

EXCHANGE OF EXPERIENCES. PRESENTATIONS BY THE STATES

THEMATIC FOCUS: JUVENILE JUSTICE SYSTEMS

WORKING GROUP 3. DATA COLLECTION AND DEVELOPMENT OF MONITORING SYSTEMS ON RIGHTS OF JUVENILE OFFENDERS.



Jamaica

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JAMAICA'S JUVENILE JUSTICE SYSTEM

Introduction

I consider it an honour to address you today as I speak briefly on Jamaica's Juvenile Justice System. The juvenile justice system are grounded in the principles of Article 40 of the Convention on the Rights of the Child which reads "*Children in Conflict with the law are entitled to legal guarantees and assistance, and treatment that promote their sense of dignity and aims to help them take a constructive role in society.*" A child accused of having infringed the penal law has the right to be treated in a manner consistent with the promotion of the child's sense of dignity and worth." In Jamaica, Children in Conflict with the Law (CICL) refer to anyone under the age of eighteen (18) years who come in contact with the justice system as a result of being suspected or accused of committing an offence.

The Juvenile Act of 1951 provided the legislative framework which stipulates how children who come in conflict with the law are to be treated in such areas as separation of adults and children when being transported or in living spaces and facilitated the presence of parent(s) or a legal guardian during any questioning or when his or her matter are being heard by a member of the judiciary. Other pieces of legislation that supports the Juvenile Justice System in Jamaica are Correctional Act and the Family Court Act.

The Child Care and Protection Act

In the late 1990s, the Government of Jamaica embarked on a comprehensive review of legislation relating to children, this exercise culminated with the landmark

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Child Care and Protection Act (CCPA) being passed in 2004. This legislation sets universal standards for the care and treatment of children irrespective of their circumstance. The Child Care and Protection Act incorporated the provisions of the Juvenile Act and greatly strengthen the capability of the nation to protect children from abuse, inclusive of institutional abuse.

The Child Care and Protection Act place the age of criminal responsibility at the age of 12 years. It further makes provision for parents / guardians of the child who is charged for an offence must attend court or face being warned or summoned to attend. Penalties are applicable for failure to attend or to carry out the Court's orders. For example, if a fine imposed is not paid, the parent / guardian may be imprisoned or have their personal possessions sold. It dispensed with the use of the term "juvenile" to be used in referring to a "child".

Other provisions designed to promote and protect the rights of children who come in contact / conflict with the law by specifying that children attending at, or detained at police stations, being conveyed to or from a criminal court, remand center or a place of safety, and waiting before or after attending court, must be separated from adults who are not relatives or a co-accused.

It requires that steps be taken by the police to inform the government agency with responsibility for child care and protection, which is the Child Development Agency, that the child is in custody and cannot immediately be brought before the Court and to ensure that children in detention obtain bail in accordance with the Ball Act, where the charge is a status or minor offence.

Section 76 of the Child Care and Protection Act permits the Court to make orders which do not involve incarceration or punishment where a child is found guilty of an offence. The orders which may be granted include probation orders, supervision orders and community service orders.

The CCPA makes specific provisions for the establishment of three important entities for the protection of children¹; the **Children's Advocate**, the **Children's Registrar** and **Children's Registry** and the **Children's Court**.

These agencies are now firmly established and have put in place systems to ensure compliance with international standards and to respond to breaches when they occur. The functions of these new agencies will be elaborated upon later in the report.

It is recognized that children will come in contact with the police from time to time either after committing an offence or after being removed from abusive circumstances. In such instances, children "in need of care and protection" as defined by Jamaican law, are immediately placed in the care and protection of the State within the Children's Homes and Places of Safety either regulated or

¹ Child Care & Protection Act, 2004– Sections 4, 5, 71

operated by the Child Development Agency. Every effort is being made to adhere to Jamaican law and international protocols which require that the children be placed before a Magistrate within 48 hours of being in the custody of the police. At the same time, the Jamaican Government is keen to uphold international good practice for children being processed at Police Stations to be accommodated in quarters where they do not come in contact with adult detainees. As such five Police Stations were or are being retrofitted with children-only holding areas. The intention is to eventually provide one such facility in each of the country's 14 Parishes.

In Jamaica, it is the Department of Correctional Services, which falls under the portfolio of the Ministry of National Security that has responsibility for a child offender and is required to manage the child's care with the intent of ensuring rehabilitation and to facilitate reintegration into the family environment. Presently, the Department of Correctional Services has (4) Children Correctional and Remand Centres. These Centres, formally approved schools, that are equipped to provide education, security, rehabilitation and other provisional rights services such as access to health care services and recreational activities to child offenders who are removed from their normal environment to a more controlled one. These institutions house children (ages 12 – 18) in two types of correctional facilities, high security and medium security. High security facilities are for children who commit very serious offences, while the medium security institutions are for those children deemed to be low security risks. As at the end of December 2013 there were 282 children living in Child Remand and Correctional Centres in Jamaica. Of this amount, 109 were living in Remand space and 173 in Correctional Centres. Child Remand Centres are used to house children who have committed an offence but whose matter is still being heard by the Courts.

Between January and December 2013, a total of 98 youth (83 males) were admitted to the island's juvenile institutions. Most were admitted for larceny/shop/house breaking (26.5 per cent), followed by wounding (11.2 per cent), uncontrollable behaviour (9.2 per cent), and Breaches of the Dangerous Drugs Act 1975 (7.1 per cent each). The number of children appearing before the courts in 2013 was 2 850 (72.4 per cent male) compared with 4 040 in 2012.

In 2007, a comprehensive review of the Jamaican justice system was undertaken, and 160 recommendations were put forward for the modernisation of the system of which over 20 were child centred. The Ministry of Justice has embarked on a programme of Justice Reform, incorporating the recommendations of the Report. Among the latest development is greater use of technology in the courts, resulting in the introduction of real time court reporting in the Supreme Court. It gave birth to a number of initiatives which were in response to some of the issues affecting children interfacing with the justice system; I will now name a few:

Child Justice Programme

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The Government of Jamaica (GoJ) has created a four year National Plan of Action for Child Justice (2010 to 2014). The National Plan of Action was prompted by the concerns of the State regarding the protection and care of children as articulated by the various advocacy groups, social workers and caregivers. Concomitantly, the increase in violence by children and against them caused significant concerns among the public and State officials who noted the shocking nature of the randomness and unpredictability of criminal conduct involving children throughout the country.

The number of children in need of care and protection has overwhelmed the social services and the judicial system. As at September 30, 2014 there were 4,370 children in the tertiary child protection system.

The effectiveness of the treatment of children entering the justice system whether they seek the protection of the law or are in conflict with the law called for urgent scrutiny, evaluation and a plan to effect meaningful changes. The goal of the Plan of Action is to develop and sustain a justice system in which the best interest of the child is paramount in the administration of the programmes to secure their protection and in the maintenance of the rule of law. It is anticipated that the National Action Plan will result in a system that seeks to balance the child's accountability for delinquent behavior with the best and most appropriate services to help that child to become a contributing member of the society.

The Child Diversion Programme

The juvenile justice system can be a potential sphere for the emotional manifestations of violence against children. Against this background, work has begun on a national child diversion policy, the goals of which include: reducing the number of children who are charged with an offence and exposed to the formal criminal justice system; increasing the use of programmes that rehabilitate children; protecting the rights of the child in keeping with international instruments and protocols; and empowering communities to take a more active role in dealing with anti-social behavior among children.

Audio-Visual Evidence in Court

The Evidence Special Measures Act was enacted to allow vulnerable witness, including child witnesses, to give evidence by way of a pre-recorded video interview and or audio-visual live link to the court room. The aim is to lessen the psychological trauma of attending and giving evidence in court and to provide an environment that may improve the quality of evidence given by a vulnerable witness. The Act also provides for the presence of a witness supporter where a vulnerable witness is giving evidence.

Removal of the Uncontrollable Label

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In August 2013, upon a submission by the Honorable Minister of Youth and Culture, the Cabinet approved legislative changes for the removal of the “uncontrollable behaviour” label ascribed to children who display extreme behaviour. These legal amendments will remove the option for Resident Magistrates to sentence such children to juvenile penal institutions.

Institutional Frameworks

A number of institutional frameworks are provided for to ensure the rights of children who come in contact / conflict with the law and interface with the justice system are protected.

The structure of the Jamaican justice system has evolved since the late 1950s and now comprises the Privy Council, the Court of Appeal, the Supreme Court, the Resident’s Magistrates Court, Petty Sessions Court and Children / Family Courts. There are five key Government Ministries with responsible for the protection of the nation’s children. They are the Ministry of Education, Ministry of Health, Ministry of Justice, Ministry of National Security and the Ministry of Youth and Culture.

In 2012 an Inter-Ministerial Working Committee was established by the Honourable Minister of Youth and Culture to better respond to issues affecting children who come in contact and conflict with the law. It brings together key child-centred organizations such as Child Development Agency, Office of the Children’s Advocate, Office of the Children’s Registry, Department of Correctional Services. The Committee, chaired by the Minister of Youth and Culture, includes the Honourable Ministers of Education, Justice, National Security, Health and the Department of Correctional Services and their senior technical representatives.

The Inter-Ministerial Working Committee as a first step, pursued programmes that resulted in the removal of children from adult correctional centres. Children have been relocated since September 2013 from two adult correctional centres where they were being held separately from the adults. New child-only remand space has been created for children who come in conflict with the law, and the Child Development Agency has now been assigned a monitoring role for children in correctional institutions.

We wish to at this forum place on record that there is now no child being housed in adult correctional centres in Jamaica. As at November 28, 2014 there were only 17 children (16 males and 1 female) who were remanded at police stations / lockups across the island.

We established of the **Legal Aid Council**. An arm of the Ministry of Justice, the body was established by the Legal Aid Act, which was passed in 1997 and came into operation on May 1, 2000. The Legal Aid Council administers and supervises legal aid across the island and also manages the Kingston and

Montego Bay Legal Aid clinics. The legal aid clinics provide support for children who may come in contact with the justice system and may require their services.

The **Child Development Agency (CDA)** is the primary agency in Jamaica with responsibility for child protection. One of its current remit is to monitor the physical spaces and reports produced by our police on a weekly basis to ensure that the rights of children who come in contact with the law are upheld.

Checks / contact at police lockups / stations are done as part of an overall monitoring mechanism to ensure that a child's human rights is being upheld at all times in keeping with the provisions of both the Child Care and Protection Act and the UN Convention on the Rights of the Child.

The **Office of the Children's Advocate**, established in January 2006, is an independent creature of statute who has the broad mandate to protect and enforce the rights of all children in Jamaica. In addition to being a *de facto* ombudsperson for children, the Children's Advocate has been given the legal authority to institute proceedings against persons in a bid to inject accountability into the child protection system. The Children's Advocate or designate represents children in courts and in non-criminal proceedings. In July 2013, the Children's Advocate published the Child Justice Guidelines which sets out best practices to be followed by persons who interfaces with children who accesses the justice system in Jamaica.

The main role of the **Office of the Children's Registry (OCR)** is to receive reports of children who have been, are being or are likely to be abandoned, neglected, physically or sexually ill-treated, or are otherwise in need of care and protection. The OCR was established in 2007, and its Registration Centre which manages the reports, operates sixteen hours per day (7:00am-11:00pm) for five days per week (Mondays to Fridays).

The **Centre for the Investigation of Sexual Offense and Child Abuse (CISOCA)** is one of the designated institutions to receive and investigation complaints about acts of violence against children and to law the matter before the Courts for its decision.

The Children's Court

The Children's Court created by the CCPA is seen as a progressive step in the area of Specialist Courts and is in keeping with the promotion of the best interests principle. It creates a different judicial space for children who come before the courts whether for care and protection or are in conflict with the law. An important feature of the Children's Court is the ability to expedite matters relating to children while providing emotional and psychological support for children in a confidential setting.

The Family Courts

Family courts were established under the Judicature (Family Court) Act of 1975. Their aim is to prevent family breakdown, and where this is not possible, they ensure that the welfare of the children are protected. Family courts are a division of the Resident Magistrate's Court and exist in four (4) parishes with social workers, probation officers, counsellors and court staff housed in the same building to amalgamate services in the best the interest of the child. Once the police detain a child, the child is brought to an intake counsellor at the Family Court, who determines whether arrest or counselling is appropriate. If the child is required to go to Court the child is placed in a place of safety or remand centre, not the police lock-up. In the ten parishes without a Family Court, Children's Courts carry out these duties with staff from Criminal Court presiding.

The **Victim Support Division (VSD)** was established in 1998 and operates in all 14 parishes across Jamaica. The VSD, which operates under the Ministry of Justice, provides advocacy, court support, crisis intervention, advice and counselling services to individuals, particularly women and children, against whom crimes and civil offences have been committed.

Children who come in contact/ conflict with the law or otherwise affected by violence may initially present to a health care facility, whether private or public, in order to ensure that their physical needs and in particular, any life threatening condition be addressed.

The **public health care system** contains an extensive network of primary care health centres and the Accident and Emergency Departments of the secondary or tertiary care facilities (hospitals) where emergency intervention may occur and the adolescent mental health services, with services delivered through the Child Guidance Clinic system established in 1996.

In 2008, the British High Commission in Jamaica spearheaded and sponsored a wide-ranging review and audit of child protection procedures in relation to the initial disclosure of sexual abuse, the investigation, as well as the prosecution and trial of such cases. In a bid to reduce the trauma experienced by child abuse victims by virtue of exposure to the criminal justice system, the child protection programme was launched. This programme employed the use of a multi-agency approach by child protection agencies (both Government and non-Government) and aimed to improve the effectiveness of the investigation and prosecution of child sexual abuse cases. Additionally, its present operation seeks to divert carefully selected cases of carnal abuse away from the criminal justice system where appropriate and only if they involved sexual activities between children. The programme is not a codified one and operates on the basis of mutual cooperation.

The multi-agency approach uses standard procedures for the reporting and investigating of cases of child sexual abuse, with the Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA), the Child Development Agency (CDA), the Victim Support Unit, the Office of The Children's Advocate (OCA), the Office of The Director of Public Prosecutions (DPP) and the Women's Centre each having specific responsibilities throughout the process.

This service now operates in the Kingston Metropolitan area, and two (2) other regions spanning six of fourteen parishes. Due largely to its success and the minimal dependency on the justice system, efforts are underway to have the programme expanded to all fourteen parishes in Jamaica.

Recommendation

1. Continue with the promotion and roll out of the national child diversion programme and the promotion of restorative justice practices as key initiatives towards drastically reducing the need for children to come in contact with the formal justice system;
2. Fully equip all persons who interact with the justice system with the knowledge on child rights and good practices on how to interact with children who come in contact with the justice system irrespective of the circumstance;
3. Establish a regional system through which best practices can be shared with/among Member States. This may include the promotion of existing mechanisms or putting measures in place to facilitate ease of accessibility in the native language of each State; and
4. The adaptation of the Multi-Agency Strategic Development Response for Child Protection Programme Model as part of a response mechanism that reduces trauma of children who are abuse while utilizing diversionary programmes to minimize the level of interface with the criminal justice system.

Concluding Statement

The country's justice system through which our children are served has undergone significant changes. The government has signaled its intention to build on these changes as it pushes ahead with the thrust to modernize and improve the system, one that effectively promote and protect all children and ensures that their human rights are upheld at all points along the justice continuum.