yet been implemented. The Committee stressed the importance of comprehensively addressing the issues stating, “The State party should take all necessary measures, including seeking international support, in order to fully implement all the recommendations in the Keating report.”

Ten years after the Report¹⁷, some recommendations are still unimplemented and the State's childcare system and the welfare of children in state care continue to suffer.

Children with Disabilities

The Child Development Agency admitted its inability to state how many of the 2,333 children who were in the residential child care facilities across the island were of school age and also to being unable to properly attend to those with special education needs. "Currently, we are not adequately trained and equipped to deal with children with mental challenges".¹⁸ This leads to a failure to separate children with disabilities from others.¹⁹

Recommendations:

1. Provide appropriate resources for the strengthening of key institutions for children, including the Office of the Children's Advocate and the Child Development Agency.
2. Conduct a comprehensive quantitative review of children's situations; adopt the best proposed plans and implement them.
3. Review the Regulations to the Child Care and Protection Act 2004 (Children's Homes): the Regulations detail the registration process at length, but speak little to the actual rights of the child with regards to provisions for nutrition, medical care, physical infrastructure, transportation, etc. while in the care of the state;

Theme 6 Basic Health and Welfare (Art. 18, 23, 24, 26, 27)

Disability

As discussed in the section on non-discrimination, there are no laws prohibiting discrimination against persons with disabilities, nor are there mandates to ensure accessibility for such persons. Although the government ratified the UN Convention on the Rights of Persons with Disabilities in 2007, there are no reports of actions taken to implement the provisions of the convention. Children with disabilities face problems with education, public infrastructure, alternative care and health care.

According to UNICEF, the a majority of children living with one or more forms of disability are 5 – 14 years old – the years for education – yet, only about 10% attend any formal classes.²⁰ For those that do attend classes, there is a shortage of trained educators, inaccessible infrastructure and a lack of support systems. Moreover, many disabled children are placed in state care facilities with non-disabled children. The physical inaccessibility at schools not only discourages children and makes attending school difficult, but it singles them out for bullying. Discrimination in access to education is particularly pronounced at the primary level. Most buildings, public transportation and sidewalks remain inaccessible.

Within child care facilities there is a lack of skilled personnel and a lack of special facilities to provide the appropriate care. As such, these children are often lumped together with nondisabled children. According to CDA reports, this situation has led to abuse from the caregivers and the other non-disabled children²¹. As discussed in the section on state care, conditions for children – both disabled and nondisabled – can be highly traumatic within child care facilities. The effect is even more pronounced for children with disabilities.

Jamaica's disabled children continue to face neglect because of the shortage of health-care experts to address their special needs²². According to consultant child psychiatrist at the Bustamante Hospital for Children, Dr Ganesh Shetty, there is a shortage of specialists within the public health system to deal with children with mental illness. "We have only about eight to ten persons in the island who are working extensively with children with mental problems," he disclosed. "In the southeast region where I work, you might have 50,000 children with different types of mental problems such as anxiety, depression, schizophrenia and so on, and we have only about six persons, including myself, who are working full time with them."

Abortion

Under Section 72 of the Offences Against the Person Act, a person who terminates a pregnancy may be sentenced to a maximum sentence of life imprisonment. An abortion may only be lawful if performed by a doctor in some cases of medical emergency. This provision is an ambiguous one and is open to different interpretations therefore it should be reviewed and altered.

According to the World Health Organisation (WHO), 22 000 Jamaican women between the ages of 15 and 44 have abortions each year. According to the WHO, abortions and related complications are the eighth leading cause of maternal deaths in the island primarily affecting adolescents. According to the Pregnancy Resource Centre of Jamaica (2007-2008 statistics), Jamaica has 20,000-30,000 illegal abortions a year; the abortion rate (# of abortions per 1,000 childbearing-aged women) is almost double the U.S.'s rate of 22.9; 40% of Jamaican women have given birth before age 20.²³

The Abortion Policy Review Advisory Group was created in 2005 by the Ministry of Health to examine the impact of Jamaica's abortion laws. The group discovered that most of the women who sought illegal abortions in the country shared similar characteristics; they were young, poor, unemployed and lived in economically and socially deprived communities.²⁴

The United Nations Committee on the Elimination of Discrimination against Women has asked for a reconsideration of criminalization of abortion, in instances where the pregnancy is a result of rape or incest or where the mother's health or life is threatened by the pregnancy. The committee voiced concerns about the poor access to sexual and reproductive health care services in Jamaica, and recommended that the country "[r]emove punitive provisions imposed on women who undergo abortions."²⁵ However, the abortion law remains unchanged.

Recommendations:

1. Review of the Offences Against the Person Act, taking into consideration the work and recommendations of the Ministry of Health Abortion Policy Review Advisory Group²⁶.

Theme 7 Education, Leisure and Cultural Activities (Art. 28, 29, 31)

Education

Promoting Quality Education and School Fees

Jamaica has done well in achieving the Millennium Development Goal of providing universal primary education. Despite this, there is still concern regarding the quality of access, especially among poor children in rural Jamaica, and the quality of the country's primary school teachers.²⁷

The Jamaican education sector faces serious challenges in its efforts to provide quality learning opportunities for children up to age eighteen. Despite high levels of enrolment in primary and secondary schools, at each of the major transition points in the education system, a substantial number of children are insufficiently prepared to access the level ahead of them²⁸.

Over 98% of children 6-14 years old are enrolled in school (99.9% for boys and 95.7% for girls). The school life expectancy is about 14 years. For males it is about 13 years and for females about 15 years²⁹. The vast majority of Jamaica's school children enrolled in public schools are being denied the higher quality education provided in private schools, based on the socio-economic status of their families. Across the island, children contend with inadequate learning material, lack of infrastructure, outdated curricula, didactic teaching methodologies and other challenges that prevent them from learning in a child-friendly environment³⁰.

In an attempt to help the families, tuition fees were removed. However, the appearance of the removal of tuition fees is almost entirely cosmetic. Schools continue to charge "supplementary fees" to help cover costs of operation³¹. "Auxiliary fees, therefore, represent a necessary part of a school's ability to finance their operations. These fees, which are worked out in conjunction with representatives of parents and principals, are not optional extras which you pay if you feel like," the Minister of Education Ronald Thwaites said.

In the meantime, Thwaites noted that nearly half the population is on the Programme of Advancement through Health and Education (PATH). He acknowledged that parents cannot afford to pay for auxiliary fees for children on PATH and said the state should seek to give schools more money to support their education. "The Ministry of Education is pleading with the ministries of Finance and Social Security to contribute J\$2,000 (US\$18.39) a year for each PATH student beneficiary. It is a matter of justice and equity, not charity," Thwaites said³².

Poor Education Performance

Franklin Johnston, an advisor to the country's education minister, asserted that poor student performance over the past decade should be attributed to what he described as a considerable decline in teaching standards. According to Johnston, "Jamaica's education system has been underperforming for years"³³. His comments come in the wake of a report from the Caribbean Policy Research Institute (CaPRI), a think tank that promotes evidence-based policy dialogue within the region, highlighting weaknesses in Jamaica's education sector as well as a National Education Inspectorate (NEI).

CaPRI argued that while Jamaica has built a good educational foundation for its youth, the country does not meet international standards of excellence. "We have failed to deliver quality education for a lot of our students. The job of being a teacher is crucial."³⁴ Among the issues the report listed in the CaPRI report were: inability of the system to address standards for school plants leading to disparity in allocation of resources, plant quality and learning opportunities; non-mandatory curricula which create a disconnect between the primary and secondary levels; and the lack of national assessment at the secondary level, with the exception of CSEC which emerges at the end of the cycle³⁵.

The NEI unveiled worrying data that students in approximately one-third of primary and secondary schools (45 out of 135) are receiving educational services rated as unsatisfactory. "The NEI conducted an inspection of 135 schools in regions one and two, comprising the parishes of Kingston and St Andrew, St Thomas, Portland and St Mary. It highlighted that "leadership and management in three percent of the schools were rated as exceptionally high, 22 percent as good and 36 percent as satisfactory. These met the minimum requirement."

"Assessing the students' performances in Mathematics and English, the NEI found that 63 per cent were performing below the national averages, while 11 per cent achieved above the national averages in the two subjects. Another 19 per cent fell in line with the national averages. The progress of students was good to exceptional in nine percent of the schools inspected, while 36 per cent were reported as being satisfactory. However, 53 percent of the students assessed in terms of their academic progress were rated unsatisfactory and two percent in need of immediate assistance. The NEI inspections were conducted between September 2010 and March 2011".³⁶

This also came after Education Minister Thwaites indicated that only 16 percent of the island's educators who specialise in Mathematics are competent enough to teach the subject in the classroom. Thwaites made the claim that "only 31.7 per cent of the students who sat the (Mathematics) exam attained passes, a decrease from 33.2 per cent last year and 39.5 per cent in 2010".³⁷

"The results of the examination, which were released last week, indicated that only 46.2 per cent of the students passed English Language this year, compared with a pass rate of 63.9 per cent last

year and 64.9 per cent in 2010”.³⁸

Early-childhood institutions are not exempt from poor performance. Professor Maureen Samms-Vaughan, chairperson of the Early Childhood Commission (ECC), reported that “though there have been gradual improvements in early-childhood institutions reaching the required standard of having trained teachers, most schools are still struggling in the area.” In 2013 only 29% of early-childhood institutions were able to reach a satisfactory standard. There are approximately 2,600 early-childhood institutions.³⁹

Recommendations:

1. Ensure that Jamaica participates in at least one global test of student achievement, such as Trends in International Mathematics and Science Study, Progress in International Reading Literacy Study or the Programme for International Student Assessment, to better understand how it compares in the global economy.
2. Ensure that teachers are equipped to handle challenges by offering focused, professional development and entrenching a mentorship period in the profession with reward opportunities.

GSAT

The Grade Six Achievement Test (GSAT) is Jamaica's national high school entrance examination. Describing the GSAT as the "apartheid of the education system", Minister Thwaites has stated that "this high-stakes terminal examination wreaks fear and trauma among parents and children alike, all because of the perceived and the real absence of quality secondary places"⁴⁰.

In 2007 in the external GSAT, the average score in Language Arts for government primary schools (attended by over 90% of students) was 48%, compared to 72% for private preparatory schools; the respective average scores for Mathematics were 46% and 70%. In 2006, at the end of secondary school, passes from the eligible cohort in upgraded public high schools (attended by 66% of students) in external Caribbean-wide English Language exams were 11% compared to 62% from the upper tier of traditional public high schools. The respective results for Mathematics were 4% and 41%.⁴¹ In comparison to other CARICOM countries, the latter results were extremely poor and highlighted the generally poor outcomes of the secondary school system. This is a severe obstacle in preparing young people for tertiary education, for the world of work and for economic and social development in general. According to 2007 Labour Force Statistics, 74% of the labour force was neither certified nor trained.⁴²

Research showed there is a great disparity in the quality of education received by primary school students at public and private institutions in Jamaica. Data showed that the majority of primary, all-age, and junior high schools are falling behind preparatory schools which are usually attended

by students from higher-income households.

In 2013, out of the top 1,022 schools preparing students for the GSAT, only four government-operated institutions made it into the top 100.⁴³

Recommendations:

1. Develop mechanisms beyond annual tests that enable educators to identify and address learning challenges at an early stage and at regular intervals.
2. Review of the now outdated Education Act.

Theme 8 Special Protection Measures (Art. 22, 30, 32, 33, 34, 35, 37, 38, 39, 40)

Child Labour and Minimum Age for Employment

As the Country Report highlights, the Child Care and Protection Act prohibits the employment of children under the age of 13 and allows employment from the age of 15. Between the ages of 13 and 15, the law permits children to engage in “light work”.⁴⁴ The law prohibits hazardous work for all children under 18. The ILO estimates that more than 26,000 children worked as vendors, agricultural and commercial labourers, domestic helpers and prostitutes, among other forms of employment in Jamaica. The government does not track the number of children involved in child labour⁴⁵. The lack of a data-collection apparatus is troubling. The last study was done in 2001.

This troubling phenomenon has not been well researched. According to a national survey on working children conducted in 2002, boys affected by this problem outnumber girls by a ratio of 70:30, are an average age of 13 years old and are usually from a female-headed household of five, where their parent or guardian is marginally employed as a vendor, domestic helper, self-employed or unskilled worker⁴⁶. Children under the age of 12 peddled goods and services, begged on city streets, and worked on plantations, farms, and construction sites, as well as in gardens, shops, and markets. Reports also indicated that children worked in garbage dumps, collecting scrap metal. Children were also engaged in commercial sexual exploitation.⁴⁷

Government Inaction

The ability of the state to effectively combat the issue of child labour has been significantly undermined due to outdated and restrictive mechanisms. Currently, the process of investigation and reporting by the Child Labour Unit (CLU) in the Ministry of Labour is governed by the Factories Act of 1943. This dated legislation is inconsistent with present realities. Contrary to the assertions of the Government in its country report, the Occupational Health and Safety Act – a vital, far-reaching law regarding labour protections – is not in operation. It has not even been

tabled. For 16 years, successive administrations have let this legislation, which was submitted in 1998 languish. Claims made by the Government regarding its efforts to combat child labour that rely heavily on the provisions of that proposed legislation are misleading.

Currently, labour inspectors are only empowered to investigate child labour within the work spaces mentioned in the Factories Act: mainly formal, regulated work spaces such as factories, loading docks and construction sites. Informal and unregulated work spaces are not included. Establishments such as nightclubs and bars where allegations of child labour are rampant are not included in routine inspections for child labour. In these situations, a crime must be suspected and reported to the CDA or police. In 2013, the Ministry of Labour noted that the act “will permit the CLU to conduct investigations in all business sectors (formal and informal), in an effort to identify cases of child labour island wide.⁴⁸” Child labour needs urgent attention and decisive action by the Government.

Recommendations:

1. Pass the Occupational Health and Safety Act
2. Engage in consistent data gathering

Trafficking in Persons

The 10th Annual Trafficking of Persons Report by the US State Department describes Jamaica as “a source, transit, and destination country for women and children subjected to trafficking in persons, specifically conditions of forced prostitution and forced labour.”⁴⁹

The report highlighted the fact that the populations most vulnerable to trafficking “include women and children from poor and single-parent backgrounds. People living in Jamaica's poverty-stricken garrison communities, territories ruled by criminal "dons" that are effectively outside of the government's control, are especially at risk.”⁵⁰

In 2007, the government adopted the Trafficking Act of Jamaica. Moreover, it recently ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.⁵¹ However, the government reported no convictions of trafficking offenders or any officials complicit in human trafficking. One alleged trafficking offender undergoing prosecution fled the country on bail.

Statistics on the prevalence of sex tourism and trafficking are difficult to ascertain as there is currently no formal tracking system designed to monitor this issue. The government is unable to provide comprehensive data on the prevalence of sex tourism and trafficking in the country. According to a study conducted by Shared Hope International on the Jamaican sex tourism and trafficking industry, there were approximately 20,000 individuals connected with the sex industry in 2004.⁵² Many of these persons were children. It is believed that many of the 1,859

children that went missing in 2009 were caught up in the trafficking industry.⁵³

A study by Ricketts and Dunn for the National Task Force against Trafficking in Persons found that trafficking victims were 79.3% females between the ages of 18 to 24.⁵⁴ The reasons that led to persons becoming involved in the sex trade were cited as poverty and unemployment (27.3%); desire for a better job (22.1%); and inadequate financial support for children (20.8 %.).

The lack of action taken to explicitly address the proliferation of sex tourism and its consequences, which include the sexual exploitation and prostitution of women and children and the spread of sexually transmitted diseases is worrying. Child prostitution and sex tourism are serious problems, especially in tourist areas. In 2010 authorities uncovered a prostitution ring in Kingston involving an undisclosed number of minors.⁵⁵ Unfortunately, Jamaica is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

The Office of the Children's Advocate released a report in 2010 that documented the government's identification of at least 16 child trafficking victims in 2009. Government officials reportedly employed formal procedures to proactively identify victims of trafficking and to refer them to organizations providing services⁵⁶.

Recommendations:

1. Vigorously prosecute, convict and punish trafficking offenders, including officials complicit in forced labour or sex trafficking; ensuring that prescribed penalties for human trafficking are commensurate with penalties for other serious crimes, such as forcible sexual assault; the improvement of guidance and training to police, labour inspectors, child welfare officials, health workers and other government workers in the proactive identification of local as well as foreign victims of forced labour and sex trafficking.

Sexual Abuse and Exploitation

The high incidence of sexual violence against women and girls in Jamaica is of concern. We were presented with an overview of the problem of sexual abuse and exploitation in 2006 when Amnesty International's "Sexual violence against women and girls in Jamaica: 'Just a little sex' "⁵⁷, attributed the high rate of under-reporting to "entrenched discrimination" and the "trivialisation" of sexual violence by family and acquaintances as "just a little sex".

According to the CDA, sexual assault is the most common reason for children to be taken to hospitals, with children under age 10 accounting for 17% of all sexual assault cases and children between the ages of 10 and 19 accounting for 57%.

As was earlier mentioned, almost half of the young women interviewed reported that they had been pressured or forced into sexual intercourse at the time of their first sexual experience.⁵⁸ NGOs reported that inner-city gang leaders⁵⁹ and sometimes even fathers initiated sex with

young girls as a “right.”⁶⁰ In 2009, according to national police statistics, 610 cases of rape and 511 cases of carnal abuse were reported. In 2011, there were 637 cases of carnal abuse reported to the Jamaica Constabulary Force compared with 538 cases reported in 2010.

Children in Conflict with the Law

In 1999, Human Rights Watch published a report about children in police detention and government institutions entitled ‘Nobody’s Children’. The report presented the Jamaican administration with strong evidence that the State’s treatment of children detained by police forces failed to meet certain basic human rights standards. The report stated:

“...many children-often as young as twelve or thirteen-are detained for long periods, sometimes six months or more, in filthy and overcrowded police lockups...The children are often held in the same cells as adults accused of serious crimes, vulnerable to victimization by their cellmates and to ill-treatment by abusive police; and virtually always, they are held in poor conditions, deprived of proper sanitary facilities, adequate ventilation, adequate food, exercise, education, and basic medical care.”⁶¹

The approach to the children in conflict with the law has been misguided for decades. There has been more focus on punishment than rehabilitation and an overreliance on the detention of children in contravention to international standards.

As of February 20, 2014 there were 253 juveniles in correctional institutions in Jamaica. The following data was obtained from the Department of Correctional Services:

MALE				FEMALE	TOTAL
HILL TOP	RIO COBRE	METCALFE	HARC	SOUTHCAMP	
56	75	77	5	40	253

In explaining why children are in conflict with the law, the OCA has pointed to what they describe as multiple critical factors: poor parenting, lack of adequate supervision and frustrations with school or being illiterate or semi-literate.⁶² Some practitioners have also pointed out that poor literacy is correlated with poor reasoning. Poor reasoning, combined with the other factors, makes at-risk boys vulnerable to exploitation by others, including 'dons' (49%), to whom they turn for fatherly support, and negative peer pressure (37%).⁶³ Children in conflict with the law are mostly young males from poor socioeconomic backgrounds. Children deemed abandoned or neglected and victims of abuse, trafficking and child labour are often taken before the courts as being uncontrollable.

The term “uncontrollable child” remains undefined in the CCPA⁶⁴. Consequently, children that should be declared as in need of care and protection are often classified as uncontrollable and detained for long periods without regard to the actual nature of their offences. According to the OCA, “uncontrollable behaviour” typically accounts for the largest number of charges levied against children admitted to institutions, followed by those charges relating to dangerous drugs, larceny, wounding, possession of offensive weapons and shop/house breaking.

Children are highly susceptible to external influences, and should not be defined by their worst acts. With proper support, juveniles possess the greatest ability for rehabilitation. The child justice system must recognize its opportunity to make a positive impact in children’s lives and thus aim to provide the necessary and developmentally appropriate support for the children in conflict with the law. This means that children in conflict with the law should be engaged in a system focused on rehabilitation and positive and structured support, rather than punitive consequences. Currently, this is not the case with our juvenile justice system.

Recommendations:

1. Expedite implementation of programmes, plans and legislation to improve the well-being of children in the criminal justice system.
2. Review the CCPA to ensure that it provides more comprehensive protection: the Act has no provision for how children in correctional institutions should be provided for. Section 62 makes it very clear as to the rights of the child in places of safety, children’s homes or in the care of a fit person order. However, there are no such directives for children in correctional centres. This makes it difficult for the rights of children in such centres to be upheld and preserved. Additionally, there also needs to be a specific definition or criteria for the identification of the “uncontrollable child” in light of the fact that children with special needs are often deemed uncontrollable and treated as such.
3. Create special provisions for OCA intervention to protect the rights of children in all legal proceedings.

Education in the Juvenile Justice System

With regard to their education, children in remand and correctional institutions face an untenable educational situation. All educational instruction is delivered within the correctional facility and is provided by the Department of Correctional Services. This agency is not only ill-equipped to provide educational instruction to Jamaica’s most vulnerable youth, but has demonstrated scant regard for meaningful educational instruction. In 2013, the OCA published a report, *Focusing on The Uncontrollable Child: Recommendations to The Houses of Parliament*, which revealed that girls in remand and correctional facilities were receiving on average two hours per day of educational instruction. Apart from being appallingly lower than the national average, the nature and content of this limited education raises serious concerns.

Major Shortcomings

Institutions tend to lack individualized, age-specific educational plans for children. In some facilities, children are divided into “mainstream” and “remedial” cohorts. Children are lumped into one group for education, regardless of their various stages of academic development. Educational records are generally not transferred to the correctional facilities from the school when a child enters the system.

The Government’s 2011 report, *New Regime for Juveniles in Remand and Correctional Facilities in Jamaica* it stated: “the Ministry of Education has primary responsibility to ensure the uninterrupted provision of educational services” (italics added). This rhetoric is divorced from reality. The education of children in correctional facilities is *not* under the auspices of the Ministry of Education. The teachers, curriculum, and educational standards are controlled by the DCS. The DCS lacks the capacity, expertise, resources and policy-directive to deliver quality educational instruction. The teachers in DCS facilities are not employed by the Ministry of Education, but by the Ministry of National Security. This separate educational system is unable to attract-qualified teachers, promotes very low standards for education, lacks the development and oversight mechanisms of mainstream education, deters or de-incentivizes educational investment, and employs the worst institutional design to what is arguably the most vulnerable group with the greatest special needs. It is difficult to find a compelling reason to disregard the existing infrastructure in place for public education and instead, offer sub-par “prison education.” Despite formally recognizing this in 2011, the GOJ has yet to implement meaningful reform in this regard.

Further, for children housed in police lockups, there is no educational instruction. In light of the harrowing tales of children being housed in police lockups alongside convicted adults, it is clear that their education is being seriously disrupted. This practice must end.

Recommendations:

1. Provide additional trained and qualified teachers or tutors to detention centres housing children;
2. Create specialized education curricula for the various age groups of children who are in detention facilities.

Children and Bail

There is a stipulated protocol for managing cases of children in conflict with the law. When arrested, a child should stay at the police station (lock up) no longer than 48 hours. He should be brought to court and, if he is charged with an offence by the police, the judge should determine if bail is to be granted or if the child is to be placed in remand.⁶⁵ Where no appropriate court is sitting within the specified time, the police may take the child before a resident magistrate's

chambers.

Bail should not be an option for children. It is a tool used as an assurance that a person charged with an offence will appear for court.-It acknowledges that a person who has been charged but not convicted of an offence is innocent and should be treated like any other member of society until there is determination of his or her culpability.

Children have often remained in custody because of the inability or unwillingness of their family to post bail. Since children rarely possess independent finances, they are at risk of being detained due to factors entirely out of their control. We recommend that the use of bail for children be discontinued. Instead, children and family members/guardians should be given release conditions by the police or court.

Although during the Universal Periodic Review (UPR) in 2010, the government stated that reforms to the justice system were being implemented; considerable delays continue to be reported in the delivery of justice. Therefore, the stipulated 48 hour limit is often not respected, justice is denied and children stay in correctional facilities for long periods of time prior to charging. The overburdened judicial system and frequent lengthy delays in trials are persistent problems in Jamaica.

Recommendations:

1. Prohibit the use of bail for children.

Life Imprisonment

As it currently stands, the CCPA allows for children to be sentenced to life imprisonment without parole. This is in violation of the United Nations Convention of the Rights of the Child (CRC). Article 37(a) states:

“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”

The CCPA should ban life imprisonment of children in compliance with the CRC

Recommendations:

1. Abolish life imprisonment for children.

Children in Need of Care and Protection

Children in need of care and protection are often placed in police lockups when they should be

housed in places of safety pending assessment. Reports have shown that the police usually try to contact the Child Development Agency to place them in such establishments. Unfortunately, there were numerous cases where the agency failed to locate a suitable facility, and the police were forced to place children in police lock ups with adults for extended periods of time.⁶⁶

Access to Information requests reveal that oftentimes the children are taken to the police station by CDA officials – those who are employed to protect them and to ensure that this precise breach of the law does not take place.⁶⁷ The Government of Jamaica is slated to spend \$75million Jamaican dollars to retrofit police stations to house children. We strongly believe that these limited financial resources would be better used in improving the infrastructure of places of safety for children and adolescents and implementing a system that ensures detained children are kept in appropriate child-centred facilities managed by suitable CDA personnel.

The Government is facing a huge task in finding space in places of safety and children's homes for wards of the state. In 2012 the Child Development Agency (CDA) said that the total capacity in places of safety is 408, and in children's homes, 2032. "On average, about five percent of those spaces are available for placement, at any given time," said the CDA. Even so, the CDA said housing wards of the state in police lock-ups is not something it would do, even though it could happen. The agency has been quoted as saying that "[i]t may be necessary for a police officer to take a child to a police station if, for example, the child is found wandering the streets late at nights, seemingly without parental control."⁶⁸ We can only deplore this attitude. Children in need of care and protection should never be held in the unfit environment of police lock ups.

Another issue involves the separation of children based on the nature of their infraction. Children are not clearly separated according to the stage of their criminal proceeding and nature of the charge. Therefore, children detained without charges, remandees, and convicted persons are often held together in the same facility and often share cells without distinction of whether they are children who are in need of care and protection, who are deemed 'uncontrollable' or who are accused or convicted of serious crimes.⁶⁹ There is also no separation based on children's ages and children on remand are incarcerated with those who are under correctional orders.

Legal Representation

The Office of the Children's Advocate (OCA) has broad responsibilities for reviewing laws, policies, practices, and government services affecting children, as well as providing legal services to protect the best interests of children. Unfortunately, a high percentage of children are presented in front of a judge without any legal representation. According to the Office of the Children's Advocate, nearly 70% of children in conflict with the law do not have legal representation. Further, the court process can be delayed because the attempt to seek legal representation for a child is frequently done after the court is made aware that the child does not have legal representation.

Recommendations:

1. Ensure quality legal representation for every child in conflict with the law. This should be provided at the state's expense immediately upon a child being detained or charged. All children going to court should always be accompanied by a lawyer.
2. Ensure that judges are adequately trained to sensitively manage issues pertaining to children.
3. Provide more easily accessible information to the public regarding legal aid; how one may apply, eligibility criteria, associated fees, etc.

Children in Contact with Adults in Police Lock Ups and Adult Prisons

Although the law prohibits the incarceration of children in adult prisons in most cases, approximately 50 juveniles were held in adult jails where the majority of inmates were serving life sentences. In fact, according to Access to Information requests, as of January 3, 2013 there were 16 girls at Horizon Adult Remand Centre and 40 girls at Fort Augusta Adult Correctional Centre.

Data from the DCS indicated that for the years 2007, 2008, 2009, and 2010, the average number of female children kept in Fort Augusta, an adult correctional centre for women, were 46, 53, 41 and 22 respectively. The numbers varied from week to week. In addition to this, there were approximately 20 to 50 children held in police-lock ups across the island. The numbers fluctuated on a daily basis.⁷⁰

In 2010, The Gleaner reported that the Office of the Children's Advocate had released a report on its findings regarding children kept in police station lock-ups. Its investigators had uncovered 80 children, almost all males, in lock-ups across the island. The newspaper report quoted the OCA's investigative officer as saying: "most are broken, they are very sad and express the desire to go home. Keeping them in lock-ups, sometimes being locked down for 24 hours is a clear violation of their basic rights, especially those who are detained because they are deemed uncontrollable."⁷¹

The conditions that children in conflict with the law were subjected to were in direct violation of international and national law.⁷² When arrested, children were often kept in police lockups alongside adults for days and weeks. Justice Downer said that from as far back as 2006, the Office of the Children's Advocate has been in discussions with the National Security Ministry and the Office of the Prime Minister about the issue of removing children from police lock-ups.⁷³

In September 2012, the government announced that it would undertake a \$120 million project to relocate the girls from the Fort Augusta Adult Correctional Centre in St Catherine to the South Camp Road Rehabilitation Centre. Minister of National Security Peter Bunting also stated that the new facility would accommodate both women and girls.⁷⁴ The Ministry of National Security followed through on its pledge and announced in September 2013, that all female juveniles were

moved from Diamond Crest Juvenile Correctional Centre, Horizon Adult Remand Centre and Fort Augusta Adult Correctional Centre and are now being housed at the renovated South Camp Road facility, or have been released.

During the period after the announcement in 2012, JFJ and other civil society groups voiced concerns regarding the plans and repeatedly made requests to visit the facility. It was only on February 11, 2014 that JFJ was allowed to tour. The tour was led by a team from DCS headed by Commissioner Bent and the Superintendent of South Camp – Superintendent White. During the tour, the JFJ representatives observed many things that confirmed the continuing concerns about the housing of children in that facility. The recent tour of the facility illustrated how the authorities had failed to consider and protect the best interests of the children:

- Although there have been some efforts to “soften” the facility (e.g. painting the wall in pale blue and tiling dormitory “pods”), it obviously remains and resembles a prison and is unsuitable for the long-term housing of children. There are rolls of razor wire, security towers, high divisional fences, arid conditions and lack of greenery, along with thick prison cell bars that contribute to an environment unsuited to rehabilitation efforts.
- There is no proper intake and assessment of the wards, girls are still being held for uncontrollable behaviour, and there is no proper educational and learning assessment to ascertain learning capabilities;
- The girls are not separated based on status, age, or the nature of their infraction. Girls who had severe behavioural problems and “acted out” were housed in a barred area, with a central tiled space and a number of prison cells around the perimeter, facing inward, each with its own heavy metal bars/doors. There was no furniture in the central area. From our discussions with the staff, it was clear that this was not the appropriate facility for these girls; they were in need of a level of therapeutic care and support that could not be provided at a correctional facility
- It did not appear that the children were receiving a full curriculum of instruction. They did Math, English, Social studies and a number of vocational subjects. We were told classes were held from 9 am until 3 pm, with a break for lunch. From 3-4 there were clubs.

Recommendations:

1. Remove children from all police lock ups and prisons with adults;
2. Provide holding facilities that are conducive to the safety, comfort and rehabilitation of children while under remand and detention.

Armada Juvenile Correctional Centre

Throughout the years, various events have prompted different governments to react and act on the matter of children in conflict with the law. One such occurrence was the Armadale tragedy.

On Friday May 22, 2009, a fire destroyed a section of the Armadale Juvenile Correctional Facility in St. Ann, Jamaica. The incident resulted in the injury and death of seven (7) young girls who were wards of the facility. Investigations that took place after the fire revealed that the girls were living in inhumane conditions.

According to the United Nations Special Rapporteur⁷⁵, the Office dormitory, which was consumed by the fire, contained seven (7) double-bunk beds with fourteen (14) mattresses, and measured 20 feet by 12 feet. The dormitory had been declared unfit for occupancy by the Property Manager for the Correctional Department on May 2007. Despite attempts to move some of the girls to other offices, 23 girls were held at the Office dormitory on 22 May 2009. The facility initiated lock-downs where the girls were locked in the room from 6:00 p.m. to 6:00 a.m. and given buckets to urinate and defecate.⁷⁶

The former Prime Minister, Bruce Golding, ordered an investigation to determine the cause of the fire. A Commission of Enquiry was established from June 30, 2009 to September 10, 2009. Jamaica accepted liability for the negligence of public officials that caused the fire at the Armadale Juvenile Correctional Centre. However, the Human Rights Committee noted in November 2011, that “the families of the victims have not received compensation. Furthermore, the State party should, as a matter of urgency, ensure that families of the victims of the fire at the Armadale Juvenile Correctional Centre receive adequate compensation.”

Following the Commission, Golding made a statement on the Armadale Inquiry on March 2, 2010: “there are three Juvenile Correctional Centres and one Juvenile Remand Centre with a total capacity of 311. Up to last Thursday, February 25th, these facilities accommodated 325 children, 286 of whom are the subject of correctional orders issued by the Courts and 39 who are being held on remand. However, an additional 124 children are being housed at other facilities which, although declared as juvenile institutions for purposes of the law⁷⁷, are not appropriate for the custody of children.”

Mr. Golding went on to say that “the housing of children at adult correctional centres such as Fort Augusta and Horizon, either on correctional orders or remand is inappropriate. The detention of children in Police lockups is unacceptable. This situation cannot be allowed to continue. We must provide adequate accommodation for those children placed in the custody of the State by the Courts and those awaiting appearance before or determination by the Courts. The accommodation must be sufficient to allow for the appropriate placement of these children based on their peculiar circumstances and needs and for the carrying out of effective programmes to address their behavioural problems.”

In June 2011, Mr. Golding said that “by the end of July, no children on remand will be in police lockups. He made this commitment during his address at the opening ceremony of the Metcalfe Street Secure Juvenile Centre on June 1.”⁷⁸ The Minister of Youth and Culture has reasserted this, stating that after 22 years of breaching the United Nations Convention on the Rights of the

Child and the Beijing Rules, Jamaica will be in compliance by the end of the year 2014. She admitted that Jamaica was in breach of its own Child Care and Protection Act which was passed since 2004, by allowing children to be detained with adults at police stations and in correctional centres.⁷⁹ However, as has been stated, children remain in police lockups across the island.

Suicides in Correctional Centres

The conditions to which children in conflict with the law are subjected are often inhumane. Many are not in conflict with the law by choice, but as a result of severely narrowed opportunities for their development. Tragically, we often come across the atrocious conditions that they are put through only after irreversible events such as the Armadale fire, the death of Vanessa Wint and attempted suicides of three girls at the Horizon Remand Adult Centre on January 1st, 2013.

On November 21, 2012, sixteen-year-old Vanessa Wint was found hanging in Horizon Adult Remand Centre with a sheet around her neck by correctional staff carrying out their usual rounds.⁸⁰ Her death in the centre is a tragic end to the life of a teenager and was a preventable one.

On January 1st, 2013, the Minister of National Security, Peter Bunting “revealed that three girls from the Horizon Adult Remand Centre in Kingston who reportedly took an overdose of antidepressants.”⁸¹ Access to Information requests have also shown that in 2012, at least six girls had attempted suicide at Horizon and Fort Augusta facilities.

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