JAMAICA’S ADHERENCE TO ARTICLE 19 OF THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

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Introduction

The world has become increasingly more globalised in its authoritative nature directing national policy agendas. The Caribbean, as members of the United Nations (UN) and their various conventions are not exempt from adherence to international laws, treaties and goals. This paper will assess the level of adherence to Article 19 of the UN Convention on the Rights of the Child (CRC), and examine significant interrelated issues concerned with the governance of a ‘child-first’ policy framework in Jamaica, with mention of Trinidad and Tobago. There will also be included a framework for action that in my view, could improve the level of adherence to child rights in Jamaica.

Convention on the Rights of the Child

There are a number of other provisions in the CRC which also deals with child protection, some of these are: Articles 32, 33, 34, 35, and 37 (‘The Status of the Rights of the Young Child in Jamaica’ 2007).

Article 19 states:

“The State shall protect the child from all forms of maltreatment by parents or others responsible for the care of the child and establish appropriate social programmes for the prevention of abuse and the treatment of victims” (ibid.: 109)

Other supporting Articles for child protection:

- Article 32, speaks to the right of the child to protection from economic exploitation, or child labour.
- Article 33, deals with protecting children from exposure to illicit drug use and trafficking.
- Article 34, outlines the rights of the child to be protected from all forms of sexual exploitation and sexual abuse, including their use in child pornography.
- Article 35, states that state parties shall protect children from abduction and child trafficking.
- Article 37, states that all children should be protected from torture, inhumane treatment or punishment, and imprisonment.

As many groups within signatory countries of the UN fall deeper into national debt to international lending agencies, many populations have fallen deeper into poverty. This has led to
many vulnerable and disadvantaged groups of people unable to cope with economic and social constraints that hinder their growth potential. The indefinite repayment of the national debt has prevented governments from providing more protection for its people, especially children. As a consequence, governments are then asked to adhere to various policies designed to redress these effects of debt as seen in the changing/deteriorating social conditions. Poverty is the number one social condition that is at the center of many social ills and deviations from what is right, not just from a moral standpoint but also from a human rights perspective, the law.

Adherence to the CRC

In order to bring into focus the consequences of poverty, governments have signed on to the Millennium Declaration and Development Goals (MDGs) in 2000 to guide the works of national governments. Countries are required to make the necessary national policy shifts and create relevant programmes to achieve the stipulated and agreed to goals. The MDGs are child-centered with its main overarching goal being the reduction of worldwide poverty and providing the basics for citizens to have improved chances of survival and inclusion. This agreement not only addresses human rights issues but also has brought into focus issues affecting the survival of children. In 1989, the United Nations Convention on the Rights of the Child was adopted; Jamaica ratified this in 1991. This is a binding treaty that includes 54 Articles with most speaking of children as individuals with rights. Jamaica has complied with the MDGs and has taken steps through the introduction of programmes, legislation and policies to adhere to the requirements of the CRC. A number of measures were taken in Jamaica in adherent to the CRC. The following are measures already implemented, taken from the 'The Status of the Rights of the Young Child in Jamaica' (2007):

- Memorandum of Understanding 2000 – to cooperate in developing policies and programmes to reduce and, ultimately, eliminate child labour from the country;

- The Early Childhood Commission Act 2003 – to oversee the early development of children;

- The Child Development Agency (CDA) 2004 – one main role is to use interventions to strengthen community and parental capacity to cope with the issues of raising children; the current focus has been on child rescue and custodial care;

- The Child Care and Protection Act (CCPA) 2004 – established laws for the care and protection of children and superseded earlier laws such as the Juvenile Act; it is to protect children from neglect and abuse and was implemented by the CDA; it gives adults the responsibility to protect the rights of children; it is the duty of families to facilitate children’s physical and developmental needs; outlines the role of the media, institutional authorities for protecting children, community; mandates the establishment of a Children’s Registry that will provide a complete database of abuses against children, abuses and neglect, with consequences in place for violation of child rights.

- The Early Childhood Act 2005 – this is for all aspects (regulations, policies and standards) of early childhood.
development in governing institutions responsible for the care of children under 6 years of age;

- Programme for Advancement through Health and Education (PATH) — is conditional assistance, for those who qualify, with the educational and health care requirements of children between the ages of 1-6 years of age;

- The Office of the Children's Advocate deals with legal matters concerning cases of neglect and abuse of children;

- There has been increased advocacy for the adherence to the rights of children, for example, through the media.

In 2004, began the Social Investment for Children Initiative, in collaboration with United Nations Children's Fund (UNICEF); United Nations Development Programme (UNDP); Planning Institute of Jamaica (PIOJ); Cabinet Office; Child Development Agency (CDA); Ministry of Education and Youth (MOEY); Office of the Children's Advocate (OCA); the University of the West Indies (UWI); Jamaica Coalition on the Rights of the Child (JCRC); National Centre for Youth Development (NCYD). The JCRC began an initiative to look at how much of the national budget is actually allocated to children. This work, with the collaboration of the above mentioned entities, has commissioned reports over a 10 year period to do just that. There is also the General Comment, which is in place to support the aims of the UNCRC by publishing the "interpretation of the content of human rights provisions" (Early Childhood Commission 2007:1). This is an important aspect of Social Investment for Children Initiative as this will help in creating a structure that can be monitored, evaluated, and therefore, will enable structural, and administrative changes and improvements, as they exist. It should also "enable the fulfillment of children's rights" (Chambers and Samuels 2007:3).

The level of adherence to Article 19 and Articles 32, 33, 34, 35, 37 of the UNCRC have become increasingly a point of the county's focus since a recent spate of violent acts against children, including brutal murders, have brought increased public attention and awareness. The abuses, neglect and other types of injustices against children in Jamaica have been very prominent in our local media as reports of various types of abuse occur.

The Inter Press Service News Agency (IPS news) on 22 October 2008, reported statistics from the Jamaica Constabulary Force indicating that 723 children between the ages of 5-17 years were reported missing, 353 found or voluntarily returned home, 560 of children missing over a 9 month period, were girls; there have been 398 murders involving children up to the age of 17 years, of this figure 196 cases have been solved. This leaves a total of 202 cases unsolved. There were 441 cases involving children that were shot and injured. Of this, 116 cases have been solved (Richards 2008). In both instances less than half of the cases have been solved. This shows a significant problem in the justice/legal system and perhaps its capacity to perform at more expedient and successful rates.

As a consequence of the increasing attention to abductions, rapes and kidnappings that have been at the forefront of the media, there has been an amendment to the police policy for handling missing children reports. This change gives the police the authority to respond immediately to such reports instead of the
required waiting period that was once in place (Richards 2008). According to the CDA ‘Intake Services Activities by case Category’ reports for 2007 to June 2008, 49 children were reported as abandoned; 969 children were reported as sexually abused; 1006 were physically abused and for 2008, there were 610 children reported as being neglected. In children’s homes across the island there are 6050 children being cared for (Anderson 2008).

To examine adherence to the rights of the child one has to examine not just the measures in place such as programmes, legislation and policies but most importantly the knowledge, understandings and perceptions of the public, including children, relevant professionals and other interests. It is also important to ascertain where people are obtaining their information. According to research conducted as reported in ‘The Status of the Rights of the Young Child in Jamaica’ 2007, there was a fair amount of knowledge about child rights, the Child Care and Protection Act (CCPA), the Early Childhood Commission or the Early Childhood Act. Children also had a fair amount of basic knowledge about what rights were and had some idea of their rights. Adults were reported to be well aware of child rights although it was noted that parents seemed to have less depth of knowledge and some participants did not know how to go about adhering to some of these rights. The information that some parents had came from the media and educational programmes or workshops (Early Childhood Commission 2007). This would suggest that there needs to be more public awareness of child rights.

The following is a general commentary on each of the supporting Articles based on anecdotal reports:

- Article 32, speaks to the right of the child to protection from economic exploitation, or child labour. There is not enough enforcement or investigations into these issues as street children begging and vending during school hours are very evident on a daily basis. The government and relevant agencies are currently trying to create a plan to address the issue of street children.

- Article 33, deals with protecting children from exposure to illicit drug use and trafficking. There are a number of children (young boys) that can be seen daily in inner city communities hanging out on the corner smoking illicit drugs.

- Article 34, outlines the rights of the child to be protected from all forms of sexual exploitation and sexual abuse, including their use in child pornography. The Child Pornography (Prevention) Act 2009 is currently being tabled in Parliament. Raids have been conducted in several known sex shops to see whether or not laws are being violated with the presence of under-aged children but no arrests have been made.

- Article 35, states that state parties shall protect children from abduction and child trafficking. Child trafficking is a fairly new problem in Jamaica and is currently being examined however with a lack of adequate resources it has been difficult to prevent more abductions.

- Article 37, states that all children should be protected from torture, inhumane treatment or punishment, and imprisonment. There are still practices
of holding children as adults under adult conditions today.

As a result of the CCPA and the Convention of the Rights of the Child, many NGOs and other supporting entities or organizations began to do their part in educating the public. There are programmes such as Parenting Partners Caribbean (early 1990s) and the Roving Care Giver Programme (1992) that have provided parenting manuals, educational workshops and programmes to disseminate information and provide practical support, these programmes are important in nature as they are preventative programmes, giving the public the tools and support needed to stem potential abuses and improper treatment against children.

Trinidad and Tobago has reported one of the highest levels of violence against children, along with Haiti and Jamaica (Meeks Gardner and Henry-Lee 2008). Trinidad and Tobago have also ratified the CRC (1989) and too have taken steps to support it. They have passed the Sexual Offences Act, the Domestic Violence Act which is aimed at protecting children from abusive homes, the Coalition Against Domestic Violence has implemented a hotline to report abuse and although Corporal Punishment has been banned, like Jamaica, it still persists. They have also signed the World Declaration for Survival, Protection and Development of Children in the 1990s, a revised National Plan of Action (2007) has been put in place for achieving goals as stated by the declaration with specific goals for combating sexual exploitation of children and child labour, they have established a family court for the best interest of the child and a National Abuse Registry. Also, there is no provision in the law that specifically prohibits trafficking in persons (children) however, there are other related laws such as the kidnapping, procurement of sex, prostitution, child labour laws, slavery and indentured servitude that may be used to prosecute such offenders and provisions in place to care for and protect such victims. In support of Article 37 of the CRC, sentencing of a child to prison is prohibited under the law (United States Department of Labour 2008).

Trinidad and Tobago’s Ministry of Education’s Student Support Services Division reported that young school children are vulnerable to abuses such as: rape; physical abuse, access to weapons, drug use and living with drug addicted parents. There were also reports of abuse in their homes or institutional settings (United States Department of Labour 2008). In Trinidad the statistics show that more families of African decent use violence as a form of discipline or just aggression towards the young (St. Bernard 2008).

The United Nations Human Rights Council (UNHRC) has reported that Trinidad and Tobago’s government, due to a lack of funding to expand social needs, is generally limited in its capacity to pursue its commitments to protect the rights and welfare of children (United States Department of Labour 2008).

The government had not passed implementing legislation for the International Labour Organization (ILO) Conventions 182 (Worst Forms of Child Labour Convention, 1999) and 138 (Minimum Age Convention, 1993), both of which were ratified. According to the US Department of State (USDO), enforcement of child labour laws in Trinidad and Tobago is weak due to a lack of a comprehensive government policy for all related procedures. (United States Department of Labour 2008).

However, while there are various outlets to support the rights of the child in Jamaica, there
are more deep-rooted cultural practices based on beliefs, religious or otherwise, that influence and guide the ways in which children are reared/ cared for and treated. These principles, beliefs and practices have made it challenging for many of the laws to be enforced and consequences meted out. The justice system is also inadequate as it is. Living in a 'culture of violence' breeds fear of reporting to the police when acts that violate rights are committed. Fear is not only directed at perpetrators but also at law enforcement officers, as there is known corruption within the Jamaica Constabulary Force.

**Issues relating to a ‘child-first’ policy**

There are inter-related issues concerned with the governance of a ‘child-first’ policy framework. Such issues include cultural practices, changing institutional arrangements, paradigm shifts and policy practices. Cultural practices are significant in how well the country will adhere to child rights. Children suffer in a number of ways as witnesses to violence, victims of violence and for some, as perpetrators of violence. One major drawback in reducing the incidence and continuation of crimes against children is fear. Fear has crippled many citizens from reporting these acts of violence against children. People are not only afraid of the perpetrators but also law enforcement officials. There are other issues such as mothers being afraid to report the accused for a number of reasons such as, they are often the financial providers for the family, families do not want to bring shame to the family by making known cases of sexual abuse on children in their homes and the child may fear the culprit for a number of reasons including threat to their personal safety and that of other family members.

Culture and religious beliefs play important roles in understanding the mindset of citizens in relation to children’s issues. Children are often seen as the property of parents or the caregiver and so parents can do as they please with them. There are religious beliefs about methods of disciplining children that makes it extremely difficult to stop the use of corporal punishment in the homes and in public institutions involved in the care of children. Corporal punishment has been officially banned for use in public spaces but has not been reflected in practice. Incidents of this nature tend not to have follow-throughs where the inflictor is brought to justice and convicted. Also, there is a tendency to think that sexual harassment by men in the streets is normal, this is one of the problems facing our society: we do not know what constitutes inappropriate behaviours towards our young. Sexual advances are seen as a ‘normal’ (Meeks Gardner et al. 2008:12) part of everyday life for children in their early years of development. This is disturbing and has serious implications for our young (and also their future gender roles and practices) and society as a whole and is reflected in the statistics that indicate Jamaica as having one of the highest incidences of sexual abuse than all reported forms (Meeks Gardner et al. 2008). Violence is also a cultural problem that is seen as normal. These practices are reflections of a highly dysfunctional society enslaved by the effects of our colonial past which have been passed on and have gotten worse over the decades. Changes to this type of culture need to be addressed if any forms of legislation, policies or programmes are to become nationally effective.

The country needs to be empowered with knowledge, alternatives to what they are accustomed to and solutions that are practical for Caribbean cultures. Media is very vital in this sphere and policy should include their role in informing our society to be able to differentiate between right and wrong, lawful and unlawful and the enforcement of consequences. In
addition, there also needs to be more attention placed on informing society on the consequences (legal and long-term psychological effects) of violence against children and abuse in all forms. Also, in the fight against neglect and abuse, the public needs to be aware of the services that are available to them if they find themselves in situations that compromise their safety, happiness and development of children and also their environment. This speaks to the need for more collaborative efforts of government programmes, NGOs, and other agencies that offer protection, assistance, information and alternatives for families in crisis. Special attention also needs to be given to the gender bias and differences in legislation and cultural practices, as this has had significant negative impact on our boys as they formulate identities on their journey to becoming men, and as a backlash how they see and treat women in their adult years. Schools also need to play their role in teaching civics to students so they will understand their roles and responsibilities in society as they mature. There needs to be a cultural transformation on most if not all spheres for there to be effective collaborations of actors and a change in cultural thinking and practices.

“Children less than 15 years constitute as much as 30 percent of the population in many Caribbean countries and therefore warrant greater policy attention” (Henry-Lee 2008: xx). In Jamaica, as published in the Social Investment for Children Initiative: Invest in our Children, Build our Nation, “children 0-18 years constitute 35.2% of the population” (Social Investment for Children Initiative 2007: 30). In addition to the fact that our children are the future leaders of nations and directors of future cultural practices, they make up a significant portion of Caribbean populations and so need protection through policies. It is well known that Caribbean economies, especially those heavily indebted to external entities are limited in resources to do more for local populace. However, there needs to be more organization and structure when dealing with issues relating to children, so they can be included in national budgets. This will allow for greater monitoring and evaluations of programmes and checks on balances in the effectiveness of policies to enable improvements where needed, etc. This as a cultural practice needs to be addressed and embraced by the State.

**Paradigm Shifts**

Paradigm shifts have occurred in policy and how they are created. There has been new energy in Jamaica directed at creating policies through the use of evidence based research (Henry-Lee 2008). This is very important as it makes use of one of the principles of the UNCRC of participation. In time, no longer will decisions be made from offices and meetings with persons who do not suffer from or experience the issues at hand, now those affected are included where they help to create their own solutions. This is important as for obvious reasons it should have direct effects on those affected. Although this is a good measure to practice this process has more effective ways of execution than others. There may be differences in outcomes depending on the level of collaboration by relevant actors in the research process. However, this research based approach is not always the practice and this needs to change. Child advocates need to demand this from relevant actors, as well as more participation of those affected such as children and parents (Henry-Lee et al. 2008).

Other paradigm shifts include a move towards a Social Investment Model or ‘child-first’ policy model from a Welfare State Model. This is an important shift as this enables
empowerment, inclusion and most of all an investment in human capital (Schoburg 2008). This type of "investment" is important as it is directed towards long term returns and not short-term fixes, moving from "equality of outcomes" to "equality of opportunity/life chances" (Schoburg 2008: 273). Also, there has been increased attention given to gender disparities in laws and in biased attitudes mainly towards males. In the Sexual Offences Act it is gender specific and does not allow for females as perpetrators or males as victims of sex crimes. The final shift identified is the removal of a child from their home (child rescue) is now being seen as a last resort. Instead, there is a move towards family intervention offering counseling, education on the rights of the child to both parents and children, and more mentoring. Institutional shifts will involve a change from thinking in moral terms in relation to the care and protection of children to legal protection (Schoburg 2008) that is enforceable and carries punitive consequences.

Conclusion

The realization of the rights of the child is a very difficult one as it involves not just a shift in cultural thinking and practices, which is a tremendous feat in itself, but also institutional shifts in thinking and adhering to laws. Culture often dictates what is socially acceptable and therefore means accepted by the people as habitual practice, which makes it difficult to convince the populace that something that has been practiced for years, of which many parents themselves have experienced while they were children, is now wrong and most of all a crime under the law. This has proven to be a major issue and drawback in offences being committed. With that said, there is also the issue of the availability of resources to enforce these laws. As it is, there is inadequate funding and resources available to accommodate the potential numbers of reports of offences committed against children, not just to place them in holding cells but to go through the judicial process in a timely and efficient manner. Also, measures of investigations may not be adequate to properly process cases such as child sexual abuse through the use of forensic analysis and DNA testing.

Although Jamaica has ratified the UNCRC and have implemented policies in support of this convention, there are cultural and economic factors that will challenge the transition of an entire country into a rights-based way of thinking where children are concerned. Here are two examples of cultural over-riding law: (1) schools have not enforced the ban on corporal punishment and it is still being practiced in both Trinidad and Tobago and Jamaica, and there are no reports leading to punitive measures by law enforcement and (2) there are many children in plain sight begging and/or selling on the streets during school hours, which is against many legislation and policies in place. There has been evidence that Jamaica (govt., NGOs, etc) has been playing greater roles in trying to disseminate information to the populace on the changes introduced. However, there is still an enormous amount of work left to be done. Although these changes may seem overwhelming, they are not impossible, however, there has to be collective input in the same direction by most of society. The lack of resources and the over-arching fear of many members of society from adhering to laws for fear of reprisal or repercussions are our greatest challenge for change, but it can be accomplished. Trinidad has a similar situation as Jamaica, in terms of cultural beliefs and practices, and lack of sufficient resources to make legislation enforceable.

Suggested framework for action to improve the level of adherence to the rights of the child:
• There needs to be an aggressive campaign using the media, relevant institutions such as schools, hospitals, antenatal clinics and workshops to educate the public and relevant professionals about child rights, issues affecting children, potential consequences of improper treatment of children, developmental stages and its importance in the scheme of things.

• Educate and train educators, train police officers in a special unit that deals with sensitive issues affecting children and families, making it gender appropriate. Meaning, for sexual offences use female counselors and officers.

• Station social workers in hospitals, schools and other relevant positions to monitor situations and for referrals.

• Create more incentive for parents to play more active roles in their children's lives through trade-offs. For example, now that tuition fees have been removed there should be some mandatory responsibility for parents in relation to the school their child attends to be able to receive this benefit for the duration of the child’s academic life.

• Create more collaboration of programmes, NGOs, JCF, policy makers, relevant agencies and citizens to educate the public on services available based on circumstances, in other words, the ability to find help when one finds themselves in certain situations, alternatives.

• Do research on what would make people feel safe to report incidents of abuse.

• Present facts to the populace to emphasize and reinforce points on the effects and consequences of child abuse, tailor-made to suit various audiences. Use documentaries/informative programmes using ‘grass-roots’ culture to send the message.

• Create more community level involvement that includes the police, citizens, parents, children, schools, church communities and social workers.

• Be persistent in the message. Have the campaign ongoing until there is evidence of change. Everyone hates the history/legacy of slavery, therefore, associate the message of violence as an act as bad as slavery citing practical linkages to child rights or the violation of child rights. Effective promoting/marketing of child rights is paramount.

Once the populace is onboard then polices can come into real effect. Jamaica and Trinidad and Tobago have taken steps to adhere to the UNCRC but faces similar challenges to enforce and implement some. However, such issues deeply embedded in culture have to be approached in timely but consistent (in the message) methods.
References


