National Plan of Action for Child Justice

2010-2014
The Steering Committee that was mandated to oversee the development of the Plan acknowledges the significant contribution of the United Nations Children’s Fund (UNICEF) both in providing technical and financial support and also sharing with us their vast reservoir of knowledge on the critical issues affecting children.

Many thanks to Mrs. Inez Morrison who was engaged as a consultant and whose work formed the foundation on which the Plan was erected.

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Additionally, we recognize the contribution of Ms. Ruth Carey, Special Projects Consultant at the Ministry of Justice for Chairing the National Plan of Action Coordinating and Monitoring Committee for Child Justice and for her commitment to updating the ‘Plan of Action’ to a 2010-2014 plan.

Finally the members of the Committee express gratitude to the ministries and agencies from which the membership was drawn and to all those who gave of their time and helpful advice.
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EXECUTIVE SUMMARY

The Child Justice Reform project was prompted by the concerns of the State about the protection and care of our children as articulated by the various advocacy groups, social workers and caregivers. Concomitantly, the increase in violence by children and against them caused significant concerns among the public and State officials who noted the shocking nature of the randomness and unpredictability of criminal conduct involving children throughout the country.

The number of children in need of care and protection has overwhelmed the social services and the judicial system. The effectiveness of the treatment of children entering the justice system whether they seek the protection of the law or are in conflict with the law called for urgent scrutiny, evaluation and a plan to effect meaningful changes.

This Plan of Action, with its goal being to develop and sustain a justice system in which the best interest of the child is paramount in the administration of the programmes to secure their protection and in the maintenance of the rule of law, was developed following extensive consultations with the general public, professionals, advocates and practitioners engaged in promoting children’s rights and dealing directly with those affected by having them in their charge, care or custody.

The strategic objectives focus on the child, from the prevention efforts to their entry into the justice system and the subsequent adjudication and disposal of their cases.

Legislative initiatives consistent with international instruments and protocols and the country’s pursuit of the goals of the World Summit for Children Declaration 1990 are integral to the Plan. The legislative process, intra-agency collaboration, training and public education will result in a system that seeks to balance the child’s accountability for delinquent behavior with the best and most appropriate services to help that child to become a contributing member of the society.

The United Nations Committee on the Rights of the Child at its third (3rd) session in June, 2003 made the following recommendations to Jamaica in response to program projects submitted by the Government and Non-Governmental organizations pursuant to the Convention on the Rights of the Child (CRC).

The Committee recommended that the State Party, in the light of the Committee’s day of discussion on juvenile justice, develop mechanisms and provide adequate resources to ensure the full implementation of juvenile justice standards, in particular Articles 37, 39 and 40 of the Convention, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines). *In particular the Committee recommends the State Parties to:-*

(a) Establish an independent mechanism to monitor the situation for children in conflict with the law, including monitoring the situation in juvenile detention centers, as well as monitoring preventive-, recovery- and evaluation policies in this regard;

(b) Amend the legislation to ensure children are not sentenced to life imprisonment;

(c) Strengthen its opening efforts to educate and sensitize police personnel, judiciary personnel and other staff within the justice system to the provisions of the Convention, especially concerning the special needs of children deprived of their liberty to ensure that the rights of the child, inter alia, to be separated from adults and to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth, always are respected;
(d) Take further measures to ensure the protection of detainees under the age of 18 from being kept, or even long time placed, in police lockups in substandard conditions, inter alia, by improving the living conditions for children on remand and encourage communication between the police and children’s officers responsible for the placement of detained children, as well as taking further measures to introduce more alternatives to the institutionalization of juvenile offenders. In this regard the Committee wishes to emphasize that article 37 (b) of the Convention requires that detention shall be a measure of last resort and for the shortest possible period of time;

(e) Evaluate and improve the standards of the juvenile institutions, such as the Places of Safety, including, inter alia, living conditions, programmes for reintegration and psychological recovery and quality of the personnel;

(f) Seek assistance from inter alia, the Office of the High Commissioner for Human Rights, the Centre for International Crime Prevention and UNICEF.”

{United Nations CRC/C/15/Add.210}

The Plan addresses the concerns raised in the Committee’s observation by devising strategies that are workable and can effect meaningful improvement to the existing conditions.

The logical framework at Appendix 1 sets out the strategies, current status, next steps, timeframe, budgeter and the lead and support agencies that will see to their coordination and implementation.

The institutional framework within which the plan must proceed is fully outlined. As soon as the Plan is approved by Cabinet it is proposed that an inter-ministerial Committee should be appointed with membership from the relevant Ministries. It must be coordinated by a senior officer within the Ministry of Justice and should have responsibility for various aspects of the implementation and monitoring of the Plan.

The time frame for the full implementation of the Plan is five years. Matters are prioritized to range from immediate (high priority) to long term objectives. Because the Plan calls for full implementation within five (5) years, those strategies that are immediate would be implemented within the first year.

Long term objectives such as the establishment of Family Courts (nine (9) more) throughout the country would clearly not be achievable in less than five (5) years, but given its high priority it is expected that work would commence in year one (1) of the project cycle.

Background and Development of National Plan of Action for Child Justice

The Government's own commitment to the promotion and protection of children’s rights has been demonstrated by:

- Several legislative initiatives in furtherance of the aims and objectives of the Convention on the Rights of the Child;
- Participation in Ministerial Meetings on Children and Social Policy in the Americas;
- The development of a National Policy on Children;
• The restructuring of the Children's Services into an Executive Agency (Child Development Agency) and making youth and poverty a primary focus in 2000.

The Government of Jamaica (GOJ)/United Nations Children’s Fund (UNICEF) Country Programme of 1993-2006, contributes to the actualization of the Convention on the Rights of the Child. This has been pursued through programmes addressing legal and policy reform, promotion of protection rights, especially for children and youth at risk and in difficult circumstances under two related projects, namely Promotion Protection Rights of Children and Children and Teenagers at Risk. Under the former project, important outputs so far have included support to the development and enactment of the Child Care and Protection Act 2004, promotion of the CRC, training of the police, children's officers, prosecutors, judiciary and Resident Magistrates on child rights issues and the establishment of Child Rights Support clubs in schools. As an output of this project, a review of the Child Justice System was completed in 2001, to determine its consistency with the CRC, the Beijing Rules and the Riyadh Guidelines, as well as the identification of key issues and recommendations for modernization of the system.

Following this review, the need to mount a National Consultation on Child Justice to advance dialogue on outstanding concerns as well as to plan for implementation became increasingly urgent. Consequently, a National Consultation on Child Justice was held in August 2001, with the objectives:

• To increase awareness of Child Justice and its role in protecting the rights of children;
• To examine the current menu of legislation and identify any gaps on areas calling for reform;
• To evolve a National Plan of Action geared at enhancing the Child Justice System and developing an agenda for reform.

The National Consultation on Child Justice was held at the Jamaica Conference Centre on August 16, 2001. It was attended by 193 persons from 45 State and non-governmental organizations.

A draft Plan of Action on Child Justice was prepared under the direction of a National Steering Committee including representatives of the Planning Institute of Jamaica, the Ministries of Health, Justice and National Security. The United Nations Children’s Fund participated in the Committee’s deliberations and provided technical and financial support.

The original draft was considered in four consultations held island-wide. The current Plan is the final outcome of the activities and deliberations.

The Ministry of Justice recognized that the activities under the 2006 - 2009 plan were not implemented in 2009. Therefore a Committee was established to update this document for Cabinet.

This final ‘Plan of Action’ has been updated by the Coordinating and Monitoring Committee. This Committee includes membership from the Ministry of Education, Ministry of National Security, Ministry of Health, Planning Institute of Jamaica, Office of Children’s Advocate, Child Development Agency, HEART/NTA, Ministry of Youth Sports & Culture, Office of the Commissioner of Police, Jamaicans for Justice, Social Development Commission, Department of Correctional Services, United Nations Children’s Fund, CISOCA.
1 POLICY AND LEGISLATIVE FRAMEWORK

1.1 The 1990 World Summit for Children

In September 1990, the first World Summit for Children (WSC) was held at the United Nations Headquarters. At this historic event, 71 Heads of State and Government agreed to accept the mandate of the Summit which states:

"Each country (will) re-examine, in the context of its national plans, programmes and policies, how it might accord higher priority to programmes for the well being of children ..."

Jamaica was represented at the Summit by the Minister of Youth and Community Development and in March 1991, was added to the list of countries to have signed the World Summit Declaration document.

In signing the Declaration, each participating country agreed to outline and achieve a number of goals by the year 2000 that would dramatically improve the situation of children and women within its borders. The goals outlined at the World Summit were formulated through extensive consultation in various international forums attended by virtually all Governments and relevant United Nations agencies. The goals which are largely related to children and women in the areas of health and education have had a long-standing history of internationally accepted priorities.

All participating governments were urged to prepare, before the end of 1991, National Plans of Action. Although not achieving the target date in the majority of cases, by December, 1995, 102 countries worldwide had prepared National Plans of Action for Children, including most countries in Latin America and the Caribbean. In the majority of countries, a permanent commission has now been established to ensure the implementation of the Plan with special units designated to monitor the indicators. Cabinet Ministers are to play an integral role in the monitoring and evaluation of the progress and in facilitating the implementation of the National Plan.

In April 1994, the United Nations facilitated a hemispheric Mid-Decade Review referred to as "AGENDA 2000: CHILDREN NOW" in which Jamaica participated. The purpose of the meeting held in Bogota, Colombia, was to assess the progress being made with respect to country-specific Mid-Decade goals which were drafted as interim goals towards achievement of the year 2000 goals. At this Mid-Decade Review, all participating governments signed a declaration called the "NARINO DECLARATION" where consensus was achieved on practical actions to increase social expenditure for children and families.¹

¹ The Five Year Plan of Action, 1996-2000, p.5
1.2 International Convention on the Rights of the Child


1.2.1 It provides a framework of principles which recognizes the child’s status as a human being with rights and calls upon every State which ratifies the Convention to respect and ensure the rights set forth in the Convention to each child within its jurisdiction "without discrimination of any kind irrespective of status, activities, expressed opinions, or beliefs of the child's parents, legal guardians or family members."\(^2\)

1.2.2 The Convention goes on to outline how these rights should be secured (Article 4) and to detail the rights in defined categories: Family Environment and Alternative Care, Basic Health and Welfare, Education, Leisure and Cultural Activities and Special Protection Measures, and to identify groups of children who may need special protection (Articles 37, 39 and 40).

1.2.3 The Convention established a monitoring mechanism through the National Committee on the Rights of the Child, (Article 44) wherein:

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

   (a) Within two years of the entry into force of the Convention for the State Party concerned;

   (b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1(b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

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\(^2\) Convention on the Rights of the Child, Article 2
6. States Parties shall make their reports widely available to the public in their own countries.

1.2.4 It ends by recognizing the sovereign right of State Parties to propose amendments (Article 50), and make denunciation of the Convention (Article 52) thus:

i. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favor a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favor such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to General Assembly for approval.

ii. An amendment adopted in accordance with paragraph 1 of the present Article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

iii. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

1.3 The Beijing Rules


Although the date of adoption is not coincidental with that of the Convention, the two working documents reflect the same thinking. Where the Convention outlines principles and concepts, the Beijing Rules speak to implementation of those principles:

They provide guidance for the fair and humane treatment of children; the use of relevant community based diversion mechanisms; institutionalization as a last recourse and, when necessary, using rights-based standards; and the role of research, planning and evaluations. The Rules give details of procedure during every stage of a child's contact with the legal system: Investigation and Prosecution, Adjudication and Disposal, Institutional and Non-Institutional Treatment.

1.4 The Riyadh Guidelines


1.4.2 Three elements within the Guidelines are important: they are comprehensive in their treatment of key environments that affect child delinquency; they promote a proactive approach to prevention; and they consider children to be full-fledged participants in the society.3

1.4.3 The Riyadh Guidelines complete the triptych of international instruments that address the protection of children who come in contact with the law.

### 1.5 National Legislation – Child Care and Protection Act

On the 25\textsuperscript{th} March, 2004 the Child Care and Protection Act came into force. It enshrined the cardinal principle that the best interests of a child are of paramount consideration in the administration of the laws relating to children.

The objects of the Acts are:

(a) to promote the best interests, safety and well being of children;

(b) to recognize that –
   (i) while parents often need help in caring for children, help should give support to the autonomy and integrity of the family unit and wherever possible, be provided on the basis of mutual consent;
   (ii) the least restrictive or disruptive course of action that is available and appropriate in a particular case to help a child should be followed;

(c) to recognize that child services should be provided in a manner that –
   (i) respects the child’s need for continuity of care and for stable family relationship; and
   (ii) takes into account physical and mental differences among children in their development;

(d) to recognize the special needs of children in conflict with the law. In so far as the treatment of children who find themselves in conflict with the law is concerned, the following principles are to guide functionaries in the justice system.

(a) the Child Justice System is intended to:
   (i) prevent crime by focusing and dealing with the circumstances surrounding a child’s misconducts;
   (ii) rehabilitate children who commit offences and have been subject to punitive/correctional orders and reintegrate them into society;
   (iii) provide timely intervention that reinforces the link between offending behavior and its consequences;
   (iv) promote long term protection and safety of the public.

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3Presentation by Laila Ismail-Khan, Representative, UNICEF Jamaica at the National Consultation on Juvenile Justice at the Jamaica Conference Centre, 16th August, 2001
1.6 Care and Protection

The Child Justice System is to a large extent concerned with care and protection issues particularly in respect of children who seek the protection of the law.

Children found abandoned or neglected, victims of abuse, trafficking and child labor are often taken before the courts as being in need of care and protection. At that critical stage, the order of the court is the single most significant factor determining the fate of the child.

The State has to make appropriate responses to:

(a) the street children phenomenon
(b) children living with Human Immune Deficiency Virus/ Acquired Immune Deficiency Syndrome (HIV/AIDS)
(c) the growing number of children with disabilities.

2 OVERVIEW OF THE NATIONAL CONTEXT

2.1 Demographic Characteristics

It is recorded that Jamaica had a population of 2,641,600 in 2003 as against 2,388,000 in 1991. During the decade, there has been a reduction in growth of the young population (under 19) and an increase in growth of the older population (60+). In 2001, the number of persons under 19 years old stood at 1,049,000 or 40% of the total population, as against 1,074,000 or 44.7% of the population in 1991. This situation has been influenced by the fact that Jamaica’s mortality rate has declined over several years due to the improvement in health care, and the birth rate has declined due to the impact of the Government’s Family Planning Programme. The highest proportion of children (0-14) was recorded for Rural Areas, while the lowest was recorded in the Kingston Metropolitan Area, yet the largest proportion of the population has been recorded for the Kingston Metropolitan Area.

2.2 Employment Trends

This Chapter records only employment data as they relate to women and youths, which are particularly relevant to this National Plan of Action for Child Justice. While there was an overall increase in employment in 2001, the youths (14-24) did not benefit from the increase. The employment of youths, which was 19.2% in 2000, went down to 18.1% in 2001.
This was a continuation of a trend since 1997. Female youths benefited even less than male youths who accounted for 64.1% of the persons within the youth group. 4 Historically, more men are employed than women and this trend continues.

2.3 Household Characteristics

The overall standard of living has improved over the last ten years. In 1993, only 9% of the poorest households had piped drinking water as against 65.9% in 2001.

In 1993, 26% of the poorest households had electricity as against 68.5% in 2001, while in 1993, 84.2% of the richest households had electricity as against 94.4% in 2001.

Average per capita consumption has risen from $8,797 in 2000 to $9,550 in 2001. These apparent gains have been almost negated by the fact that, according to the Survey of Living Conditions, 2001, Non-Food consumption in the highest one-fifth of the population is fifty times higher than that in the lowest.

There are other indicators. While the average household size has shrunken in the last decade, the households headed by women (44.7%) are larger than those headed by men and tend to include a larger number of children and adult women.

2.4 Family Structure

Jamaican family structure is characterized by a variety of relationships, many of which do not offer stability to the children of the union. Children are born into legal marriages, common-law residential unions, visiting and casual unions, in which the parents do not necessarily remain together at all, or after the birth of one or several children. Because of this, children are often brought up in circumstances where one or both parents are absent from the home. This background accounts for a number of phenomena which add to the destabilization of the unit in which the child is reared, and what has been called “the creation of dysfunctional families.” 5

2.4.1 Migration

The societal norm of a female headed household has created a strong, independent woman who often seeks ways and means to augment her income which, even if she is employed, cannot support her child or children, especially as the transient presence of her partner in the home forces her to take another partner or to maximize her earning capacity by migration. She often leaves her child with a grandmother, aunt or other relative. The foster family may have its own problems and although the child’s financial security may be improved by this arrangement, his sense of emotional security may well be eroded.

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4ESSJ of Jamaica 2001, p.21.4
5Report, National Consultation on Juvenile Justice, p.7
2.4.2 Inappropriate Experiences

Against the background of different or multiple partners, the child may well be subjected to abuse by “step-parents”. This has contributed to the very high incidence of teenage pregnancies, which repeat the cycle of dysfunctional families.

The proportionately high number of female-headed households and the consequent lack of a male role model in the home have probably contributed to the formation of child gangs, many of whose members end up before the Courts.

3 STRATEGIC OBJECTIVE FOR THE PREVENTION OF CHILD DELINQUENCY

3.1 Analysis of the Causes of the problems

The Riyadh Guidelines identified the family, education and the community as factors in the socialization process which contributes to the prevention of delinquency in children. This section will examine the Jamaican child in the context of these three headings and assess the support which is available to him in his formative years.

3.2 The Family

The working group in the National Consultation on Child Justice describes “the creation of dysfunctional families due to migration of parents leaving children either to manage on their own or with irresponsible adults. Usually there is a breakdown in the substitute family, which was created upon the migration of parents”. The problems of the type of family described above are often multiplied by factors such as poverty, large family size and unemployment.

Majority of young parents are not adequately equipped with parenting skills. Teenage mothers have had to balance demands of rearing a child with their own efforts towards the path of upward social mobility through education and employment.

3.3 Education

Facilities for education have improved over the last decade. In the 17-18 age group students are enrolled in the upper grades of the school system (Grades 10-13) tertiary level institutions, non-formal training programmes and private institutions. For the past three years enrolment has been increasing, with 48.3% enrolled in 2001. However, the trend has continued for the children from the poorest homes to find it difficult to benefit from it. Data showed that enrolment was 21.7% for the poorest and 71.9% for the
wealthiest. *(Survey of Living Conditions 2004)* While Government does provide a safety net by giving assistance on request to parents who cannot afford any payment at all, such parents often refuse through pride to take advantage of the facility.

The introduction of social protection programmes such as National Poverty Eradication Programme, Secondary School Fee Assistance Programme and Programme of Advancement through Health and Education (PATH) significantly improved the living conditions of the poor and make access to educational facilities considerably less difficult.

### 3.4 Communities

Communities have lost focus and cohesion because of a number of factors such as migration to urban areas and foreign countries, in the quest for employment. The children of such parents are often left with elderly relatives and the generation age gap creates a sense of alienation in the child, even though he may be left with a caring relative. Separation from parents has been identified as a strong contributing factor to child delinquency. In a comparative study of delinquent and non delinquent adolescents, it was shown that in the delinquent group there was a preponderance of absent mothers (86%), while in the non-delinquent group, the figure represented only 13%.  

A great deal of effort is being made to improve community cohesion through the Parish Development Committees under the Local Government Reform and the Inner City Renewal Programme. It is imperative that emphasis should be placed on creating measures to support the family unit and the community. Some facilities exist: the Coalition for Better Parenting, a voluntary group housed within the Ministry of Education and Culture and PALS (Peace and Love in Schools), a non-governmental organization supported by the Community Component of a Canadian Project, Social Conflict and Legal Reform, which is designed to improve the ability of Jamaicans to resolve disputes more amicably.

The Dispute Resolution Foundation, a State supported entity, churches and NGOs also offer mediation services in limited areas to parents, but it is necessary for Government to launch an aggressive programme island wide to support and educate parents and communities.

### 3.5 Objective

Strategies are designed to provide support to families and communities and to reduce the number of children coming into conflict with the law. The aim ultimately must be to enhance the ability of the nation’s children to live responsibly and productively in their communities and at the same time, as a necessary corollary, emphasize public safety and accountability on the part of the child offender.
4 THE IMPROVEMENT OF CONTACT AND PROCESSING

4.1 Detention and Options

A child who is charged with an offence undergoes a fairly lengthy process before his case is considered and dispensed with by the Court. This section describes this process in some detail.

Detention and Bail

The police, in the main, represent the first point of contact of the child with the law. A Constable who detains him for committing an offence should endeavor to contact his family with a view to granting bail. The relevant provisions in the law are quoted here for the sake of emphasis.

Section 67 (1) Where a person who is apparently a child is apprehended, with or without warrant, and cannot be brought forthwith before a court, the office or sub-officer of police in charge of the police station to which the person is brought shall act in accordance with subsection (2).

(2) The Officer or sub-officer shall –

(a) so inform the government agency responsible for the care and protection of children; and
(b) enquire into the case and may, in accordance with the Bail Act, release the person on a recognizance being entered into by the person or his parent or guardian (with or without sureties) for such amount as will, in the opinion of the offender or sub-officer, secure the person’s attendance upon the hearing of the charge, and shall so release that person unless

(i) the charge is one of murder or other grave crime; or
(ii) it is necessary in the person’s interest to remove the person from association with any reputed criminal or prostitute; or
(iii) the officer or sub-officer has reason to believe that the person’s release would defeat the ends of justice

Where a person apparently a child is apprehended and is not released under subsection (2), the agency responsible for the care and protection of children shall cause the person to be detained in a juvenile remand centre until the person can be brought before a court.

All these arrangements, and the follow-up to ensure the child’s court appearance, are the responsibility of the personnel from the police station at which the child was initially detained. This procedure has been laid out in detail in the A-Z Manual, a booklet prepared by the Children Advisory Council in consultation with officials of the Children’s Services Division, now Child Development Agency (CDA) and the Ministry of National Security and Justice (including the Jamaica Constabulary Force and the Correctional Services).

This initial contact with the justice system does not involve early assessment by a professional trained in child psychology or related discipline which would assist in the screening and placement of the child in the most suitable environment.
This is the formal procedure and it is observed before a final decision is made to prefer a charge and eventually take the child before the court. However, every effort should be made to avoid that outcome, involving the time-consuming process we have described and the inevitable trauma which a child must experience in being removed from home. As an alternative, a child in breach of the law, save in the case of a major crime, can be placed with a relative or a foster parent until arrangements can be made for his appearance in court. In addition, some parishes have established informal diversion committees which are designed to keep (or “divert”) children who are accused of minor offences from the criminal justice system. The child meets with the Committee and is encouraged in an informal atmosphere to outline his difficulties, particularly those which may have contributed to his alleged wrongdoing. Members of the Committee seek to address his problems in consultation with the child and his family.  

4.2 Diversion

Legislation is necessary to give authority to the Police and other law enforcement agencies to deal with child offenders by means other than prosecution and arrest in some clearly defined circumstances.

The Convention of the Rights of the Child enjoins State Parties to the Convention to develop alternative non-custodial programmes as sanctions for adolescent offences.

“Socio – educational sentences” discourage anti-social attitudes and behavior and provides opportunities for the offender to identify their strengths and weaknesses and work with care givers to change the course of their lives.

Diversion as a tool of restorative justice is used primarily to put the child offender on a path away from the criminal justice system and its attendant negative features.

A police officer who has first contact with the child should be responsible for taking the decision to place him before the diversion committee. The Committee could have scheduled meetings or meet on an ad hoc basis in response to case load demand.

If the complainant is a child, permission should be sought from his parents or guardian. So too, must the consent of the offender’s parent or guardian be obtained before a reference can be made to the diversion committee.

For the approach to be useful the offender must admit to wrongdoing and the victim must agree to the process.

Decisions reached can include mediation or counseling for offender and the punishment (sentencing) could be a Final Warning (Caution) by the police officer, who should undertake ongoing supervision. A Reparation Order for the child to make amends, in cash, kind or services or a Supervision Order would become options available to a court in appropriate cases.

Finally, one outcome of the diversion proceeding is that the Committee could decide to offer support to the family of the offender in ensuring that the decisions are implemented.

These diversion committees are a classic example of the principles of Restorative Justice. If the child does not fulfill the conditions placed by the committee, the option remains for the police officer who had first

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7 Report to the UN on the CRC, 1998, p.87
contact with him, to take him before the court. If this course is taken the law requires that the child should be brought before the court at the earliest opportunity. The police officer has the responsibility to warn his parent or guardian, if he can be found, to attend court and should also inform the Probation Officer of the grounds on which the child will be brought before the court and the date and time of his appearance. This will enable the Probation Officer to investigate the child's surroundings and prepare a social enquiry report, which he will present to the court on the day of the child's appearance.

The suggested composition of a diversion committee is as follows:

- Justice of the Peace
- Probation Officer
- Children's Officer
- Minister of Religion
- School Guidance Counselors
- A person under the age of twenty one years

4.3 Children in the State’s Custody

The relationship between the police and civilians has always been the subject of debate and analysis aimed at effecting improvement. Complaints are often leveled against the police by children of abuse while in detention, even on mere suspicion of having broken the law. The Child Care and Protection Act provides several options for dealing with such a child: the most desirable option is that he can be taken before the Court forthwith. If this is not possible, he can be released on bail on his own recognizance or on that of his parent or guardian (with or without sureties) for such an amount as will secure his attendance to Court. The law requires that the child's parent or guardian should be contacted. If such a person cannot be found, he should be detained in a place of safety until he can be brought before a Court.

The law does not permit a child to be held in a police station. Yet for many years there have been sporadic public outcries against the practice of holding children in police lockups for long periods. The police have justified this practice on the grounds that transportation was unavailable to transfer the child to a place of safety or remand centre, that these centers were full or that the parent or guardian could not be found. But there have also been credible reports of children being abused both physically and sexually while in police custody.

There is need for ongoing training of police officers to continually upgrade their level of performance in the interaction with children.

It is sometimes necessary for the child charged with an offence to return to court once or several times. This is often caused by the fact that the social enquiry report is not ready due to problems such as difficulty in finding parents and their refusal or inability to communicate necessary information. If this happens, the child is often remanded in custody, and it is again the responsibility of the police officer to escort him to the remand centre. In keeping with the terms of the Convention (Article 40), which dictate that institutional placement should be avoided whenever possible; efforts must be made to avoid this further confinement as far as possible.

Children brought to the court as being in need of care and protection may not have had the police as their first point of contact. Any Probation and After Care Officer, Children Officer or any person specially
appointed by the Minister, for that purpose, may institute proceedings in respect of a child in need of care and protection.

The Children Registry to be established under the Child Care and Protection Act together with the Office of the Children’s Advocate are critical institutional mechanisms to address survival and protection issues and should auger well in promoting the desirable policy of separating criminal law matters from those concerned with child protection.

Consideration must be given to the following matters when contact is made with the child seeking the protection of the law:

1. A child has a right to live with his or her parents unless it is deemed to be incompatible with the child’s best interest.

2. The child must be appropriately placed in a Place of Safety pending assessment and removal to children’s institution or foster homes.

3. Efforts must be made to reduce the institutionalization of children in favor of foster homes and adoption, always giving paramount consideration to the best interests of the child.

### 4.4 Training of Law Enforcement Officials

The Beijing Rules suggests that “Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with children’s cases.”

In 1997 the Justice Training Institute was established with a Magistrate as the Director/Principal to offer courses for persons who work in the justice system. Both local and overseas training was provided through seminars, workshops and attendance at conferences. Six hundred and ninety-five persons were trained locally and eleven persons were sent abroad to attend judicial and other conferences.

These activities were initially made possible through a USAID/GOJ – Sustainable Justice Reform Project from August, 1992 - December, 1996. Further activities were supported by Canadian International Development Agency, Department for International Development (Britain) and the Government of Jamaica.

The Institute is equipped to offer courses on children’s rights to the police, military, correctional officers and other agencies concerned with children.

Some agencies can conduct in-house training in order to reduce cost that would be incurred for traveling to the Corporate Area locations for instructions.

Strategies are outlined to improve the quality of service to children who come in contact with the justice system and to improve the level of performance of professionals who by the nature of their duties have to deal with children.
5 IMPROVEMENT OF THE ADJUDICATION AND DISPOSITION OF CASES

5.1 The Courts

Specialized Courts to deal with Children in conflict with the law have been an integral part of the criminal justice system. Two courts exercising concurrent jurisdiction – The Family Court and the Children’s Court have been in existence since 1975. The Children Court, has jurisdiction in all matters concerning children; while the Family Court, has jurisdiction in all matters concerning the family and children except matrimonial causes. In addition, it includes services to the family not provided in the Children’s Court.

The Children’s Court

The Children’s Court does not have the structured support services to be found in the Family Court. The staff of the Children’s Court are members of the staff of the Resident Magistrate’s Court for the parish in which the court sits.

The Chairman of the Court is a Resident Magistrate who travels the court circuit, sitting once per month, in each parish.

The infrequent sitting of the court results in children being kept in custody for too long before their cases are disposed of. The police and social workers who serve the courts experience difficulties carrying out investigations into the child’s antecedents because he is usually remanded in one of the Places of Safety or the Remand Centre in another parish.

These are only some of the reasons that led to the establishment of the Family Court.

Another problem is the physical location of the Children’s Court. Section 71 (5) of the Child Care and Protection Act provides that:

“A children’s court shall sit in such place or places as may from time to time be specific under paragraph 3 of the Third Schedule as the place or places in which such court shall sit”.

The Minister of Justice is required to designate suitable locations within the parish for sittings of the Children’s Court to be held and Section 71 (6) provides that where no place is specified under paragraph 3 of the Second Schedule as the place in which a children court shall sit, the children court shall sit either in a different building or room from that in which sittings of courts other than children courts are held, or on different days or at different times from those on which sittings of such other courts are held.

The Family Court

Against this background, and in response to advocacy from social workers and other persons, the Kingston and St. Andrew Family Court was established in 1975. It has jurisdiction in matters arising under the following statutes:

The Child Care and Protection Act
The Adoption Act
The Children’s Custody and Guardianship Act
The Maintenance Act
The Affiliation Act
The Maintenance (Facilities for Enforcement) Act
The Married Woman’s Property Act
The Domestic Violence Act

The court is structured to include a cadre of social workers; Intake and Family Counselors, Probation and Children’s Officers, an Adoption Officer and a Nurse. There is also a police unit headed by a Sergeant of Police. The court is located in a building separate from the regular criminal court.

The Kingston and St. Andrew Family Court was intended as a pilot project, to be replicated island wide, dependent on its success, and the Judicature (Family Court) Act was structured to facilitate such extensions. In 1978 a Family Court was established in Montego Bay, with a sub-court in Lucea and Jurisdiction for St. James and Hanover. In 1996, the system was expanded with the establishment of a Family Court in Westmoreland, with jurisdiction for that parish.

In the parishes where the Family Court is established, the Children’s Court ceases to exist and its work is carried out by the Family Court.

5.2 Analysis of the System

Despite strong lobbying by several interested groups, no further expansion of the Family Court System has been undertaken since 1996. The parishes of Kingston and St. Andrew, St. James, Hanover and Westmoreland are served by the Family Court, while the Children’s Court in its original form, continues to serve the other parishes.

The result of this situation was that persons in parishes not served by the Family Court system clandestinely assumed places of abode in Kingston and St. Andrew for the purpose of accessing the court. This practice has continued and has resulted in a serious overburdening of the Kingston and St. Andrew staff and services. A Standing Committee of Parliament in 1999 recommended that the Family Court be established in all parishes. This recommendation was also echoed by the Jamaica Justice System Reform Task Force in its 2007 Report on Justice Reform.

Table 1 below illustrates the nature of cases dealt with in the Family Court and the proportion of children in conflict with the law brought to court in comparison with the other non-criminal cases.

Table 1: Cases held in the child section of the Family Court, Kingston

<table>
<thead>
<tr>
<th>Year</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>M</td>
<td>F</td>
<td>M</td>
<td>F</td>
</tr>
<tr>
<td>Sex</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criminal</td>
<td>2,082</td>
<td>687</td>
<td>4,120</td>
<td>759</td>
</tr>
<tr>
<td>Care and Protection</td>
<td>955</td>
<td>740</td>
<td>1,130</td>
<td>1,487</td>
</tr>
<tr>
<td>Maintenance</td>
<td>2,309</td>
<td>1,778</td>
<td>2,539</td>
<td>2,513</td>
</tr>
<tr>
<td>Declaration of Paternity</td>
<td>181</td>
<td>113</td>
<td>245</td>
<td>209</td>
</tr>
<tr>
<td>Custody</td>
<td>467</td>
<td>340</td>
<td>600</td>
<td>590</td>
</tr>
<tr>
<td>Adoption</td>
<td>21</td>
<td>18</td>
<td>32</td>
<td>37</td>
</tr>
<tr>
<td>Domestic Violence</td>
<td>258</td>
<td>399</td>
<td>126</td>
<td>796</td>
</tr>
<tr>
<td>Married Women</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>6,273</td>
<td>4,075</td>
<td>8,792</td>
<td>6,391</td>
</tr>
</tbody>
</table>
The work of the court continues to show significant increase in the number of cases filed. See Table below.

Table 2: Cases heard in the Family Court, Kingston /St. Andrew, 2010

<table>
<thead>
<tr>
<th>NATURE OF CASE</th>
<th>NUMBER OF CASES FILED*</th>
<th>NUMBER OF CASES DISPOSED OF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Examinations/Committal</td>
<td>165</td>
<td>38</td>
</tr>
<tr>
<td>Indictment</td>
<td>298</td>
<td>109</td>
</tr>
<tr>
<td>Summary Offences</td>
<td>600</td>
<td>521</td>
</tr>
<tr>
<td>Petty Sessions</td>
<td>153</td>
<td>135</td>
</tr>
<tr>
<td>Care &amp; Protection Proceedings</td>
<td>736</td>
<td>543</td>
</tr>
<tr>
<td>Declaration of Paternity</td>
<td>337</td>
<td>321</td>
</tr>
<tr>
<td>Maintenance</td>
<td>4,540</td>
<td>3,593</td>
</tr>
<tr>
<td>Custody</td>
<td>987</td>
<td>643</td>
</tr>
<tr>
<td>Married Women Property Act</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Adoption</td>
<td>60</td>
<td>43</td>
</tr>
<tr>
<td>Plaint</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Domestic Violence</td>
<td>4,097</td>
<td>764</td>
</tr>
<tr>
<td>Total</td>
<td>11,973</td>
<td>6,710</td>
</tr>
</tbody>
</table>

*including matters brought forward.

In parishes where the Family Court does not exist, cases that would fall within that Courts’ jurisdiction are heard by the Resident Magistrate’s Court and the Children’s Court. So for example, in 2003 the number of cases ranging from maintenance, affiliation to adoption and domestic violence heard in the Resident Magistrate’s Court in parishes were as follows. Those heard in the Children (Juvenile) Courts are also listed.

<table>
<thead>
<tr>
<th>NATURE OF CASE</th>
<th>Resident Magistrate’s Court</th>
<th>Children (Juvenile) Courts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clarendon</td>
<td>2,176</td>
<td>157</td>
</tr>
<tr>
<td>St. Ann</td>
<td>2,352</td>
<td>185</td>
</tr>
<tr>
<td>St. Elizabeth</td>
<td>1,455</td>
<td>24</td>
</tr>
<tr>
<td>St. Mary</td>
<td>911</td>
<td>70</td>
</tr>
<tr>
<td>St. Thomas</td>
<td>374</td>
<td>58</td>
</tr>
<tr>
<td>Manchester</td>
<td>1,311</td>
<td>123</td>
</tr>
<tr>
<td>Portland</td>
<td>248</td>
<td>62</td>
</tr>
<tr>
<td>Trelawny</td>
<td>586</td>
<td>82</td>
</tr>
<tr>
<td>St. Catherine</td>
<td>Figures not available</td>
<td>Records destroyed in fire.</td>
</tr>
</tbody>
</table>

Litigants and children in these parishes are deprived of access to a court designed to protect privacy and identify persons whether as victims, offenders or persons merely seeking the protection of the law.
5.3 The Powers of the Court – the child as the victim

Children below the age of sixteen (16) years were in the majority as victims of sexual offences in the year 2003. Some Eight Hundred and Forty-Six (846) children were victims of carnal abuse and rape. In the age groups 16-30 rape victims numbered Two Hundred and Eighty-Two.

The Child Care and Protection Act provides for the hearing of cases in the absence of the child. Furthermore, a child who is certified by a medical practitioner to be too ill to travel and gives evidence in court and that the child's attendance “would involve serious danger to the life or health of the child” a Justice of the Peace may take a deposition from the child which will be admissible in evidence at the trial of the case in which the child would have testified.

There is a greater problem however, of getting the evidence of the vulnerable or intimidated witness to secure convictions. Children who have been the victim of abuse or who witness serious crimes are in many cases unwilling to attend court and testify.

It is necessary to take steps to afford protection to children whenever they appear as witnesses or victims in the criminal courts. This has been an area of major focus in legislative reform and judicial innovation in some Commonwealth jurisdictions. In Canada, for example, the Criminal Code permits a witness less than eighteen years to testify from outside the court room or behind a screen so as to prevent the witness from seeing the accused person. The use of video recordings or video link subject to court approved conditions is now accepted as testimonial support for the young, vulnerable and in some cases intimidated witness.

5.4 The Child as the Offender

Section 76 of the Child Care and Protection Act empowers the Court to make orders ranging from placing the child under the supervision of a probation and after care officer, to committing the child to a juvenile correctional centre.

A corrections order may result in the child being incarcerated until he attains the age of eighteen (18) years and there is provision for him to be further incarcerated in an Adult Correctional Centre where the Minister is satisfied that he is “of so recalcitrant a character that it not expedient that he should continue being detained in a juvenile correctional centre”.

With the age of eighteen (18) years being the new ceiling, children who would have been tried in the adult court are now to be dealt with in accordance with the Child Care and Protection Act. Children above the age of fourteen (14) years who are convicted of firearm offences are dealt with in accordance with the Gun Court Act and the Criminal Justice Reform Act.

It is necessary to have corrections orders of fixed duration. A matrix for “sentencing” offenders over fourteen (14) years is to be implemented in order that the child’s period of incarceration and after care treatment reflect his age of incarceration and after care treatment reflect his age, antecedent, the gravity of the offence, his conduct during incarceration and other relevant considerations that are in his best interests.
Children who are found to be abusing drugs should be subject to a regime of diversion, treatment and rehabilitation as exists under the Drug Court (Treatment and Rehabilitation of Offenders) Act.

Provisions should also be made in legislation for the Children and Family Court to make Attendance Centre Orders that can only now be made in respect of persons over the age of seventeen (17) years. The Order should be available as an option in respect of children who are above the age of sixteen (16) years.

The Courts should resort to incarceration only where no other suitable “sentencing” option is available.

In addition to those options now available the following are recommended for inclusion in legislation.

### 5.5 Restorative Justice

Restorative Justice is a philosophical framework which has been evolving mainly in North America, New Zealand and Australia as an alternative to the current way of thinking about crime and criminal justice. The current system, in which crime is considered an act against the State, works on a premise that largely ignores the victim and the community that are hurt most by the crime. It is punitive of the offender rather than rehabilitative of the victim and community. Restorative justice is a new and alternative concept in punishment according to which only violent criminals would be imprisoned, while non-violent offenders could for example, work in closely monitored community projects, earning money with which to make financial restitution to their victims and support their own families.

The concept of restorative justice is consistent with the aims of the National Plan of Action for Child Justice which emphasizes the importance of the family and the community in the life of the young offender.

**Victim Offender Mediation** is one type of restorative justice process. It provides the victim and the offender with the opportunity to meet each other in a safe and structured environment and discuss the crime with the assistance of a trained mediator. The goals of the mediation are to encourage the victim and the offender to tell their side of the story surrounding the crime, for the offender to learn about the impact of the actions and take responsibility for the harm he has caused. The victim and the offender then work together on an agreement that will represent what reparation is acceptable to the victim.

- The child could also be required to undergo **counseling, psychotherapy or any other treatment programme** to resolve any behavioral disorders or relationship problems between the child and other persons.

- **Sentencing/Punishment of the offender** - The present child justice system deals with youth crime by punishing the offender. Restorative Justice recognizes that imposing a sentence is not sufficient to resolve the matter or address the needs of the victim, offender or the community. The restorative approach provides greater flexibility in the sentencing options available to the court, with emphasis being on diversion and not incarceration of the offender.

- **A Reparation Order** for the child to make amends to the victim. This can be done by rendering services to the victim or another form of compensation.

- **A Community Service Order**, this is now available under the Criminal Justice (Reform) Act for persons between the ages of 17-23. Consideration should be given to the extension of its application to offenders between the ages of 16-23.
6 STRATEGIC OBJECTIVES FOR THE IMPROVEMENT OF RESIDENTIAL INSTITUTIONS

The Child Care and Protection Act provides protection for two categories of children:

6.1 Children in Need of Care or Protection

These include children who are abused, neglected or abandoned. Any constable, probation officer or children’s officer has the authority to bring such a child before the court. Until this is done, he must take the child to a place of safety and arrange for a court appearance at the “earliest practicable opportunity”.

If no fit person can be found, the child is placed in a children’s home. The court has the authority to commit the child to the care of any fit person, whether a relative or not, who is willing to undertake his care, to require his parent or guardian to enter into a recognizance to exercise proper care and guardianship, or to place him, for a specified period not exceeding three years, under the supervision of either a probation or children’s officer.

Sixty percent of children admitted to Children’s Homes are committed to these institutions pursuant to a fit person order. The referrals to the courts are made by children’s officers, police or parents and care givers. Other children are orphans or have been abandoned or rejected.

The Places of Safety and Children’s Homes are the administrative responsibility of the Ministry of Health. Eight Places of Safety and six Children’s Homes are owned by Government and four Places of Safety managed by private persons or organizations. However, all the Places of Safety and Children’s Homes are supervised by the CDA and must satisfy certain standards before they can be licensed to operate.

These institutions have accommodation for about 1876 children. Of these, there are twice as many males as females. 59% are between 12-17 years and 10% are 5 years and under.

In 1999 the Ministry of Health commissioned a survey of Children’s Homes by a team of researchers, one British and two Jamaicans of each sex and supported by National Children’s Homes (U.K.) and UNICEF, Jamaica. Some twenty-five Homes were assessed by field visits, an examination of records and interviews with staff and children.

In 2002 the Government commissioned a review of all Children Homes and Places of Safety in the island. The Terms of Reference of the Review Committee were as follows:

- Assess the procedures for intake evaluation and placement of children in care and make recommendations for improvement

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8 Consultant’s Report 2000
• Determine the support systems necessary to address behavioral problems exhibited by children in care

• Ascertain the functionality of the children’s homes in Jamaica, determined by factors such as staff-child ratio, level of education accessed, environmental conditions and prepare for final separation from care

• Evaluate the effectiveness of the monitoring procedures that will ensure that standards of care and children’s complaints are addressed

• Review the structure proposed for the CDA to determine the congruence between structure and desired improvements in care

• Determine any other steps to be undertaken by the State to ensure the safety and well being of children in its care.

The result of that review is contained in a comprehensive report in the name (The Keating Report) of the Chairman of the Review Committee Mrs. Sadie Keating and was considered in preparing this Plan of Action.

### 6.2 Children who have been charged with offences (Children in Conflict)

A member of the Jamaica Constabulary Force has the authority to take before the court a child who is alleged to have committed an offence. Under the Corrections Act, every correctional officer has the powers, authority, and privileges of a constable for the purpose of his duty as a corrections officer. The child should be brought “forthwith” before a court. If this is not possible he can be offered bail. Failing these conditions he can be detained in a Place of Safety.

The court has the authority, where a child has been found guilty of an offence, to make a probation order and place him under the supervision of a probation officer for a period not exceeding three years or committing the offender to a Juvenile Correctional Centre – a name preserved by the Child Care and Protection Act pending amendments to the Corrections Act.

The Juvenile Correctional Centers are the responsibility of the Ministry of National Security. There are three Correctional Centers, two for boys and one for girls. There is also a Remand Centre for boys only. The Correctional Centers are, like the Children’s Homes, for the care and rehabilitation of children who have been sent there by the courts. The Remand Centre is really a secure Place of Safety, a holding station for children on charges who have been remanded by the Courts, pending the disposition of their cases.

The Juvenile Correctional Centers are the Rio Cobre Correctional Centre in St. Catherine and Hilltop Correctional Centers for boys and the Armadale Correctional Center for girls located in the parish of St. Ann. A fire which occurred in the Armadale facility in 2009 has resulted in the temporary relocation of the wards to the Diamond Crest facility, a facility under the Ministry of Education that has been retrofitted to house them.

The St. Andrew Juvenile Remand Centre for Boys at Stony Hill commenced operation in 1968 as part of the Homestead Place of Safety. The escalation of crime in the country and the public outcry about children being

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10 Juveniles Act, Section 18(1)
held in lockups resulted in the separation of the Remand Centre from the Place of Safety. It was placed under the Ministry of National Security in 1972. It has a capacity for 48 children, ages ranging from 12 to 17.

The Rio Cobre Correctional Centre evolved from the fusion of the Tredegar Park and Rio Cobre Approved Schools in the 1970s. It has a capacity for 120 children, ages ranging from 13-17 years old. These youngsters are charged with comparatively minor offences and are not considered dangerous.

The Tables below show that, notwithstanding a general decline in the number of correctional orders made and in the resulting population in the correctional centers, the numbers are still too high.

<table>
<thead>
<tr>
<th>ADMISSIONS TO JUVENILE INSTITUTIONS FOR THE YEARS 2006 - 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Years</strong></td>
</tr>
<tr>
<td>-----------</td>
</tr>
<tr>
<td>2006</td>
</tr>
<tr>
<td>2007</td>
</tr>
<tr>
<td>2008</td>
</tr>
<tr>
<td>2009</td>
</tr>
<tr>
<td>2010</td>
</tr>
</tbody>
</table>

Source: Department of Correctional Services, 2010

<table>
<thead>
<tr>
<th>TOTAL POPULATION As at the Year Ending December 31</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Years</strong></td>
</tr>
<tr>
<td>-----------</td>
</tr>
<tr>
<td>2006</td>
</tr>
<tr>
<td>2007</td>
</tr>
<tr>
<td>2008</td>
</tr>
<tr>
<td>2009</td>
</tr>
</tbody>
</table>
Entry

After the Correctional Order is made he is seen as soon as possible (within a few days) by a Placement Committee, comprising the Director of Juvenile Centers, the Probation Officer, the Chaplain and the Superintendent of the Remand Centre. The police responsibility ceases and he is now in the care and custody of the Department of Corrections.

In an interview to decide where he could be suitably placed, his deportment as well as the social enquiry report - which would include his background, family circumstances, his previous behavior and his aspirations for the future - would be considered.

During his interim detention for processing stay at the Remand Centre he is seen by the Probation Officer twice weekly, by the Chaplain each week and by the Superintendent frequently. It is the duty of the Probation Officer to ensure that he maintains contact with his parents.

After the most suitable placement is agreed on, the child may be taken to either the Rio Cobre or Hilltop Correctional Centre by the Probation Officer. Children who are seen as less of a security risk and more open to rehabilitation are sent to Rio Cobre, while the older children, perceived as more hardened, are sent to Hill Top.

The entry to Rio Cobre follows the same procedure, except that the initial assessment concentrates more on a long term stay - to determine what programme will interest and benefit the child.

Where the stay at Stony Hill is estimated at a few days; the stay at Rio Cobre is likely to be for the duration of the Court Order or until the child’s eighteenth birthday, whichever comes first.

6.2.1 Child Rights Information

This appears to be an area of weakness. There is no indication that any explicit effort is made to inform children of their rights, although confidentiality is maintained, there is no discrimination and visits from parents are encouraged. Warders are unfamiliar with the United Nations Rules for the Protection of Juvenile Deprived of their Liberty (1990).

6.2.2 Education

Children in detention facilities should be provided with education in community schools. Those who are illiterate or experience learning difficulties should have access to special education.

At Stony Hill there is a teacher with a short-term curriculum and a timetable. Children are tested on entry. The teacher offers remedial work and there is an art programme.
The education at Rio Cobre is much more varied and advanced. There are three teachers who instruct in academic subjects to CXC level and there have been some successes. Children are also tested at entry and it is decided if they will enter the academic stream, the vocational, or both. A number of boys attend Hydel Secondary School. Rio Cobre is sited on 120 acres and there is capacity for the introduction of many and varied programmes.

Boys receive instructions in motor mechanics, woodwork and cabinet making. There is a chicken-rearing project, the products of which are sold or used at the Centre.

6.2.3 Health

At Stony Hill, there is a medical doctor on call at all times.

At Rio Cobre, newly admitted wards are seen by a doctor within 48 hours of admission. Other visits are scheduled.

There is a psychiatrist who visits all Juvenile Correctional Centers at least once per month and there are three trained psychologists to whom all the Centers have access.

There is a doctor who visits the Rio Cobre Centre at least once per week and wards are also taken to the local clinic for minor complaints.

Search for Solutions

The Mission Statement of the Correctional Services is “to create a safe and healthy environment for the empowerment and rehabilitation of our clients.”

The facilities for meeting the physical needs of the wards who occupy the juvenile correctional centers are excellent. The efforts to create an environment for the development of measures to satisfy the emotional needs of the wards must be vigorously pursued.

The Plan calls for the promulgation of standards consistent with the United Nation Rules referred to earlier to be observed in the Juvenile Correctional Centers and the establishment of a Board of Visitors under the Corrections Act for Juvenile Correctional Centers.

7 Rehabilitation and Reintegration into Society

There is a clear link between the prevention of delinquency and a young offender's reintegration into society. On one level, reintegration is seen as assisting the offender's return to his community by equipping him to survive: giving him tools like skills training and counseling and facilitating his gradual return by conditional release or release to a half-way home. On another level, he can be assisted to return by providing the same facilities which assist in prevention: a stable home environment, a good education and a caring community. To provide this environment involves the efforts of a large number of persons, not only professionals, but parents, the schools, the communities and the churches.
Rule 1.3 of the Beijing Rules provide that "Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community institutions, for the purpose of promoting the well-being of the child, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the child in conflict with the law". Unfortunately, the situation in Jamaica does not automatically provide this favorable environment for the child who has been released from a Correctional Institution. It is very difficult to find a foster home for such a child.

Even if he is still young enough to fit into the school system, there may be some difficulty for him to secure a place in an already overcrowded school. In the community, he is stigmatized as an "ex-convict" and may find difficulty in finding employment.

These reactions arise from the understandable fear, in a violent society, that the presence of an ex-ward in a home, school or business, will constitute a threat. The only way to ensure that these attitudes on the part of the society do not frustrate the re-integration of the ex-ward, is to prepare him for his return while he is institutionalized and to try to change the societal attitudes by public education and other measures.

7.1 The Prevention of Recidivism – Deterring Repeat Offenders

Although no figures are available on the number of repeat young offenders in Jamaica and the existing law does not make explicit provision for their treatment, some trends can be identified.

The record of “convictions” of the child offenders are not officially maintained and the records remain sealed. As a result, children who have been wards of a correctional facility sometimes find it extremely difficult to secure employment in the job market.

The dangers of peer pressure are particularly serious in the placement of child offenders. Girls, for whom there is no Remand Centre, are often placed in inappropriate institutions, where they learn anti-social behavior which they adopt and pursue when they return to society. This is particularly true of those who have no parental support.

Altogether, the child who leaves a correctional institution at 18 years old, un-skilled and uneducated and with the stigma which society attaches to a person, child or adult, with a criminal record, may be tempted to repeat the offence which caused him to be confined in the first place or a more serious offence.

Strategies have been designed to prepare the child offender for re-entry into society and also to reduce the incidence of recidivism. A tracer study is to be carried out on ex-wards for the purpose of shaping policy to achieve this objective.
Strategies must be developed to:

- to efficiently rehabilitate young offenders during their period of detention.
- to equip those who have been in conflict with the law with the tools for readjustment in society.
- facilitate the smooth re-integration into society of children who have been institutionalized for offences against the law.

7 STRATEGIC OBJECTIVES FOR THE PROMOTION OF YOUTH PARTICIPATION AND EMPOWERMENT

During the decade of the 1980's, children were sometimes invited to participate in conferences on youth affairs. This participation was often the attendance of one token child, whose awe at the adult presence prevented a meaningful contribution; or a group of children designed to provide entertainment for the adults or demonstrate the culture of the host country. One writer has divided these activities into three categories;

Symbolic participation: which takes place when children participate in activities organized by adults; carrying out actions of a purely ceremonial or honorific nature, acting on behalf of an organization, community or society as a kind of metaphor that gives the appearance of importance being attached to the social participation of children;

Decorative participation: which takes place when children are called upon to adorn events with their appearance as a public display of their talents; and

Manipulated participation: when groups of children "participate" as mouthpieces for adults.  

8.1 Assessment of the Situation

Things have changed dramatically since the landmark World Summit for Children in 1990, and it has become increasingly common to include children representatives to participate fully in regional and international conferences.

In the year 2000, for the first time in a regional conference, Jamaica included a separate youth working group in the Fifth Ministerial Meeting on Children and Social Policy in the Americas. In 2001, a working group for Children and Adolescents was placed on the Agenda of the National Consultation on Juvenile Justice. A group of wards from a Juvenile Correctional Institution also attended and made a presentation in the plenary.

In 2002, at the twenty-seventh session of the United Nations General Assembly (UNGA) held in New York, there were delegations of children from various countries, including Jamaica. Several NGOs, including the World Association of Girl Guides and Girl Scouts were represented by children. Indeed, children held their own assemblies and made statements to the General Assembly on the same day as adult representatives of countries as far removed geographically as Liechtenstein, Austria, the Philippines, Uruguay, Monaco, Iraq and the Republic of Korea.

Efforts to ensure that children's voices are heard have been made on a different level; and representatives have been included on Government-appointed committees such as the National Council on Education and there have been conferences and workshops with child participants only. Examples of these are children's conferences hosted by the Coalition for the Rights of the Child and a recent conference on violence hosted by the Ministry of National Security. Some of the recommendations made by speakers at the first Children's parliament held in Jamaica in 1996 were actually included in the National Policy for Children, published by the Ministry of Health in 1997.

In spite of all these efforts at the public level, the children themselves do not appear to believe that they have the right to express their opinions freely and have those opinions taken into account. This perception obtains particularly at the private, practical level and it affects the dispensation of Child Justice. The Children/Adolescent group at the National Consultation had recommendations in this regard:

The Regulation governing correctional facilities for children should be consistent with the United Nations Rules for the Protection of Juveniles (Children) deprived of their liberty adopted in 1990.

The Regulations now in place were promulgated long before the Convention of the Rights of the Child and the Rules came into force. It is therefore imperative that the required review be undertaken and that personnel concerned with the management of those institutions adhere to the objectives of the Convention.

They suggested that there should be youth participation in delinquency prevention policies and processes; and that anti-social behavior of children in institutions should be judged and punished by their peers.

One child from a correctional institution voiced the common feeling that she felt that no one cared for her once she had committed an offence. She pleaded in a colorful image: "We are wounded - we are not dead".

There appears to be the pervasive feeling, voiced by the group at the Fifth Ministerial Meeting, that even when an opportunity is given for self-expression, the children's views are not taken seriously. They longed for some medium to take their concerns directly to Government.

During the past few years, there have been several publications, including the reports on the conferences already mentioned, documenting the feelings of children. Perhaps the most powerful is the "Voices of Children and Adolescents in Latin America and the Caribbean", the report of a survey sponsored by UNICEF in the year 2000. This document is particularly important because of its scope, as well as its structured approach.

A few conclusions are quoted from this publication:

- "More than half of those interviewed say they are not heard, either at home or at school."
• 26% of respondents complain of a high level of aggressive behavior in the household. This perception represents 28 million children and adolescents in the region.

• Close to half of the respondents have already experienced first hand a theft; while a third has experienced violence (experienced by family, friends or themselves).”

All these views, point to children the world over, desiring to participate in decision-making and to have their views taken seriously. For the children in institutions, they speak also to a sense of loneliness and alienation "we are wounded - we are not dead".

It is necessary to set goals to address these concerns. It is also necessary to prepare the child at every level; if the participation is to be meaningful. In the home, he should be a part of family discussions in so far as they are within the scope of his understanding. Schools should encourage the active participation of children in discussions involving their future and involve groups like the Students' Council and the Prefect's body in policy and decision-making, and communities should foster the involvement of youth in their activities. The provision of educational opportunities by the State and the grasping of these opportunities by the youth are the first steps towards equipping the youth to be a useful participant. Measures like Diversion Committees and a Youth Court will go a far way towards achieving these goals

The Plan recommended measures to:

• Develop a society in which children and adolescents feel safe and confident in their capacity to contribute to nation building and participate in the decision making processes.

• Provide adequately for youths and adolescents, including those in Juvenile Correctional Centers to express themselves.

• Promote and strengthen parent education and peer groups.

It is further recommended that:

(a) a child be included in the Children Advisory Council established under the Child Care and Protection Act and

(b) Board of Visitors to the Juvenile Correctional Centre to include a child.

9 MONITORING THE PLAN

Monitoring must be seen as an integral part of the National Plan of Action. The monitoring will become part of an ongoing process towards the achievement of the National Plan of Action as a whole, as well as the establishment of a national human development information system encompassing monitoring of the family structure, household characteristics and the impact of poverty on social conditions.12

Although the primary focus of this Plan is to provide a system of justice for children in conflict with the law, it covers such a wide spectrum of issues which impact on the society as a whole that the close monitoring of the goals contained in the Plan has the potential to strengthen Government's efforts to enhance and regularize its statistical system capability as it relates to human development.

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As soon as the Plan is approved by Cabinet, it is recommended that a Committee should be appointed to monitor the implementation of such recommendations as the Cabinet should accept.

**It is recommended that the following persons be included in the membership of the Committee:**

- The Permanent Secretary, Ministry of Justice or his/her nominee
- The Permanent Secretary, Ministry of Health or his/her nominee
- The Permanent Secretary, Ministry of National Security or his/her nominee
- The Permanent Secretary, Ministry of Education or his/her nominee
- The Permanent Secretary, Ministry of Youth, Sports and Culture or his/her nominee
- The Commissioner of Corrections
- The Chief Executive Officer, Child Development Agency
- The Director General, Planning Institute of Jamaica or his/her nominee
- The Executive Director, Dispute Resolution Foundation

The Committee should have the power to co-opt other members:

- Activities of the Committee should be coordinated by a senior officer within the Ministry of Justice.
- The Committee should ensure ongoing collection of data to facilitate monitoring and evaluation.
- The Committee should be mandated to prepare annual reports on the status of implementation for forwarding to the Human Resource Council.
- The Committee must identify areas for research, source funding and oversee evaluation research such as tracer studies of ex-wards to assess effectiveness of programmes.
- The Committee should seek to ensure that indicators on Child Justice are included in the SIMS report prepared by the Planning Institute of Jamaica each year.
- The Committee should also seek to ensure that related Ministries include activities for implementation in their annual budgets and should negotiate with donors through the Planning Institute of Jamaica for funding of special responsibilities.
- Monitor targets that are established and agreed
- Mechanisms for analysis of attainment/ not of the targets.
11 IMPLEMENTATION

For the purpose of implementation, the Strategic Objectives are divided into three groups: short term to include those which can be implemented with little or no expense over a period of one to two years; medium term are those which can be implemented within two to four years and long-term over a period of five years at considerable expense.

11.1 Interrelated Strategies for Implementation

The Strategic Objectives outlined by the National Plan of Act on Child Justice are interrelated; not only as activities, but in terms of their impact on all sectors of society. There are a number of strategies which are overarching. They can only succeed if all sectors of society accept them fully. Some such strategies are listed here:

11.2 Building Advocacy, Communication and Social Mobilization

The non-governmental organizations continue to play an important part in providing service to children. There is need to reach out to them and to the public to obtain acceptance of these goals. This acceptance goes farther than that for the improvement of the Child Justice System. It must also include information on the Convention on the Rights of the Child and its companion instruments, the Beijing Rules and the Riyadh Guidelines. Advocacy, social mobilization and public education are all mechanisms designed to facilitate public acceptance of the concept that child delinquency is the concern of the whole society. This will be the key to public support at all levels for the welfare of child delinquents.

11.3 Institutional Strengthening and Capacity Building

The achievement of the goal in this Plan will depend on the capacity of both Government and non-governmental agencies to deal with the Strategic Objectives. There is need for the improvement of management capacity, training of professionals in the needs of the new child-friendly approach introduced by the Convention and, above all, strengthening their capacity to collect and use data.

11.4 Interagency and Inter-sectoral Collaboration

This will be necessary to promote efficiency, and prevent the duplication of effort and waste of resources.
11.5 Resource Mobilization

Every effort will have to be made to seek resources from outside of the Government’s budget. This will be in keeping with the notion that the problem of delinquency belongs to all sectors. The Private Sector must be implored to give more assistance in a revised system with less fragmentation.

Multilateral support continues to be received in several areas benefiting children. For example, the United Nations Children Fund/Government of Jamaica Country Programme of Cooperation 2002-2006 had 8,582 million dollars assigned to the programme for expenditure. The areas of focus include early childhood development, adolescent development and participation, policy advocacy, special care and protection.

11.6 Increased Budgetary Allowance for Children

The Budgetary support will have to be increased every year as this is the only certain source of funds for the support of children’s causes.

11.7 Acceleration of the Implementation of Government Plans and Decisions

Although Jamaica has been progressive in its acceptance of international instruments for the welfare of children, there has been delay in implementing them. While the value of interdisciplinary committees is without doubt, their uncoordinated existence could reduce the pace at which programmes are implemented.

A schedule of strategies to achieve the objectives in the categories of short, medium and long term for the purposes of implementation is set out in the logical framework at Appendix 1.

11.8 Advocacy/Public Education

This section attempts to identify, in precise terms, the practical details necessary for the commencement of activities on the National Plan of Action. The projected date for the launching of the Plan is the January, 2012. This leaves time for the approval of the Plan by Cabinet and the establishment of the Coordinating and Monitoring Committees.

It will be necessary to ensure that both the public and the stakeholders are fully aware of the details of the Plan before the actual implementation of its provisions commences. To a great extent, this has already been done.
12 FINANCING THE NATIONAL PLAN OF ACTION FOR CHILD JUSTICE

(a) The Costing of the Plan is set out

(b) It will be a very important function of the National Plan of Action Coordinating and Monitoring Committee for Child Justice to ensure that Ministries include provision for implementation of the Plan in their budgets, and that suitable projects are developed to qualify for international funding.