ADVANCING CHILDREN’S RIGHTS IN JAMAICA
REPORT ON LEGISLATIVE REFORM INITIATIVE

For every child
Health, Education, Equality, Protection
ADVANCE HUMANITY
## CONTENTS

<table>
<thead>
<tr>
<th>Part</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Part I: Executive Summary</td>
<td>1</td>
</tr>
<tr>
<td>2.</td>
<td>Part II: Presentation of the state party</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>2.1 Legal system and political organization</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>2.2 Status of the CRC in domestic law</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>2.3 Budget</td>
<td>10</td>
</tr>
<tr>
<td>3.</td>
<td>Part III: Law review and law reform</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>3.1 Law review</td>
<td>13</td>
</tr>
<tr>
<td></td>
<td>3.2 Types of legislative reform undertaken</td>
<td>14</td>
</tr>
<tr>
<td></td>
<td>3.3 Rationale for undertaking legislative reform initiative</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>3.4 Institutional changes put in place to support laws</td>
<td>15</td>
</tr>
<tr>
<td>4.</td>
<td>Part IV: Process of legislative reform</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>4.1 Strategy and actors</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>4.2 Implementation of law and follow up actions</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>4.3 The use of law in court disputes and by judges in court decisions</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>4.4 Social policy documents accompanying law reform</td>
<td>21</td>
</tr>
<tr>
<td>5.</td>
<td>Part V: Conclusion</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>Lessons learnt and recommendations</td>
<td>22</td>
</tr>
</tbody>
</table>

**Annex A:**
The Convention on the Rights of the Child and the Child Care and Protection Act | 26   |

**Annex B:**
The Government of Jamaica Budget Process | 31   |

**Annex C:**
Documents and publications used | 32   |
Jamaica was among three countries with a Common Law system selected by UNICEF headquarters to participate in a Legislative Reform Initiative aimed at reviewing existing national legislation and mechanisms with a child rights lens. Under the LRI, a national study was conducted by UNICEF in Jamaica to assess the impact of the Convention on the Rights of the Child on legislative reform. Particular attention was paid to the linkages between legislative reform and social policies.

The UNICEF Jamaica office would like to thank Attorney-at-Law Candis Hamilton for her comprehensive analysis of the laws of Jamaica and how they support the Jamaican commitment to the progressive realization of children’s rights. We are also very grateful to all our partners who contributed to this report by sharing their time and expertise.

We hope that legislators and policymakers will find the study a useful tool as they continue the process of legislative reform and the aligning of legislation with the Convention on the Rights of the Child and the Child Care and Protection Act.

Bertrand Bainvel
Representative
UNICEF Jamaica
According to the “The Economic and Social Survey for 2003”, published by the Planning Institute of Jamaica, children (0-18 years) accounted for 39% (approximately 1,027,325) of Jamaica’s total population. Jamaica’s population is very young, yet it is this sector that is the most vulnerable. In Jamaica over 45% of households are headed by females.¹

Jamaica has ratified the main international treaties that have an impact on the rights of children in Jamaica. These are the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Elimination of All Forms of Racial Discrimination (CERD). These three conventions are complementary as they regulate both public and private realities of individuals. All three seek to eliminate discrimination and promote equality for all persons, regardless of age, gender, race or colour. They provide the framework for the development of policies and strategies to “promote and protect the rights of children and women, to eradicate inequality and discrimination, and to create a healthy environment in which all children may flourish”.²

Under Jamaica’s current political and legal organization international treaties are not recognised as a source of law for domestic purposes until there has been a separate act of Parliament enacting legislation on that subject matter. There are several pieces of legislation that address the issue of equality between men and women, such as the Employment (Equal Pay for Men and Women) Act, Domestic Violence Act, Maintenance Act, among others, but there is no single piece of legislation that is the definitive response to CEDAW. Similarly there is no domestic legislation for Jamaica in response to the CERD. However, the Child Care and Protection Act (CCPA) has officially been declared as Jamaica’s response to its international obligations under the CRC. Chapter III of the Constitution of Jamaica addresses several of the principles under these three treaties and can be examined for gaps that are not addressed in specific domestic legislation to satisfy Jamaica’s international obligations under these treaties.


It is significant that the CCPA has been enacted and seeks through this process of legislative reform to institute a major overhaul in the area of children services in Jamaica for the continued promotion and protection of Jamaica’s children. The antiquated Juvenile Act has been repealed and a new executive agency – Child Development Agency – has been established to amalgamate the Children’s Services Division, the Adoption Board and the Child Support Unit of the Ministry of Health with the objective to coordinate and regulate child-care bodies and services within a single entity.

There is a general feeling of optimism that the CCPA will bring Jamaica in line with the provisions of the CRC, and the hope that if there are gaps the judges will look to the CRC for clarification. However, there are gaps in the CCPA, the most glaring being the approach as it is not fully rights-based as the CRC encourages. While the CCPA adequately addresses issues of child care and protection in places of safety, children’s homes and in the care of fit persons, children in other instances particularly in the access of economic, social and cultural rights are not adequately addressed.

² Supra, Jamaican Children and Their Families, p. 15.
In Jamaica's courts the practice has been to use the Constitution of Jamaica, statute and case precedents from Jamaica, the Judicial Committee of the Privy Council and other Commonwealth jurisdictions to resolve disputes. This practice by local judges to date has been slow in incorporating international treaty obligations as an additional binding or persuasive source of law.

There are several points of entry for further activities in advocacy and projects that can strengthen efforts for the continued protection of children in Jamaica. There is ample evidence to suggest that the Judiciary could be a potential partner in utilising child-related treaties for judicial decisions in child-related matters. Additionally, the Child Development Agency as an umbrella entity for the protection of children in Jamaica will require assistance to coordinate with the relevant agencies, ministries and non-governmental entities to ensure children's access to rights is efficient and effective. It is essential that future plans are proposed in the context of the socio-economic climate and taking into consideration the cultural nuances of Jamaican society.

This study will address whether the legislative reform initiated and conducted by Jamaica is an adequate response for children's access to rights in Jamaica's legal system. The study will present an overview of Jamaica's legal and political organization, the status of the CRC in domestic law, and an overview of the national budget process. The study will also set out a summary of the history and processes of legislative reform, outlining the rationale for such a reform, the institutional changes proposed and the required resources for such reform. It will conclude with the lessons learned by the stakeholders, the State and non-governmental organizations together with specific recommendations aimed at reinforcing a rights-based approach towards children.
Part II: Presentation of the state party

2.1 Legal system and political organization

Origins of law in Jamaica

The three main sources of law in Jamaica are common law, statutory law and the Constitution of Jamaica. Hierarchically, the Constitution of Jamaica is the supreme law of the land, followed by statutory law and finally common law.

Statutory law is created by the enactment of legislatures and comprises the body of those principles and rules of action, relating to the government and security of persons and property.

Jamaica’s Judicial System

Currently the legal system of Jamaica is comprised of the following courts:

<table>
<thead>
<tr>
<th>Judicial Committee of the Privy Council ¹</th>
<th>All Members of the House of Lords comprise a pool of approximately thirteen (13) Members. Selected or appointed mainly from senior levels of Court system in England and occasionally from other Commonwealth countries. They advise the Queen on the disposition of matters, and are referred to as Her Majesty’s Council.</th>
<th>Highest Court of Jamaica Hears three types of appeals from the Court of Appeal: (1) as of right, i.e., automatically (2) with leave, or permission of the Court, or (3) by special leave, or permission, by Her Majesty.</th>
</tr>
</thead>
<tbody>
<tr>
<td>United Kingdom (usually before five(5) judges)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Court of Appeal (three (3) judges) with 10+ yeas experience</td>
<td>Appointed on the recommendation of the Judicial Services Commission. The President is appointed by the Governor General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.</td>
<td>Hears Appeals from all the lower Courts</td>
</tr>
<tr>
<td>Supreme Court/High Court/Circuit Court (one (1) judge)</td>
<td>Appointed on the recommendation of the Judicial Services Commission. The Chief Justice is appointed by the Governor General on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.</td>
<td>Determine issues of law &amp; fact</td>
</tr>
<tr>
<td>Gun Court (hybrid of Resident Magistrate Court) (one (1) judge)</td>
<td>Appointed in the manner of High Court judge</td>
<td>Established to try cases concerning gun related offences</td>
</tr>
</tbody>
</table>

¹ Ibid, p.17.
² Interpretation Act, Section 41, “All such laws and Statutes of England as were, prior to the commencement of 1 George 11 Cap. I, esteemed, introduced, used, accepted, or received, as laws in the Island shall continue to be laws in the Island save in so far as any such laws or statutes have been, or may be, repealed or amended by any Act of the Island”.
³ The Judicial Committee of the Privy Council, the Court of Appeal and the Supreme Court/High Court/Circuit Court are all Superior Courts or Courts of record.
The Caribbean Court of Justice (CCJ) will shortly be replacing the Judicial Committee of the Privy Council as the highest court of resort. On February 14, 2001, ten Heads of Government of the Caribbean Community7 signed the Agreement Establishing the Caribbean Court of Justice in Bridgetown, Barbados. The Government of Jamaica is party to the Agreement establishing the Caribbean Court of Justice. The CCJ will have original jurisdiction with respect to issues arising under the Revised Treaty of Chaguaramas and appellate jurisdiction with respect to matters arising from the Jamaican Court of Appeal.

The original jurisdiction will be concerned primarily with questions of regional integration, trade, freedom of movement and macroeconomic matters. This jurisdiction is not likely; therefore, to have direct bearing on the rights of children within Jamaica, although, to be sure, some original jurisdiction matters will touch and concern children.

The appellate jurisdiction of the CCJ will involve all matters currently within the jurisdiction of the Judicial Committee of the Privy Council. Thus, it is intended that the CCJ will replace the Judicial Committee of the Privy Council as Jamaica’s final court of appeal. Article XXV (2) of the Agreement establishing the CCJ indicates that the CCJ will have final appellate jurisdiction for the following matters:

- (a) final decisions in civil proceedings where the matter in dispute on appeal to the Court is of the value of not less than twenty-five thousand dollars Eastern Caribbean currency or where the appeal involves directly or indirectly a claim or a question respecting property or a rights of the aforesaid value; (b) final decisions in proceedings for dissolution or nullity of marriage; (c) final decisions in any civil or other proceedings which involve a question as to the interpretation of the Constitution of the Contracting Party; (d) final decisions given in the exercise of the jurisdiction conferred upon a superior court of a Contracting Party relating to redress for contravention of the provisions of the Constitution of a Contracting Party

---

7 The Heads of Government came from Antigua and Barbuda, Barbados, Belize, Grenada, Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia, Suriname and Trinidad and Tobago.
for the protection of fundamental rights; (e) final decisions given in the exercise of the jurisdiction conferred on a superior court of a Contracting Party relating to the determination of any question for which a right of access to the superior court of a Contracting Party is expressly provided by its Constitution; and (f) such other cases as may be prescribed by any law of the Contracting Party.

These provisions cover the entire range of rights and duties that concern Jamaican citizens (including children).

The Agreement establishing the CCJ provides no specific rules as to the relationship between existing decisions of the Judicial Committee of the Privy Council and the CCJ. It is clear, however, that decisions of the Judicial Committee of the Privy Council will not be binding on the CCJ. Based on common law tradition, Privy Council decisions are likely to carry persuasive authority before the CCJ. However, the CCJ will be free to disregard Privy Council precedents. Given that the CCJ is yet to be established, it is difficult to identify the future pattern of that court’s jurisprudence. The CCJ will undoubtedly operate within the common law tradition; it is expected that the new court will follow accepted canons of legislative interpretation that are part of this tradition. On issues concerning children, this suggests that the CCJ, as the final appellate court for Jamaica, will not embark upon “judicial legislation”; rather, it will interpret constitutional and statutory instruments in keeping with common law tradition, it is unlikely that, the establishment of the CCJ will, in itself, lead to changes in the laws of Jamaica pertaining to children.

A related question concerns the possible approach of the CCJ to Jamaica’s treaty obligations on children and children’s rights. Treaty obligations do not automatically form a part of Jamaican law [see discussion infra]; the rules set out in specific treaties need to be incorporated into local law before they have domestic effect. This approach is derived from Jamaica’s constitutional structure, and is unlikely to change with the introduction of the CCJ. It should be noted in this context, however, that the Privy Council has relied upon treaty obligations in interpreting local statutes on ambiguous points; this approach is part of the common law, and it is expected that it will be retained by the CCJ.

**Political Organization**

The structure of Jamaica’s government is outlined in the Jamaican Constitution.

**Head of State**

**Queen**

Represented by the Governor General

(These functions include: ceremonial duties, prerogative of mercy and converting Bills to Acts of Parliament by final signature)

**Executive**

Chapter VII of the Jamaica Constitution established the independence of the Judiciary. A judge of the Supreme Court can only be removed from office by the Governor General for inability to discharge the functions of the office or misbehaviour, and only upon the recommendation of a tribunal appointed to investigate the inability or misbehaviour. Given the security of tenure in the offices of judges they are theoretically able to objectively adjudicate claims that come before the courts.

**Legislature**

Resident Magistrates, however, do not enjoy the same security of tenure as High Court and Court of Appeal judges. Judicial appointments are made by the Judicial Service Commission, chaired by the Chief Justice. The Commission includes the President of the Court of Appeal, the Chairman of the Public Service Commission.
Commission and three others. Judicial decisions form part of the common law of Jamaica; accordingly, the integrity of the legal system and the competence of judges are both of utmost importance.

This independence does not exist between the Executive and the Legislature as outlined in Chapters V and VI of the Jamaica Constitution, where the Cabinet or Executive is comprised of Ministers or Members of Parliament as appointed by the Prime Minister. The Legislature or Parliament consists of Her Majesty, a Senate and a House of Representatives. The Prime Minister is appointed by the Governor General, “who, in his judgment, is best able to command the confidence of a majority of the members of the House of Representatives”. The Senate consists of twenty-one (21) persons and the House of Representatives consists of sixty (60) Members of Parliament. All the Senators are appointed by the Governor General, thirteen (13) Senators, however, are so appointed on the recommendation of the Prime Minister and the remaining eight (8) on the recommendation of the Leader of the Opposition. The Leader of the Opposition is similarly appointed by the Governor General as the person who in his judgment is best able to command the confidence of a majority of the Members of the Parliament who do not support the Prime Minister.

“The division of 13 to 8 in the Senate is significant because some entrenched provisions of the Constitution may only be changed if they receive the endorsement of at least a two-thirds majority in each House of Parliament.” The Members of the House of Representatives are elected by Universal Suffrage (all persons over the age of 18 years) for a five-year term at a General Election or, as occasion may arise, at by-elections. The five-year terms of the 60 MP’s may be shortened if the Prime Minister calls a General Election during the term. The Senate is also reconstituted after a General Election.

Any Member of either the Senate or the House of Representatives may introduce a Bill or propose a motion for debate in the House, which shall be debated and disposed of according to the Standing Orders of that House. The Bill will be debated and voted on in both Houses, and become law once final approval is assented to by the Governor General. This law making facility of Parliament establishes the legislation or statutory law of Jamaica. Once the laws are made by Parliament it is the Judiciary that will interpret these laws in a court of law, these judicial decisions form part of Jamaica’s common law and give further significance to the application of the law in practical terms.

There are thirteen Parish Councils (Kingston and St. Andrew are combined into a single area for local government purposes) whose power is determined by Central Government. Each of the Parish Councils is a corporation with the right to enter contracts, sue, and be sued. They have general responsibility for roads and works, water supplies, public health, poor relief, fire brigades, and other social development mandates. Despite a recent local government reform project the Parish Councils are still heavily dependent on Central Government as the principal source for policies, financing and administration. However, Parish Councils are statutorily empowered to make by-laws and regulations as it relates to the functions of the Parish Council. Many of the areas referred to in the Parish Council Act are relevant to promoting and protecting the best interest of the child, however, given the current organizational structure it may be futile at this time for Parish Councils to introduce regulations regarding children that will be difficult to implement.

The Ministry with direct responsibility for children is the Ministry of Health as indicated by the CCPA which places the Child Development Agency under this Ministry. Other ministries that have an impact on a child’s development and access to rights/justice are the Ministry of Justice, Ministry of Education, Youth and Culture, Ministry of Health, Ministry of National Security, Ministry of Labour and Social Security and Ministry of Local Government.

In practice, the Executive (through the Cabinet) proposes legislation for the consideration of the legislature, which is
typically voted on according to party lines. Any opposition to proposed legislation is likely to come only from the Opposition benches in Parliament.

However, given the independence of the Judiciary the interpretation of these laws as developed by Parliament is subject to the interpretation of the judges, influenced in part by case precedents. As such, the Judiciary is a significant point of entry for advocacy in the use of international treaties as a persuasive basis for their decisions.

Standard English is the official language used in Jamaica’s courts, and administrative agencies. However, the majority of Jamaica’s population speak a Jamaican dialect known as patois which is often used in court proceedings and administrative agencies to facilitate communication.

Sources of law in Jamaica’s legal system

a) Treaty law

“Treaties represent attempts by States to reduce the measure of uncertainty inherent in the conduct of international affairs.” However, universal or regional treaties, including human rights treaties have a different character. They are not set up to regulate State relations but rather are established in the interest of creating a better world for all human beings. They contain both the commitment of States and the rights and freedoms of individuals. The child related human rights treaties to which Jamaica is party are:

- the Convention on the Rights of the Child,
- the Convention on the Elimination of All Forms of Discrimination Against Women, and;
- the Convention on the Elimination of All Forms of Racial Discrimination.

Jamaica has also ratified:

- the Optional Protocol to the CRC on involvement of children in armed conflict,
- the Convention relating to the Status of Refugees and;
- the International Labour Organization Conventions 138 and 182 relating to Minimum Age and the Worst Forms of Child Labour respectively.

Jamaica has signed, but not ratified:

- the Optional Protocol to the CRC on the sale of Children, Child Prostitution and Child Pornography and;
- the Protocol to the Convention on Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, especially women and children

The principal regional treaties ratified by Jamaica are the American Convention on Human Rights and the Charter of Civil Society for Caribbean Community. Jamaica has signed the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities but has yet to ratify.

Informal reports suggest that the Government of Jamaica may be moving towards the ratification of the Optional Protocol to CEDAW as well as the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women “Convention of Belém do Pará”.

In Jamaica’s legal system, international treaties have no binding domestic effect until and unless they are incorporated into Jamaican law by domestic legislation. Accordingly, the CRC would have binding domestic effect in Jamaica only after it is incorporated into Jamaican law by parliamentary legislation. The enforcement of treaty provisions is outside the competence of the Jamaican courts, unless those provisions are given (domestic) statutory expression. Customary international law (as opposed to international treaties) also represents a source of law. Theoretically, Jamaican courts may take judicial notice of this source. However, no judicial precedent has been identified in which a rule of customary international law has been applied by the Jamaican courts. The general approach of judges is to review Jamaican legislation and earlier (domestic) case precedents in formulating their decisions.

Another issue of note is the interface between international law and common law. There are two prevailing views regarding this relationship. The first view is that international law is a part of common law, and as such would fall within the hierarchy of sources of law used by domestic courts. The principal source of authority for this view is *Regina v. Keyn*, where it was held that international law is incorporated as part of the law of the land only so far as is not inconsistent with Acts of Parliament or prior judicial decisions.15 The second view is that international law forms a part of common law only if the law forms part of domestic law by legislation, judicial decision, or established usage, in other words, transformed into domestic legislation.

The practice in Jamaica is that international law does not form part of the common law. The Constitution of Jamaica is silent on this issue. Thus, international law may only become part of domestic law if recognized by judicial decision or legislation. To date, Jamaican judges have been reluctant to do so.

The need for local legislation to give credence to international law in Jamaican courts was recently reiterated by the House of Lords in the Privy Council decision of *Lambert Watson v. Regina*. Lord Hope of Craighead, speaking for the majority, indicated that, “if existing laws are found to be inconsistent with obligations binding on Jamaica in international law, it will be – as it always has been – for Parliament to provide the remedy”.16

**b) Constitution of Jamaica**

The Jamaican Constitution, in particular Chapter III, “Fundamental rights and freedoms”, provides for the fundamental rights and freedoms of individuals without distinction as to race, place of origin, political opinion, colour, creed or sex and is compatible with the provisions of CERD, CEDAW and the CRC.

The rights provided for in chapter III form part of the entrenched, as distinct from the ordinary provisions of the Constitution and can therefore only be amended by a two-thirds majority of both Houses. Constitutional litigation is predominantly about rights, to a fair trial, legal representation, a fair hearing, freedom of expression and association, among others. There is little evidence of constitutional challenges launched with respect to children or women’s rights.

In adjudicating these constitutional challenges, Jamaican judges have been reluctant to explore or utilize international treaties in arriving at their decisions. They generally remain faithful to statutory interpretation and precedents from Jamaican and other Commonwealth jurisdictions.17

The case of *Regina v Director of Public Prosecutions and Director of Correctional Services* (1996) illustrates this approach. In arriving at its decision the Full Bench of the Supreme Court examined the Extradition Treaty to which Jamaica is a party but ultimately relied heavily on the local Extradition Act, in rendering its decision.18 The Jamaican court’s approach to this treaty might be due in part to the fact that the treaty governs State commitments to the issue of extradition, rather than a human rights treaty which contains corresponding individual rights and freedoms.

However, in another constitutional case19, Mr. Justice Downer of the Court of Appeal writing for the majority referred to an interpretation of the European Court of Human Rights on freedom of expression. He noted that since Chapter III of the Constitution of Jamaica is modelled on the convention that governs the jurisdiction of that court he was able to borrow from the European Court’s interpretation of this right.20 This is a positive step for Jamaican practitioners who seek to expand the source of persuasive law in their cases in Jamaican courts.

**c) Statutory law**

There are over three thousand pieces of primary and secondary legislation currently in existence in Jamaica. Some of this legislation is outdated or in need of reform, while other statutes are innovative and comprehensive in supporting the rule of law necessary in maintaining a safe and civil society. Appendix A includes a comprehensive discussion on some of these
pieces of legislation as it relates to women and children, and recommendations for addressing the gaps in the legislation.

d) Common law

Statutory provisions apply until they are repealed or amended. Similarly, common law principles apply until superseded by a new statute enacted on that specific area of law. The common law functions in the Jamaica legal system to supplement areas not addressed or partially addressed by existing legislation. For example, in the area of tort law, the doctrine of attractive nuisance still applies in Jamaica’s courts. If, for example, a property owner could reasonably foresee that a broken tractor on his property could attract a child onto the property and injury results to the child, such an owner might be liable for any injury sustained by the child as a result of being lured onto the property. Similarly common law contract principles would apply if not specifically addressed or modified by legislation.

2.2 Status of the CRC in domestic law

Jamaica, ratified the CRC on May 14th 1991 and did not submit any reservations or declarations to this treaty. Likewise Jamaica ratified the CEDAW on November 18th 1984 and declared itself not bound by Article 29, paragraph 1. CERD was ratified by Jamaica on July 14th 1971 with one reservation.

In Jamaica, international treaties are justiciable instruments in international tribunals. However, in domestic courts international treaties are recognised only insofar as they are given legal status by an act of Parliament. Since Jamaica ratified the CRC in 1991 various laws impacting on women’s and children’s rights have been passed by the Jamaican government. These include:

- the Inheritance (Provision for Family and Dependents) Act 1993,
- the Domestic Violence Act (1994), the Family Property Act 1995,
- the Mental Health Act 1997,
- the Caribbean Community (Free Movement of Skill Persons) Act 1997,
- the Legal Aid Act 1997,
- the Maintenance Orders (Facilities for Enforcement) (Amendment) Act 1999,
- Citizenship (Constitutional Amendment) Act 1999,

The passage of the Child Care and Protection Act (CCPA) in 2004 represents the latest effort by the Government of Jamaica to bring all legislation pertaining to children in line within the standards of the CRC. This Act constitutes Jamaica’s response to its international obligations to the CRC. In the event of a conflict between the CCPA and the CRC, the courts have the option to look to the actual CRC as a part of international customary law for clarity in interpretation.

There is no set rule or policy regarding the domestic mechanisms to ensure compliance with international treaty obligations, however, certain government agencies and ministries bear the responsibility of ensuring government compliance with international obligations. The recently established Child Development Agency under the Ministry of Health bears the primary responsibility for ensuring implementation of the CRC, and the Bureau of Women’s Affairs under the Cabinet Office is responsible for ensuring implementation of the CEDAW. The Legal Unit of the Ministry of Foreign Affairs and Foreign Trade liaises with the necessary agencies, ministries and non governmental organizations to encourage implementation of the CERD.

Public education is an integral component of the objectives of these agencies, as well as training workshops. Human rights principles reflected in the CRC are currently included in the primary and secondary schools curriculum. The media (particularly the radio) are heavily relied on as a method of promoting greater awareness in the Jamaican population of their rights.

Additionally ministries and departments responsible for children are required to submit an annual report to the Human Resources Council, a subcommittee of
Cabinet, regarding the status and development of the children. These agencies also collaborate extensively with civil society organizations for the dissemination of publications and to facilitate access to the wider society on the rights and standards established in these international treaties. There is significant evidence of the impact of the CRC in the Jamaican population, which is due to the collaborative efforts of both government and civil society entities.

2.3 Budget

The Constitution of Jamaica gives the Minister of Finance the responsibility for the preparation of Estimates of Revenue and Expenditure before the close of a financial year and tabling them in Parliament as soon as is convenient in the new Financial Year.

The Government’s Financial Year runs from 1st April of one year to 31st March of the following year. A budget call is distributed to all the ministries, executive agencies, and relevant government departments between September and October. This budget call communicates the government’s funding priorities for the next financial year and budgetary limits.

Draft budgets are received and examined by the Ministry of Finance, following which they are approved by Cabinet before being submitted to Parliament. The national budget debate takes place in Parliament in April and closes with a parliamentary vote by early May. Members of the public can attend the debate. Only the Prime Minister, the Leader of the Opposition, the Minister of Finance and the Spokesperson for Finance of the Opposition are permitted to address the Parliament during the actual debate. After the national budget has been approved the sectoral budget debate begins. During this debate, Ministers and backbenchers can participate in the debate. Members of the public cannot participate in any of these debate discussions.

The Public Expenditure Division of the Ministry of Finance monitors all ministries, executive agencies and government departments to ensure they are in compliance with their budgetary allocations and expenditures. All budgetary requests, supporting figures and project narratives are recorded in a computerised monitoring system known as Jamaica Budget Information System (JABIS).

Under the current system there is no specific rule, regulation, or policy that defines the portion of the budget that will be dedicated to social expenditure for children. However, it is the representation of the Ministry of Finance that social expenditure for children is a priority of the government. Given the latitude in preparing the national budget another point of entry for advocacy is to monitor the budget calls by the Minister of Finance, and advocate for inclusion of specific line items for projects on children and women, as it relates to the specific ministry, executive agency or government department.
Annual budgetary allocations for the period FY 1999/00 to FY 2002/03 reflected functional classification of expenditure as follows:

### Functional Classification of Expenditure 1999/00 – 2002/03

<table>
<thead>
<tr>
<th>JS Billion</th>
<th>Actual Expenditure</th>
<th>Revised Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Services</td>
<td>118.65</td>
<td>121.57</td>
</tr>
<tr>
<td>- Public Debt Management</td>
<td>97.34</td>
<td>97.51</td>
</tr>
<tr>
<td>Social &amp; Community Services</td>
<td>29.29</td>
<td>30.45</td>
</tr>
<tr>
<td>- Education</td>
<td>17.47</td>
<td>18.50</td>
</tr>
<tr>
<td>- Health</td>
<td>7.05</td>
<td>7.18</td>
</tr>
<tr>
<td>- Social Security &amp; General Welfare</td>
<td>1.18</td>
<td>1.23</td>
</tr>
<tr>
<td>- Water Supplies</td>
<td>0.4</td>
<td>0.66</td>
</tr>
<tr>
<td>Economic Services</td>
<td>9.96</td>
<td>12.78</td>
</tr>
<tr>
<td>Miscellaneous Services</td>
<td>0.03</td>
<td>3.03</td>
</tr>
<tr>
<td>GROSS TOTAL</td>
<td>157.92</td>
<td>167.83</td>
</tr>
<tr>
<td>Less Appropriation in Aid</td>
<td>0.33</td>
<td>0.44</td>
</tr>
<tr>
<td>NET TOTAL</td>
<td>157.60</td>
<td>167.39</td>
</tr>
</tbody>
</table>

Source: The Jamaica National Budget: Budget Review. Renee Anne Shirley 2004; Economic and Social Survey Jamaica 2003, PIOJ.

During this period primary education was a priority and was allocated a significant percentage of the total education allocation.

### Ministry of Health – Other Services/Programmes Specific to/Impacting Children

<table>
<thead>
<tr>
<th>Estimates</th>
<th>Revised Estimates</th>
<th>Actual Expenditure</th>
<th>Actual Expenditure</th>
<th>Actual Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003/04</td>
<td>2003/03</td>
<td>2001/02</td>
<td>2000/01</td>
<td>1999/01</td>
</tr>
<tr>
<td>Capital B (Financed with External Funds)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family Services Schemes</td>
<td>10.0</td>
<td>5.0</td>
<td>12.0</td>
<td>10.9</td>
</tr>
<tr>
<td>- Policy Advocacy Special Care &amp; Protection (UNICEF)</td>
<td>10.0</td>
<td>5.0</td>
<td>12.0</td>
<td>10.9</td>
</tr>
<tr>
<td>Prevention &amp; Control of Drug Abuse</td>
<td>3.1</td>
<td>3.0</td>
<td>5.0</td>
<td>-</td>
</tr>
<tr>
<td>- Integrated Drug Abuse Prevention Project (EDF)</td>
<td>3.1</td>
<td>3.0</td>
<td>5.0</td>
<td>-</td>
</tr>
<tr>
<td>Surveillance, Prevention &amp; Control of Diseases</td>
<td>108.0</td>
<td>63.1</td>
<td>39.6</td>
<td>22.6</td>
</tr>
<tr>
<td>- AIDS/STD (USAID)</td>
<td>7.0</td>
<td>6.0</td>
<td>7.0</td>
<td>7.1</td>
</tr>
<tr>
<td>- Improved Reproductive Health of Youth (USAID)</td>
<td>7.0</td>
<td>6.5</td>
<td>7.0</td>
<td>4.1</td>
</tr>
<tr>
<td>- AIDS Prevention &amp; Management (IDB)</td>
<td>2.0</td>
<td>1.0</td>
<td>3.0</td>
<td>-</td>
</tr>
<tr>
<td>- Jamaica HIV/AIDS Prevention &amp; Control (IBRD)</td>
<td>90.0</td>
<td>40.2</td>
<td>10.5</td>
<td>-</td>
</tr>
<tr>
<td>Common Health Services</td>
<td>3.1</td>
<td>2.0</td>
<td>1.5</td>
<td>-</td>
</tr>
<tr>
<td>- Public Health Laboratory (EEC/EDF) (IBRD)</td>
<td>3.1</td>
<td>2.0</td>
<td>1.5</td>
<td>-</td>
</tr>
<tr>
<td>Maintenance &amp; Upgrading of Facilities</td>
<td>10.0</td>
<td>3.5</td>
<td>107.5</td>
<td>163.2</td>
</tr>
<tr>
<td>- Health Services Rationalization Project (IDB)</td>
<td>10.0</td>
<td>1.0</td>
<td>102.0</td>
<td>151.4</td>
</tr>
<tr>
<td>- Redevelopment of the Bustamante Children’s Hospital (Italy)</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
The budgetary allocation under the Ministry of Health for the Family Services Programme was transferred in FY 2003/04 to the Child Development Agency, and has received an allocation of $550 million to cover recurrent expenditures in the 2003/04 financial year.

### Ministry of Health – Family Services Programmes

<table>
<thead>
<tr>
<th></th>
<th>Estimates 2003/04</th>
<th>Revised Estimates 2002/03</th>
<th>Actual Expenditure 2001/02</th>
<th>Actual Expenditure 2000/01</th>
<th>Actual Expenditure 1999/01</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recurrent Budget</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Direction &amp; Administration of the Children’s Services Division</td>
<td>187.9</td>
<td>157.2</td>
<td>133.2</td>
<td>93.6</td>
<td>67.0</td>
</tr>
<tr>
<td>Children’s Homes</td>
<td>204.0</td>
<td>193.0</td>
<td>180.1</td>
<td>137.1</td>
<td>135.8</td>
</tr>
<tr>
<td>Places of Safety</td>
<td>101.1</td>
<td>87.3</td>
<td>66.2</td>
<td>68.4</td>
<td>59.3</td>
</tr>
<tr>
<td>Foster Care</td>
<td>56.9</td>
<td>42.0</td>
<td>42.0</td>
<td>22.6</td>
<td>21.4</td>
</tr>
<tr>
<td>Other Family Services</td>
<td>14.7</td>
<td></td>
<td>11.5</td>
<td>11.2</td>
<td>10.9</td>
</tr>
<tr>
<td>Total</td>
<td><strong>550.0</strong></td>
<td><strong>494.3</strong></td>
<td><strong>433.0</strong></td>
<td><strong>332.9</strong></td>
<td><strong>294.8</strong></td>
</tr>
</tbody>
</table>

Source: The Jamaica National Budget: Budget Review. Renee Anne Shirley 2004

### Adequacy of resources:

While the Child Development Agency is confident there is sufficient funding for the first year of operations, there are other financial implications that result from the Child Care & Protection Act and which fall outside the scope of the CDA and can militate against the success of the implementation of the CCPA. Some of these include:

- Transportation costs for police, investigation officers, Investigations by officers
- Monitoring of trafficking
- Capacity to search for a child that is being abused, ill-treated, etc.
- Transportation for police bringing children to court by police from places of safety or remand centres
- Taking child to medical examiner, finding a medical examiner
- Monitoring of employment of children in nightclubs, bars, hazardous or dangerous places
- Monitoring sale of intoxicating liquor and tobacco products
Part III: Law review and law reform

3.1 Law review

No Parliamentary debate has taken place to date on the reservations to the CRC, CEDAW, nor CERD, however, civil society organizations and individual advocates have been diligent in ensuring that the discussion on child-related issues remains on the forefront of the government agenda. Three key analytical reviews on legislation related to children and women have been prepared in the last decade. These reviews are, “Review of Legislation in Jamaica” by Justice O.D. Marsh in 1994; “Meeting Adolescent Development and Participation Rights” (ADPR) by UNICEF and UNFPA in 2002, and “Review of Jamaican Legislation Affecting Women in Jamaica” by Macaulay, Bassie and Dodd in 2000.

The main findings of the reviews are as follows:

Marsh Report

This report identified the need for new legislative provisions to bring Constitutional and CRC provisions realistically to the attention of the public and administrators. Marsh recommended the enactment of a “Child Care and Protection Act” to reinforce existing legal and constitutional provisions where necessary to comply with the CRC. The report highlighted the specific articles of the CRC that required further reinforcement in proposed legislation.23

Adolescent development and participation rights report

Recommended the elaboration of a policy document on adolescents in Jamaica and specifically,
• The development of policy on issues such as care and protection, prevention and rehabilitation, participation, and building linkages/integrating services
• The Establishment of a national entity to coordinate the formulation of relevant policy

for the development of adolescents
• The national entity should collaborate with relevant and specific agencies

The policy document should include the following goals:

1. Improvement of access to health care for adolescents
2. Improvement of environment where adolescents live
3. Increase in role of schools in improving adolescent development
4. Implementation of a legal reform programme
5. Development of Public Education and Awareness programme
6. Development of networking and collaborative relationships
7. Promotion of the development of data base and research facilities and capabilities
8. Promotion of the participation of adolescents in the decision-making process

Review of Jamaican legislation affecting women in Jamaica

The review covered an analysis of over thirty pieces of legislation and found that the laws of Jamaica relating to women were substantially defective and recommended legal reform to ensure that Jamaican law is more consistent with principles of non-discrimination and equality. For example, the offence of incest is a misdemeanour with a maximum penalty of five years at hard labour. The current legislation lacks provisions to address the social, psychological and physical trauma associated with incest, given the extent of incest in Jamaica. The Act also provides that in the trial for incest the jury may acquit of incest and find the accused guilty of an offence of unlawful carnal knowledge of a female idiot or imbecile (emphasis added), the penalty for that offence being three years. It is essential that discriminatory legislation pertaining to women and children are reviewed with the

23 Convention on the Rights of the Child, Articles 2, 4, 8, 12, 13, 18, 19, 22, 23, 25, 28, 31, 32, 33, 35, 36, 37, 38, 39, 40.
aim to establish equality of access to rights. If women are treated differently in the legal system the resulting consequences in their public and private lives will impact on children. How? These reviews have facilitated significant public policy advances. The Child Care and Protection Act was passed as recommended by Justice Marsh, and the Child Development Agency was established in keeping with the principal recommendations of the ADPR review. However, a proposal (by Macaulay et al) to eradicate discriminatory language and procedures from existing legislation remains to be implemented. The review by Macaulay, et al is a significant step in initiating that necessary process to ensure that Jamaica’s legal framework promotes the principles of non-discrimination and equality as established by Jamaica’s international commitments.

3.2 Types of legislative reform undertaken

The Child Care and Protection Act repeals the Juvenile Act, (a 45 year old Act), and provides a more comprehensive piece of legislation aimed at protecting the child in all spheres of life and promoting a caring environment to give each child an equal footing in society.

The main objective of the legislative reform for the protection of children was the fulfilment of Jamaica’s obligation to enact legislation to implement the provisions of the United Nations Convention on the Rights of the Child. According to the Report of the Joint Select Committee on the Bill the overriding principle of the new legislation is to ensure the best interests, safety and well being of the child. It recognizes that services for children should be provided in a manner that respects children’s need for continuity of care and stability, taking into account the physical, mental and emotional needs and the differences that may exist among children. The new legislation should ensure support for the autonomy and integrity of the family unit and in cases where the child has to be separated from that unit, ensure that the least disruptive and restrictive course of action is taken to assist the child.

The CCPA came into effect on 26th March 2004, representing the culmination of many years of work by both government and non-governmental entities in Jamaica. The reform itself has been described by government and non-governmental entities as positive and a significant effort for the legal protection of Jamaica’s children. It aimed to incorporate the inter-relationship between civil rights and freedoms, education, health, culture, personal safety and security of the child, the family and community environment as a basis for the proposed law reform, enforcement and implementation.

The focus of the reform is best described as providing a legal framework for the protection of the best interests of the child, and to establish mechanisms and institutions to monitor investigate and supervise this process, utilising an integrated holistic approach to achieve this protection for children.

The general perception by government and non-government entities of the CCPA is positive, however, there remain some concerns. Some of these are as follows:

- The Child Care & Protection Act could be described as having a discriminatory effect on the poor as the instances and circumstances under which children may be detained could disproportionately apply to children from poor backgrounds. For example, section 8, outlines the circumstances in which a child is in need of care of protection, and 8(2)(c) establishes that one such definition of a child in need of care and protection is, “if a child is found begging or receiving alms or loitering for that purpose”. The objective of the Act is to protect this vulnerable sector of society, not discriminate. As such, the challenge is to ensure that the police, probation officers, teachers, nurses, employees in children’s homes and all persons who come in contact with children are properly trained to provide the best care for all children regardless of social status, or economic background.

- Another possible discriminatory effect of the legislation is the seeming bias towards females in sexual offences and abuse and thus exclusion of males as victims of these offences, abuse and exploitation.

In addition there is a general concern regarding funding to sustain and implement the provisions of the new Act. Some specific obstacles for implementation of the Child Care & Protection Act include:

- Comprehensive training for practitioners across the island, particularly in the rural areas, including police, judges, social workers, probation officers, staff in government and non-government places of safety, among others;
- Sufficient funding to sustain the training and educational programme to ensure a change in the mind-set of all persons that protecting children is a priority;
- Sufficient funding to ensure the mechanisms and institutions function as proposed;
- Sufficient funding for day-to-day logistics, such as vehicles, gasoline to transport children from centres to court.

### 3.3 Rationale for undertaking legislative reform initiative

There is much debate about who initiated the reform process but there is general consensus that the movement for legislative reform began even before Jamaica ratified the Convention on the Rights of the Child in 1991. Some claim the public debates began as far back as in the late eighties coming from the pressing need to revamp the dated Juvenile Act. Several key individuals from the government and private organizations were instrumental in initiating and sustaining the dialogue for legislative reform in Jamaica.

Children and inter-governmental organizations also played an integral role in ensuring that this reform process was participatory, comprehensive and responsive to the needs of Jamaica’s children.

During the period between 1991 and 2004 there were specific recommendations from the UN Committee on the Rights of the Child. While these were not the impetus for legislative reform they provided the needed catalyst to keep the fire burning in the process. Some of the recommendations by the UN Committee included legislative reform in the area of children, the establishment of a comprehensive data system on children in Jamaica, public education campaigns on rights, improvements early childhood education, overhauling the education system and minimising child labour, among others. These recommendations have been implemented in various degrees with the obvious passage of the CCPA and particular mention of early childhood education which has been significantly revamped during this time period. Legislative reform was a specific recommendation from the 1995 National Plan of Action for Children and the need for a national policy for children was identified as a priority. There is no indication that this reform was triggered by a regional agreement or regional cooperation mechanism.

During this same timeframe the UNICEF Jamaica Office was instrumental in maintaining the issue of legislative reform on the political agenda of the government. After Jamaica’s ratification of the CRC, UNICEF Jamaica funded the legislative review conducted by Justice O.D. Marsh in 1994. This review formed the backbone of the government debates on the new Child Care and Protection Act. In 2000, UNICEF Jamaica also funded a Roundtable of Jurists that convened various legal experts from the region particularly in the area of family law and children’s rights to discuss the proposed draft of Jamaica’s CCPA. The report from this Roundtable was also referred to by the Chair of the Joint Select Committee, Mr. John Junor, in his presentation before Parliament, as being helpful in developing the final draft of the legislation. Additionally, for each draft of the Bill that was prepared UNICEF Jamaica provided comments. In providing these comments UNICEF Jamaica collaborated with the civil society organizations and government agencies to ensure that the submissions were not duplicated, allowing the Joint Select Committee the opportunity to receive a wide range of information for their deliberations on the Bill.

### 3.4 Institutional changes put in place to support laws

Two significant reports were published that led to recommended changes in the institutional framework for children in
Jamaica. These reports were the UNICEF-funded Assessment of Children's Homes and Places of Safety (1999) and the Review of Children’s Homes 2003 (Keating Report). Today, to support the new child care legislation the government has sought to consolidate the management of child care and protection under the umbrella of an Executive Agency known as the Child Development Agency. The Child Development Agency (CDA) is a merger of the Children Services Division, the Adoption Board, and the Child Support Unit.

The reform provides for the establishment of a system of mandatory reporting of child abuse and establishment of a central registry for the reporting of abuse of children. It also provides for the establishment of an office of Children's Advocate to act in legal matters on behalf of children. The advocate will not only act on behalf of children in conflict with the law, but will, for example, provide assistance to children making complaints about acts of Government or the State that infringes on their rights and adversely affect children's interests. The reform also calls for the establishment of a Central Registry where incidents where a child is being abused, or in need of protection can be lodged.

The role of the Child Development Agency (CDA) is to implement the Child Care and Protection Act, working with the Central Registry and the Children’s Advocate. The central focus of the agency is to safeguard and promote the welfare of the child, taking into consideration the child’s developmental needs, parenting capacity and family and environmental factors.

As an executive agency the CDA will be able to act independently regarding its operation and organization. Currently staff from the previous institutions and agencies has been absorbed under the CDA. However, under its new status as an executive agency the Child Development Agency aims to open all its positions to the public, allowing the agency to attract qualified and committed personnel. Hence there are no guarantees that persons who were employed under the previous systems will continue with the new CDA. This is a crucial point, as non governmental organizations in particular have voiced their concern that despite the good intentions of the legislation if the same individuals are responsible for implementing the law as under the previous system there may be little actual change.

This concern while valid is addressed in the Act itself which imposes liability on the registrar and the CDA for failure to investigate, ensuring accountability from the institutions.25 However, this point remains a concern for civil society entities that claim that the Act only imposes the duty to investigate, not a duty to act upon that information for the protection of the child.

The final regulations for the Child Care and Protection Act have not been approved but are in the final process of deliberation, as are the Child Development Agency Guidance and Standards of Care for Residential Childcare Facilities. There is a concern that the various documents, that is, the Act, the Regulations and the Guidelines will make it cumbersome for practitioners to adhere to all the standards established.

Currently, in compliance with Ministry of Finance procedures, executive agencies submit their budgetary requirements directly to the Ministry of Finance, with copies to the Ministry of Health which covers a three-year corporate and operational plan with costs. The establishment of the CDA, the Office of the Children's Advocate and the Children's Registry will incur considerable financial implications. According to the Child Development Agency funding for the CDA is adequate. Funding has also been allocated for the Office of the Children’s Advocate and the Children’s Registry for its first year of operation despite the fact that neither is currently operational. Given the proposed activities the Child Development Agency affirms that funding for these two additional offices is also adequate. There is a concern among practitioners, however, that the previous system could have been strengthened, using the same funding rather than institute an entirely new system.

This concern is particularly striking in the area of access to justice for children in the courts.

---

25 Child Care and Protection Act, section 7(5)
As indicated there are four family courts in Jamaica that incorporate the functions and provide access support for children from three government ministries. These ministries are Ministry of Health, Ministry of Justice and Ministry of National Security.

At the Family Courts children and adults alike are able to access services of family counselling, probation officers, children services (including counselling, placement in places of safety, etc.) and the court. Having these varied services housed in one central location has, according to practitioners at the Family Court in Kingston, significantly increased the access to government services and protection to children and families.

However, there is considerable discussion to change the profile of the Family Court. This proposal is of great concern as parents and children will not be able to access all the services in one area, and will run the risk of reducing access to services and facilities for families and children. The concept of housing several essential services in one area is recognised as the method to increase the numbers of persons that will access the services. This holds true for the services of the Family Court and every effort should be made to maintain the status quo of the Family Court and expand the Family Court model to the remaining parishes.

Aside from that possibility of fragmentation, the system of the Family Court is most effective. Children and adults alike are registered upon arrival, and seen by an intake counsellor/social worker. Their problem is then assessed and they are directed to the appropriate division, whether family counselling, probation, children’s services or the court. Children’s Services would make their own assessment and provide the necessary assistance for the problem. In the Courts, there is still the general fear of courts and judges by adults and children alike. The Family Court while less imposing than the Resident Magistrate or Supreme Court, still maintains an aura of justice “looking down” on the parties in a matter, whether victim or perpetrator, and efforts could be made to address this issue in the Family and proposed Children Courts. Children are allowed to voice their concerns and speak freely with the judges in chambers, and the reports of social workers and officers from the Children’s Services are heavily relied upon before a final determination in the matter affecting a child.

The proposed institutional changes with regard to the establishment of the CDA, the Children’s Advocate and the Children’s Registry can reasonably be attributed to Jamaica’s ratification of the CRC as the Joint Select Committee as well as the Minister of Health have mentioned on several occasions the CCPA is Jamaica’s response to the CRC. The proposed in-house policy changes regarding the administration of justice in the Family Courts will have to be explored to determine whether these are indeed in the best interests of the child.
4.1 Strategy and actors

The Jamaica Coalition on the Rights of the Child (JCRC) is a coalition comprised of several non-governmental organizations established to encourage ratification of the CRC. After Jamaica ratified the Convention the JCRC began several strategies to encourage Jamaica to begin the process of legislative reform for children. They submitted a report to the UN Committee on the Rights of the Child as the civil society response to the Government’s submission.

With the support of UNICEF the JCRC hired a legal draftsman to conduct a review of Jamaica’s legislation regarding children and the recommendation was for one comprehensive act on child care and protection. The year 2002 also saw a new phenomenon, the targeting of children in gang feuds. Twelve children were killed in October including one at a birthday party and another while having his hair cut in a barbershop. The JCRC issued a press release and the media became involved in the agitation process to encourage legislative reform.

From then the JCRC utilized the media and other public arena to call for “legal protection for our children”. Various strategies were employed, lobbying, letter-writing, press-releases, radio programmes, education workshops as well as collaboration between various non-governmental organizations who shared the same objective of provided urgent legal protection for children in Jamaica. Children were also an integral part of the process as their involvement was helpful in preparing the second civil society report submitted to the UN Committee on the Rights of the Child. Island-wide workshops prior to the preparation of the report facilitated their involvement.

UNICEF was integral to the process. The organization provided much of the necessary technical assistance required by civil society organizations, supported government efforts and made specific recommendations on how to keep the issue of legislative reform on the government’s agenda. Contributions by UNICEF to programmes in early childhood development, children at-risk, HIV/AIDS, health and nutrition through community development, adolescents, policy and monitoring, assisted in providing the holistic approach to the legislative reform for children’s issues. UNICEF provided technical assistance to both government and non governmental actors in the process through their staff in-house, consultants, regional and headquarters staff.

Government agencies which were instrumental in ensuring that the issue of children was a priority included the Bureau of Women’s Affairs, Children’s Services Division, Office of the Special Envoy for Children, the Planning Institute of Jamaica, the Ministry of Health, Ministry of Education and Culture, Ministry of Local Government and Community Development, Ministry of National Security and Justice, Ministry of Labour and Social Security, and the Office of the Prime Minister.

There were many obstacles that prolonged the legislative reform. The process was participatory, and while this is one of the very positive aspects of the legislative reform, the very nature of the participation delayed the passage of the Bill. During this time frame Jamaica held national and local government elections and this may have temporarily diverted the attention of policy makers from the reform process.

The main concerns by civil society regarding the CCPA were resolved in the debate. However, there remain some outstanding concerns which child advocates maintain are in direct conflict with the principles established in the CRC. For example,

• section 20, provides that evidence of a child of tender years must be corroborated;
• section 62(d) establishes that children in places of safety, children’s homes and in the care of a fit person (i.e., the Minister and any person or body whether corporate or incorporate designated by the Minister) have the right to be free from corporal punishment. However, the CCPA is silent regarding this right for children in other instances and spheres of society;
• section 68 establishes instances when a child may be placed in adult correctional facilities;
• section 7 imposes an affirmative duty on the Registrar to assess and investigate reports referred to the Registrar. Failure to do some carries an offence. There is concern that the offence is not defined, whether a summary or indictable offence and neither is a fine specified for this failure. Additionally, there is a concern that the Registrar could stop at the investigation stage and not carry a case to its full completion, as the offence lies in the failure to assess and investigate. Lastly, under this section, there is no penalty imposed on the Children’s Advocate for failure to act upon a report.

4.2 Implementation of law and follow-up actions

The CCPA has created new institutions and procedures which will incur additional financial obligations. These, to the extent of the needs for the Child Development Agency and the Office of the Children’s Advocate, have been adequately satisfied for the first year. However, there is no administrative rule or policy that guarantees the same or similar disbursements each year. The Ministry of Finance has indicated that children are a priority for government spending, however, similar disbursements in coming years must be subject to the government’s financial status and capacities at that time. UNICEF along with non-governmental organizations and the Child Development Agency have devised various strategies for the dissemination of the new Child Care and Protection Act. Some of these activities include:

• A Handbook for practitioners (law enforcement officials, judges, lawyers, police, etc.) on the practical application for the implementation of the Act
• Training for same target group as mentioned above on implementation of the Act
• Public service announcements on the radio on provisions of the Act, e.g. outlining the responsibilities of the Children’s Advocate
• Child friendly versions of the Act
• Child friendly radio or printed media messages of the Act

4.3 The use of law in court disputes and by judges in court decisions

In the Privy Council case Chung Chi Cheung vs. The King, Lord Atkin in giving the opinion of the majority was unequivocal when he stated:

“International law has no validity save in so far as its principles are accepted and adopted by our own domestic law. There is no external power that imposes its rules upon our own code of substantive law or procedure” 26

This principle has been firmly applied by the Jamaican courts. Hence, as stated previously,27 there is no indication from the Jamaican law reports that the Jamaican courts have utilised the CRC or other treaties in its deliberations. Treaties form part of Jamaican law only if an Act of Parliament has been passed on the issue. As such, the sources of law used by Jamaican courts when analysing and deliberating matters before them are the Jamaican statutes, the Constitution of Jamaica, common law and case precedents.

Current Jamaican legislation is quite comprehensive in its coverage with regard to issues of custody, protection from violence and child participation. The Domestic Violence Act of 1995 has the discretion to grant a protection or occupation order whenever the alleged conduct is used or threatened against a child or dependent. Section 3(2) of the Domestic Violence Act identifies the persons who can apply for a protection order for a child and section 4 outlines the respondent’s prohibited from entering or remaining in the household residence of any prescribed person or from watching or besetting the household residence or place of education of a prescribed person.28

27 Sources of law in Jamaica’s legal system, supra, p.10.
28 Section 4(1)(a) and 4(1)(b)(i); Domestic Violence Act of 1995
The limitation with the statute however, is that only adults are permitted to make an application before the court for a protection or occupation order for a child thereby limiting the child’s right to participate directly in this legal process or directly advocate for his/her rights in this example.

Occupation orders are another vital tool under this act that have been utilised particularly by women in domestic violence situations to protect themselves and their children. This order grants the prescribed person the right to occupy the household residence for a period of time as the court deems fit. In practice the threat of being expelled from the household residence has compelled persons to remain in violent situation. This occupation order permits persons who have been abused to seek this occupation order. Through the order they are granted the right to remain in the home until the court has had an opportunity to hear the matter. Prior to granting the orders the Court ensures that it is in the best interest of the child and it is necessary for the protection of the prescribed person.29

Similarly, under the Matrimonial Causes Act the Court has the power to grant injunctive relief for the personal protection of a party to the marriage or of any relevant child.30 This is in addition to the Supreme Court’s unlimited jurisdiction to grant injunctions in equity in cases of assault, battery or other similar torts and instances it deems appropriate. Likewise under this act the court has the power restrain a party to marriage from entering or remaining in the matrimonial home which can have an indirect bearing on protection of a relevant child.31 Also, as in the case of protection orders under the Domestic Violence Act an injunction be granted “restraining a party to the marriage from entering the place of work or education of any relevant child.”32 (emphasis added) Furthermore, the court has the power to make orders as it thinks just for the custody, maintenance and education of any relevant child likewise in exceptional instances of child neglect, the custody of the child may be given by a welfare officer. Breaches of any injunction order can lead to a fine or imprisonment which the courts have not been hesitant to impose.

The Constitution of Jamaica establishes in Sections 22 and 23 the right of every person to freely hold opinions, receive and impart information without interference and to peacefully assemble and associate with others without hindrance. As such this right is established for all children. The Constitution of Jamaica does not however, specifically guarantee the right to participate in all proceedings relating to a child, and as such the domestic statutes do not address this issue. While it can be argued that this right is established in the aforementioned sections of the Constitution, it remains to be tested in the courts. However, the practice reveals that judges in the family courts are open and receptive in allowing children to express their opinions and speak freely in matters that relate to their well-being and their participation is considered an integral part of the process before final decisions are reached in their interest.

The Family Court and Juvenile Circuit Court are the courts responsible for hearing matters related to children on Jamaica’s legal system. Judges in this division are aware of the Convention on the Rights of the Child and Jamaica’s ratification of this treaty. However, since the Jamaican legal system requires an Act of Parliament for an international treaty to be used in court disputes, the courts’ decisions in family courts will not include reference to this treaty or other relevant treaties. As such, they incorporate the principal sources of law as mentioned above in their reported decision and use relevant treaties to informally assist their deliberation. The approach adopted by these courts in decisions has been and remains today a holistic approach. The voice of the child is a paramount in the Family Court and as a result, judges often find themselves wearing several hats as counsellor, social worker and – judge. They make every attempt to include the participation of family members, teachers, parents and the report from the probation officer is an essential element. In deliberations of sentencing the rehabilitation of the child is taken into consideration and alternative options to detention are given serious consideration.

Case precedents reveal that Jamaican courts have always ruled that the welfare of the child
is paramount and overrides all other considerations. In *Thompson v Thompson*, Justice Carey maintained the principle of the welfare of the child being paramount and while he gave weight to an order from a foreign court he placed the interest and welfare of the child over the order in arriving at his final decision. This principle has been further expanded under the Child Care and Protection Act, where the overriding principle is the best interest of the child. Since this piece of legislation has been passed to give effect to the CRC, there is a presumption that the Jamaican Parliament intended this Act to fulfil its international obligation. As such “in the case of a conflict between the statute and the treaty, the text of the Convention may be used an aid to interpretation even if the statute does not in terms incorporate the Convention nor even refer to it.” In this light, with reference to future cases before the Jamaican courts there may now be a greater willingness to formally rely on the CRC.

### 4.4 Social policy documents accompanying law reform

During the period of the law reform the government has placed children’s issues at the forefront of their agenda and sought to implement social policies to reflect this focus for the continued improvement of the state of children in Jamaica. Regulations to accompany the Child Care and Protection Act regulations are currently being developed as are the Child Development Agency Guidance and Standards of Care for Residential Childcare Facilities. Various stakeholders were also allowed to comment on these policy documents. There is some concern that the regulations and guidelines are not specific enough - for example, a concern was raised regarding the lack of specific evacuation procedures for children in places of safety, particularly children with physical disabilities.

Social policy documents were developed in other areas during this period of legislative reform in the area of child protection and development. According to the Economic and Social Survey 2003, the priority issue in the area of education for the government is early childhood education and the improvement of basic schools.

The National Council on Education (NCE), an agency of the Ministry of Education, Youth and Culture has also placed the monitoring of student performance in the Caribbean Examinations Council Secondary Education Certificate as an additional area of focus.

Further policy recommendations in education highlight the need to emphasize licensing of teachers and improving quality, training and remuneration of teachers in the system. A consensus in education was signed between the Government and the Opposition establishing a five-year plan to increase expenditure in education, improvement of teacher quality and a shifting of resources to the lower tiers in the education system.

In the area of health, the government continues to place emphasis on HIV/AIDS and launched the “Live Positive” campaign during 2003 in response to the prevailing attitude towards Persons Living with HIV/AIDS. A National Plan of Action was launched for Orphans and other Children made Vulnerable by HIV/AIDS in that same year.

The Ministry of Labour in collaboration with the Jamaica offices of the International Labour Organization and the United Nations Children’s Fund (ILO/UNICEF) conducted a comprehensive National Programme on the Prevention and Elimination of Child Labour (2001-2004). One of the key components of the programme was a survey conducted by the Statistical Institute of Jamaica (STATIN). The survey revealed that while more boys are engaged in child labour than girls, girls were more involved in the worst forms of child labour such as pornography and prostitution.

Other programmes instituted during this period that have a significant impact on children are the Possibility Programme to support street children, and the social safety net programme (PATH) which replaced the Food Stamp, Kerosene Stamp, Outdoor Poor Relief and Old Age Incapacity Allowance programmes and incorporates the Education Ministry’s Cost Sharing Programme.

---

33 1993 30 JLR 414
34 Brownlie Ian, Principles of the Public International Law, fifth Edition, pp. 47-48
Part V: Conclusion

The PIOJ/UNICEF Situation Assessment on Jamaican Children and Their Families takes a rights-based approach to explore children development issues. Children are viewed as “claim-holders” and adults as “duty-bearers,” subjects of their destiny with corresponding responsibilities, rather than objects with needs to be met at the whim of charity. States, local governments, institutions, communities, families and individuals bear the collective responsibility and duty to ensure that the rights and standards established in the CRC are implemented. As such, any analysis, policy proposals or legislative reform pertaining to children should incorporate this approach.

The legislative reform process while attempting to bring Jamaica in line with its international obligations of the principal treaties related to children, namely, CRC, CEDAW and CERD, has not fully complied with this rights-based approach. In addition, the current socio-economic reality has a considerable impact on the survival, development, protection and participation of children in society.

Crime and escalating violence particularly in inner-city communities is a real concern. The rapid spread of technology brings new influences into the Jamaican home through the television, the radio and the internet, posing additional challenges. Jamaica is caught in the position of trying to keep abreast with the technology while attempting to monitor its influence in keeping with the societal norms of Jamaica. Greater monitoring of information available on the radio and television suitable for children needs to be instituted.

The rising cost of servicing Jamaica’s external debt and its resulting limitations for domestic spending gives rise to problems of poor infrastructure and services in predominantly poor and deep rural areas of Jamaica. Given this economic reality, limited resources are often used to address these shortfalls and very limited funding towards expanding arts, culture, and recreational facilities for children is available.

Employment opportunities are scarce. Families and individuals alike are turning to alternative sources for income and the resulting exploitation of women and children is alarming, whether in the growing sex industry or drug trafficking. The rapid increase in sexually transmitted infections such as HIV/AIDS among persons of childbearing age including young people is an area of concern.

The psychological impact of violence, poverty, and limited opportunities for self-actualization are evident in Jamaicans’ perceptions of self. The health and welfare needs of children due to the degradation of Jamaica’s natural environment must to be addressed. Greater opportunities for children to access information on protecting and preserving Jamaica’s environment, heritage, culture and their ability express their opinions is also in need of attention.

Lessons learnt and recommendations

The road to Jamaica’s legislative reform since its ratification of the Convention on the Rights of the Child has been a long one. There is a general air of optimism that the new Child Care and Protection Act will indeed bring together all the relevant actors for the protection of children in Jamaica. Further it is the view that this piece of legislation is the required response by the government to ensure that the welfare of children is given the priority it merits. It is the hope that under the vision of the Child Development Agency and the Children’s Advocates all persons in Jamaica will see the protection and welfare of all children as their individual responsibility and priority number one.

The Government of Jamaica has made significant strides in incorporating the principles

of the CRC into its policies; but these initiatives need to be sustained to generate the necessary change of consciousness and attitude at the personal level in all sectors of society.

Both government and civil society actors agree that the lessons learned from this process are myriad. The main lesson is that a collaborative and participatory approach to legislative reform is the most effective way of ensuring law that is accessible to the people of Jamaica. The role of the various stakeholders in the process for policy and law reform for children has been fundamental - key among these are the international donor agencies, government, non governmental organizations, communities and individual advocates.

Additionally, children are traditionally viewed as objects in Jamaican society and while this perception has changed and continues to change due to the various efforts of children's advocates, both government and non governmental, efforts to ensure an integrated rights-based approach must be maintained. The participation of children, in particular in the legislative reform process, has been of considerable value as their insight into the process and into the impact new legislation will have on their lives, has been extremely valuable.

Ratification of international legislation and the passage of subsequent domestic law related to children do not guarantee implementation. Efforts for implementation must be incorporated as standard procedures and practices of government. The legal and political structure of Jamaica lends itself to various entry points for additional advocacy to ensure implementation of these domestic and international laws related to children.

There are serious concerns that the lessons learned and best practices of the past should not be set aside but incorporated into the new mechanisms for the continued advancement and improvement of child care services in Jamaica. There is a wealth of information to be gained from the persons in the field, in the courts, places of safety, correctional facilities, police stations, on the day-to day challenges faced and their best practices to "tun their hand and make fashion" i.e., using scarce resources effectively. While consultations for the legislation have been comprehensive and inclusive of government ministries, agencies and non governmental organizations, this important sector, busy on the frontline, may have been excluded from the debate. There are several recommendations to be gleaned from these lessons that can be integrated into future proposals for the improved welfare of children in Jamaica. Some of these include:

1. Target members of the Judiciary to incorporate principles of international law into their judicial decisions. Increase training on the interplay of international law and domestic legislation recognising the supremacy of domestic legislation but introducing international law as a strong persuasive secondary source of law. Efforts should be made to include the three main international treaties that provide the standards to ensure the comprehensive approach for the welfare of children;

2. Sustain and improve participation of children and persons in the field in the development of future proposals;

3. Make every attempt to incorporate the Jamaican culture and reality when proposing recommendations. Best practices from other states while extremely helpful may need modification to the Jamaican reality.

4. Increase lobbying efforts for a specific percentage allocation of the national budget for children's issues. In the interim, advocate for inclusion within each ministry, agency, and government department, a line item for children in their budget submission. These efforts by various ministries could alleviate the current limitations faced by the system in addressing issues such as insufficient transportation to take children from institutions to court, insufficient gasoline, insufficient personnel, particularly in rural Jamaica, as well as the need for improving the physical facilities and accommodation for children in courts, places of safety and other facilities for the improved care of children throughout the island;
5. Increase training efforts with law enforcement officials. Sustained long-term national training programme for these practitioners on the CCPA, CRC, CERD, and CEDAW;

6. Make every effort to coordinate activities with various ministries that impact on the survival and development of children. For example, Ministry of Health, Ministry of Justice, Ministry of Local Government, Ministry of Tourism, among others;

7. Increase lobbying efforts for a comprehensive review of legislation to eliminate existing discriminatory legislation, against women, children, the disabled, or any other vulnerable group. At the same time, review other pieces of legislation that do not include women and children but should, and lobby to make amendments for such relevant inclusion;

8. Ensure there is an integrated approach to women and children’s issues. Policy, rules and regulations should not only have a separate report on its impact on women and children, rather this impact should be fully integrated into all such activities, e.g., building permits, television licenses, road construction. It needs to be recognised that every policy has an impact on women and children and as such this must be reflected in an integrated way. Identify entry points in legal and political structure for further advocacy;

9. Encourage the incorporation of the CCPA in the curriculum at the police academy and educational institutions that train social workers, probation officers, etc.;


11. Increase efforts to expand the concept of the Family Court to other parishes. Strengthen the institutional structure of the Family Court and the concept of providing various services to children and families in one location. This could be expanded to include a law enforcement component as well;

12. Increase efforts to include practitioners in a real and sustained way in the future for policy and advocacy development strategies;

13. Accelerate the passage of the proposed anti-discrimination legislation aimed at the eradication of discriminatory practices.
List of Contributors

This study; undertaken and reviewed by the UNICEF office in Jamaica, would not have been possible without the critical contributions from the following persons: Engelbert Davis, Jamaica Foundation for Children; Alison Anderson, Winston Bowen, Child Development Agency; Susan Goffe, Carolyn Gomes, Ron Good, Jamaicans for Justice; Youth Advocacy Movement; Carol Samuels, Jamaica Coalition on the Rights of the Child; Michelle Walker, Ministry of Foreign Affairs; Ruth Jankee, National AIDS Committee; Honourable Minister Deika Morrison, Rose Henry, Ms. Lewars, Miguel Walker, Ministry of Finance; Inez Morrison, National Street Children Initiative; Claire Miller, Crafton Miller & Co; Maragaret Macaulay; Stephen Vasciannie, Attorney General's Chambers; Sharon McDonald, Collette Robinson, Planning Institute of Jamaica; Jennifer Williams, Denise Francis, Bureau of Women’s Affairs; Paula Blake Powell, Resident Magistrate; Beryl Marshall, Coordinator, and Lorice Henry, Senior Counsellor, Family Court, Kingston and Hilaire Sobers, Attorney, Inter-American Commission on Human Rights.
## Annex A

### The Convention on the Rights of the Child and the Child Care Protection Act

<table>
<thead>
<tr>
<th>Article</th>
<th>CRC</th>
<th>CCPA</th>
<th>Existing Legislation where right recognised</th>
<th>Gaps in Existing Legislation &amp; Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 1 - Definition</td>
<td>Every human being under the age of 18 years</td>
<td>s.2 person under the age of 18 years</td>
<td>s. 2 Bail Act; s.2 Crime Prevention Act; s.2 Deportation (Commonwealth Citizens) Act; s. 10 Flogging Regulation Act; Education Act; Offences Against the Person Act - Definition of child in these laws conflict with CCPA &amp; CRC</td>
<td></td>
</tr>
<tr>
<td>Article 2 - Non-discrimination</td>
<td>Chapter III Constitution of Jamaica Legitimation Act s.3 Status of Children Act</td>
<td>Issue of equality and non-discrimination sufficiently addressed in these laws</td>
<td>s.3 Crime Prevention Act Corporal punishment for males only; Offences Against the Persons Act Incest Act</td>
<td></td>
</tr>
<tr>
<td>Article 3 - Best Interests of the Child</td>
<td>ss. 2-3 interpretation &amp; objects of Act</td>
<td>Children (Guardianship &amp; Custody) Act Matrimonial Causes Act Affiliation Act Maintenance Act</td>
<td>Places priority on welfare of child</td>
<td></td>
</tr>
<tr>
<td>Article 4 - Implementation of Rights</td>
<td>ss.33-35 conditional employment s.62 refers to children in place of safety, children’s home or in care</td>
<td>Economic rights protected Social and cultural rights insufficiently addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 5 - Parental Guidance &amp; Child’s Evolving Capacity</td>
<td>ss. 2-3 respect for parents, family unit and continuity of care for child.</td>
<td>Children (Guardianship &amp; Custody) Act Respect for parents rights equally and welfare of Child Education Act s44 Wishes of parents to be considered in education of students</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 6 - Survival and Development</td>
<td>s.78(1) death penalty inapplicable if offence committed as a child</td>
<td>Constitution of Jamaica Offences Against the Persons Act</td>
<td>Not addressed in CCPA</td>
<td></td>
</tr>
<tr>
<td>Article 7 - Name and Nationality</td>
<td>Registration of Births and Deaths Act - s11 duty of parents to register child</td>
<td>Not addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 8 - Preservation of Identity</td>
<td>Constitution of Jamaica</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 9 - Separation from Parents</td>
<td>s. 11 warrant to search and remove child s. 60 emigration of child</td>
<td>Matrimonial Causes Act Children (Adoption) Act Registration of Births and Deaths Act</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 10 - Family Reunification</td>
<td>s.60 emigration of child</td>
<td>Constitution of Jamaica Immigration Restriction (Commonwealth Citizens) Act</td>
<td>Insufficiently addressed in CCPA Aliens Act does not address family reunification</td>
<td></td>
</tr>
<tr>
<td>Article 11 - Illicit Transfer and Non-return</td>
<td>Offences Against the Person Act</td>
<td>Not addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 12 - The Child’s Opinion</td>
<td>First Schedule, Part II, s. 13(5) child can make complaint to Children’s Advocate s.62(b) express views freely</td>
<td>Constitution of Jamaica s.3 Domestic Violence Act Child cannot make application for protection/occupation order Corroboration requirement conflicts with CRC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 13 - Freedom of Expression</td>
<td>s.8 Law Reform (Age of Majority) Act – child has power to consent to surgical, medical or dental treatment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 14 - Freedom of Thought, Conscience and Religion</td>
<td>Constitution of Jamaica Education Act s18 – freedom of conscience/religion permitted</td>
<td>Insufficiently addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 15 - Freedom of Association</td>
<td>Constitution of Jamaica Public Order Act – children free to meet/march if for cultural, educational, sports, religious activities</td>
<td>Not addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 16 - Protection of Privacy</td>
<td>First Schedule, Part IV, s. 22 - upon payment of fees may inspect register ss. 43-45 child court matters private</td>
<td>Constitution of Jamaica</td>
<td>Conflicts with CRC</td>
<td></td>
</tr>
<tr>
<td>Article 17 - Access to Appropriate Information</td>
<td>s. 62(k) (l) informed of rights and Children’s Advocate</td>
<td>Education Act Public Broadcasting Corporation of Jamaica Act – s.4(2) established to provide access to appropriate information</td>
<td>Insufficiently addressed in CCPA</td>
<td></td>
</tr>
<tr>
<td>Article 18 - Parental Responsibilities</td>
<td>Education Act s44 wishes of parents considered, children have a right to an education</td>
<td>Insufficiently addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 19 - Protection from Abuse &amp; Neglect</td>
<td>s. 8 circumstances when child in need of care and protection s. 27 duty to provide care for a child</td>
<td>Sufficiently addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 20 - Protection of a Child without a Family</td>
<td>Children (Guardianship and Custody) Act</td>
<td>Sufficiently addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 21 - Adoption</td>
<td>Children (Adoption) Act</td>
<td>Not addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 22 - Refugee Children</td>
<td>Children not mentioned in Alien Act Not addressed in CCPA</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 23 - Disabled Children</td>
<td>s.2(b) child’s physical and emotional needs</td>
<td>Insufficiently addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 24 - Health and Health Services</td>
<td>Public Health Act – regulates public spaces and private premises to ensure public health</td>
<td>Not addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 25 - Periodic Review of Placement</td>
<td>ss.54-57 power to visit, inspect, control licensed homes</td>
<td>Sufficiently addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 26 - Social Security</td>
<td>NIS Act Pensions Act</td>
<td>Not addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 27 - Standard of Living</td>
<td>s.2(2) best interests of child</td>
<td>Sufficiently addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 28 - Education</td>
<td>s.28 between 4-16 years</td>
<td>Insufficiently addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 29 - Aims of Education</td>
<td>Proposed Amendment to Constitution of Jamaica – right to a healthy environment Public Broadcasting Act</td>
<td>Not addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 30 - Children of minorities or indigenous populations</td>
<td>Constitution of Jamaica</td>
<td>Not addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 31 - Leisure, recreation and Cultural activities</td>
<td>s.62 refers to children in place of safety, children’s home or in care</td>
<td>Insufficiently addressed in CCPA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article</td>
<td>Description</td>
<td>Law(s)</td>
<td>Addressed</td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>--------</td>
<td>-----------</td>
<td></td>
</tr>
<tr>
<td>Article 32 - Child Labour</td>
<td>s.25 interpretation of employment ss33-36 permissible and impermissible employment s.39 offence if employ a child in a nightclub</td>
<td>Labour Officers (Powers) Act – power to enter premises to ensure compliance with several labour laws</td>
<td>Sufficiently addressed in CCPA</td>
<td></td>
</tr>
<tr>
<td>Article 33 - Drug Abuse</td>
<td>s. 40 prohibition of sale of intoxicating liquor or tobacco products to a child</td>
<td>Dangerous Drugs Act - Children not specifically mentioned</td>
<td>Insufficiently addressed in CCPA</td>
<td></td>
</tr>
<tr>
<td>Article 34 - Sexual Exploitation</td>
<td>s.8 circumstances when child is in need of care &amp; protection</td>
<td>Offences Against the Person Act ss28, 45, 47, Incest (Punishment) Act</td>
<td>Insufficiently addressed in CCPA</td>
<td></td>
</tr>
<tr>
<td>Article 35 - Sale, Trafficking and Abduction</td>
<td>s. 10 sale or trafficking prohibited</td>
<td>Offences Against the Person Act s.69</td>
<td>Insufficiently addressed in CCPA</td>
<td></td>
</tr>
<tr>
<td>Article 36 - Other Forms of Exploitation</td>
<td></td>
<td>Offences Against the Person Act</td>
<td>Not addressed in CCPA</td>
<td></td>
</tr>
<tr>
<td>Article 37 - Torture and Deprivation of Liberty</td>
<td>s. 4 Children’s Advocate s. 9 cruelty to children s. 66 separation of children from adults</td>
<td>Constitution of Jamaica</td>
<td>Contact with family insufficiently addressed in CCPA</td>
<td></td>
</tr>
<tr>
<td>Article 38 - Armed Conflicts</td>
<td>s.62 rights of child in place of safety</td>
<td>Defence Act s18 persons under 18 not permitted to enlist w/o adult consent</td>
<td>Not addressed in CCPA</td>
<td></td>
</tr>
<tr>
<td>Article 39 - Rehabilitative Care</td>
<td></td>
<td></td>
<td>Sufficiently addressed in CCPA</td>
<td></td>
</tr>
<tr>
<td>Article 40 - Administration of Juvenile Justice</td>
<td>ss. 42-45 privacy in court matters ss. 63-84 court proceedings from detention</td>
<td>Family Court Act Corrections Act</td>
<td>Sufficiently addressed in CCPA</td>
<td></td>
</tr>
</tbody>
</table>

**Gaps and Recommendations:**

While the Child Care and Protection Act seeks to consolidate the welfare of children in Jamaica, and does meet that objective in the main, the fact that the Act does not sufficiently incorporate the rights-based approach is of concern.

In addition to the pieces of legislation mentioned in the above chart, there are other gaps in existing legislation that deserve mention. In the Education Act, it does not specifically address the aims of education as indicated in section 29 of the CRC. The Public Broadcasting Corporation Act outlines in section 4(2) the specific aims of broadcasting, which include, to “promote positive values and attitudes, respect for fundamental rights, protection of the environment, development of education and training, development of culture, human resources and sports, literary and artistic expression”. This specific detail is commendable in the broadcasting regulation but is lacking in the Education Act. Recently there have been affirmative efforts on the part of the Broadcasting Commission to regulate television programmes to ensure that children are unable to access programmes that may not be appropriate for their age of development. The Obscene Publications (Suppression of) Act however

---

36 Shops & Offices Act; Minimum Wage Act; Factories Act; Women (Employment of) Act; Holidays with Pay Act; Apprenticeship Act; Employment Agencies Regulation Act; Employment (Equal Pay for Men & Women); Employment (Termination & Redundancy Payments); Foreign Nationals & Commonwealth Citizens Act; Recruiting of Workers Act; Maternity Leave Act.
imposes a summary offence on persons who publish, possess, import, advertise or take part in any obscene business. This legislation requires revision as there is no definition to the term “obscene”.

There is no specific right to health under Jamaican legislation. The Public Health Act addresses the issue of public health and there are several government policies related to health which include the mandates of Article 24 of the CRC. Likewise there is insufficient attention placed on ensuring that children have the right to leisure, recreation and cultural activities as established in Article 31 of the CRC. This right is referred to in section 62 of the CCPA but only includes children in places of safety.

Children and women are not mentioned in the Aliens Act, Betting, Gaming & Lotteries Act, Dangerous Drugs Act, Fingerprints Act, Interception of Communications Act, Larceny Act, Noise Abatement Act, Offensive Weapons Act, and Terrorism Prevention Act. These laws need to be reviewed with the aim to include amendments recognising the status of children. While Article 2 recognises the equality of children and the right not to be discriminated against, it is the responsibility of the State to ensure that children are protected and it should establish laws, regulations or policies to ensure this protection specifically in the areas that the preceding laws govern.

Neither children nor women mentioned in the following laws: the Local Improvements Act, Main Roads Act, Natural Resources Conservation Authority Act, Road Traffic Act, Towns and Community Act, Towns & Country Planning Act. While it is not immediately apparent what consideration is given to the impact on women and children when issuing permits for the construction of roads, buildings and development projects, both women and children will continue to be marginalized and not fully integrated into government policy plans and proposals if the laws remain as they are.

Special mention should be made of proposed pieces of legislation that should address some of the above-mentioned gaps. There is a proposal to draft an anti-discrimination legislation. While it originated from the sector working specifically with persons with HIV/AIDS, it proposes to address all areas of discrimination to ensure that all persons are able to live freely and not be discriminated against for any reason or status. Another piece of legislation being developed is a Maintenance Reciprocal Enforcement agreement. Currently Jamaica has an arrangement with the UK, where delinquent parents can be forced to make maintenance payments for children they have in Jamaica. A similar arrangement exists with some states and provinces in the USA and Canada, and discussions are underway with the US to have one piece of federal legislation so that the law can be applied uniformly throughout the US.
Annex B
THE GOVERNMENT OF JAMAICA BUDGET PROCESS

The main steps in the process of preparing the annual budget are outlined below:

- Between August and September the Ministry of Finance prepares a submission for Cabinet’s approval outlining the profile of the Budget for the next fiscal year, based on the macro-economic targets developed and the priority polices for the next budget year.

- Between September and October the Ministry of Finance issues the “Budget Call” to all ministries, executive agencies and departments requesting them to send in to the Ministry of Finance draft proposals of their requirements for the next year’s budget. The Budget Call informs ministries/departments of the programmes to which Government intends to give priority funding in the next financial year as well as expenditure ceilings within which ministries and departments are expected to operate. Ministries and departments are given two to three months to submit draft budgets. Associated with the Budget Call is a request for Ministries to submit their Corporate Plans outlining their programmes for the next financial year.

- Ministries submit draft budgets and Corporate plans to the Ministry of Finance by December.

- The Ministry of Finance examines the draft budgets. The examination process takes place between December and February.

- Cabinet’s approval is sought for the proposed budget in March.

- After receiving Cabinet’s approval, the Budget is then submitted to Parliament. This takes place in March to April.

- The draft Estimates are referred to the Standing Finance Committee of the House of Representatives for examination.

- The Minister of Finance submits the Appropriation Bill setting out the allocations for each ministry and department of Government for the financial year to the House of Representatives at the opening of the Budget debate in April.

- On the same day that the Budget debate opens, the Revenue Estimates, which deal with the financing of the Budget, is tabled in the House of Representatives.

- The Budget Debate closes with the approval by Parliament of the Appropriation Bill – by early May.

The Budget process does not end with the approval of the budget by Parliament. There are four important phases in the overall cycle, which follow the passage of budget, namely:

(i) Ministry of Finance releases funds
(ii) Departments record expenditure
(iii) The Auditor General audits these records, and
(iv) Parliamentary Review

Re (i) release of funds by Ministry of Finance, the Constitution and the FAA Act provide that nothing can be spent until the Minister of Finance gives approval by issuing a warrant. A warrant is a document signed by the Minister of Finance and Financial Secretary authorizing withdrawals of specified sums from the Consolidated Fund to fund the accounts of ministries and departments. The warrant thus has a control function - to ensure that there is a relationship between the inflow of revenue and outflow of expenditure.

By virtue of the Financial Administration and Audit Act, all revenues are paid into the Consolidated Fund. Re the processes (ii) and (iii) above, the Permanent Secretary, as head of a Ministry is held responsible for the operation of his/her ministry as well as accounting for its expenditure. He/she is required by law to submit his/her final (Appropriation) Accounts to the Ministry of...
Finance and the Auditor General by July of the year after the expenditure takes place.

Re item (iv), Parliamentary Review, the Auditor General’s Department is concerned with auditing the accounts of all government departments – i.e. External Audit. The Auditor General is answerable to Parliament. The Auditor under the Financial Administration and Audit Act is required to submit to Parliament each year a report on the Appropriation Accounts of ministries and departments. The Public Accounts Committee (P.A.C.) is a select committee of Parliament consisting of all members of Parliament from both sides of the House and chaired by the Shadow Minister of Finance. It is the function of this committee to examine the Appropriation Accounts and the Auditor General’s report, and based on the Auditor General’s comments, question accounting officers on how they have discharged their responsibilities during the year under review.

Annex C
Documents and Publications Used

- The Caribbean Court of Justice, Closing the Circle of Independence – Duke E. Pollard, (Kingston 2004)
- A World Fit for Children – UNICEF
- Economic and Social Survey Jamaica 2003 – Planning Institute of Jamaica
- Report of the Joint Select Committee on the Bill Entitled an Act to Provide for the Care and Protection of Children and Young Persons and for Connected Matters, September 2003
- The Jamaican Child, Planning Institute of Jamaica 2002
- Jamaican Children and Their Families – A Situation Assessment and Analysis 1999-2000, UNICEF/PIOJ
- Meeting Adolescent Development and Participation Rights UNICEF/UNFPA July 2002
- End Decade Assessment of the World Summit for Children Year 2000 Goals – National Report Jamaica