CAPRI

FIX THE VILLAGE

Governance and Accountability for Children in State Care in Jamaica

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Acronyms

CAP	Children's Advisory Panel
CCPA	Child Care and Protection Act
CEDAW	Convention for Elimination of Discrimination Against Women
CEO	Chief Executive Officer
CISOCA	Centre of Investigation for Sexual Offences and Child Abuse
CPFSA	Child Protection and Family Services Agency
CSO	Civil Society Organisations
CDA	Child Development Agency
CPA	Child Protection Act
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisation
DCS	Department of Correctional Services
ECC	Early Childhood Commission
GOJ	Government of Jamaica
HR	Human Rights
IACHR	Inter-American Commission of Human Rights
JFJ	Jamaicans for Justice
LIFE	Living in Family Environment
MDA	Ministries, Departments and Agencies
MOEYI	Ministry of Education, Youth and Information
MOE	Ministry of Education
MNS	Ministry of National Security
MOH	Ministry of Health
MOJ	Ministry of Justice
NCR	National Children's Registry
NGO	Non-Governmental Institution
MOEYI	Minister of Education Youth and Information
NPACJ	National Plan of Action for Child Justice
NPACV	National Plan of Action for an Integrated Response to Children and Violence
NPSC	National Parenting Support Commission
OCR	Office of Children's Registry
OCA	Office of Children's Advocate
STD	Sexually Transmitted Diseases
UN	United Nations
UNICEF	United Nations Children's Fund
UDHR	United Nations Declaration of Human Rights
VSD	Victim Support Divisiona

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Executive Summary

Consistent with many other low-resourced countries,

Jamaica

DOES NOT HAVE A ROBUST GOVERNANCE STRUCTURE to coordinate and oversee the **effective management of state care programmes for children.**

This report examines the quality of state care for children in Jamaica. It focuses on the role that governance plays in the development and implementation of policies and programmes whose stated aim is to promote the best interests of children in need of care and protection. Consistent with many other low-resourced countries, Jamaica does not have a robust governance structure to coordinate and oversee the effective management of state care programmes for children. The current governance structure lacks a number of important characteristics including: active collaboration, clear escalation pathways, effective and consistent communication, as well as guidance and enforcement mechanisms.

The absence of a collaborative approach to governance is reflected in the (i) general, vague national policies and protocols, which provide limited guidance on implementation; (ii) disparity between policy and implementation, where guidelines are not adhered to, without any measures for accountability; and (iii) unsustained and inconsistent delivery

of fundamental needs of children. These weaknesses exacerbate issues of abuse, as has been documented in Jamaica's alternative care settings, and negatively impact the overall capacity of the state to provide safe places for children in need, and to efficaciously transition children to family settings, whether through family reunification, foster care, or adoption.

This report explicates the above issues with a view to making specific recommendations to strengthen Jamaica's childcare governance structure, so that it is consistent with international best practice of state care in low-resourced jurisdictions, and to render it better suited to look after the best interests of Jamaican children in need of care and protection.

This report focuses on the role that governance plays in the development and implementation of policies and programmes whose stated aim is to promote the best interests of children in need of care and protection.

Recommendations

Long-term changes

There are a number of legislative changes that, if made, would clearly identify and define roles and responsibilities across agencies and create independent oversight and a pathway of accountability within the state care programme:

1   Conduct a review exercise, which considers empirical research in addition to stakeholder consultations, to order to amend the Child Care and Protection Act, so that it is consistent with evidence-based research and a contextualised perspective.

Similarly, undertake an updated review of the Adoption Act, informed by evidence and best practice in other jurisdictions.   **2**

3   Requirements as part of all legislative reform to include youth and community representation on all agency boards, as a means of ensuring their involvement in the development and implementation of all related policies and all other strategic decision-making. This could be achieved through the inclusion of former wards of the state, a representative from the foster parent association and/or the parenting commission, as well as relevant CSO representatives.

Ratify the optional protocol to the Convention on the Rights of the Child (which allows the CRC to carry out monitoring procedures), and incorporate the CRC, and the UN Guidelines on Alternative Care into domestic legislation.   **4**

Medium-term changes

While legislative change is necessary, there are several policy actions that can be done ahead of a change in legislation, a process which can take several years.

5   Implement the software package SOHEMA across all relevant state agencies, with the requisite training and change management.

Design and implement a data collection system with protocols for capturing data on all applications and all case reports. Whether by adding capacity or by re-directing existing personnel such as the existing CPFSA statisticians, make data collection and data analysis a routine aspect of all the CPFSA and other agencies' work, as well as the preparation and presentation of regular reports analysing the data. Undertake a project to digitize existing case files, at the same time as cleaning the dirty data that those case files contain to create data sets.   **6**
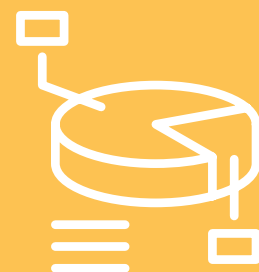
Medium-term changes (cont'd)

7 Engage in research on child care in Jamaica, comparing the effectiveness of each stream of the state care programme (institutional, foster care, adoption, transitional), as well as an evaluation report on the effectiveness of the existing ancillary programmes.

Establish and institutionalize an information sharing mechanism between the CPFSA, NCR, OCA, and CISOCA. That mechanism should allow for and facilitate input from academia, civil society, the private sector as relevant, and the Children's Advisory Panel. A similar multi-sectoral investigation mechanism should be designed and implement. **8**
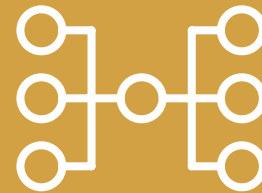
Short-term changes

There are also changes to programmes and agencies that are already in operation or near implementation that can be amended to improve efficiency.

9 Appoint and convene the Advisory Council and the Board of Visitors, as set out in the CCPA (and Regulations). These will require dedicated administrative support, housed in and directed by a body other than the CPFSA, to be effective as an independent oversight mechanism.

Currently, participation in the Children's Advisory Panel is dependent on the educational performance of children. Change the terms of reference regarding the membership of the Children's Advisory Panel, so that the needs of the most at-risk are represented, such as the disabled and pregnant teens. **10**

1

Introduction

There are an estimated

4,875

children in state care in Jamaica,

0-18

The importance of a family environment to a child's development and well-being is incontrovertible, and every child has the right to live in a family environment.[1] Article 7 of the United Nations Convention of the Rights of the Child (CRC) states that children have a right "to know and be cared for by his or her parents."[2] However, there are many practical instances where children cannot live with their parents. Article 20 of the CRC identifies the state as being "responsible for ensuring care, where children are temporarily deprived of their family environment."[3] Most governments across the world, Jamaica being one, have developed and operate state care programmes to meet this inevitable need.

Over the past two decades, the Jamaican government has made efforts to improve the quality of state care for children. In addition to developing legislation in the form of the Childcare and Protection Act (2004), a number of social programmes have been implemented to offset some of the systemic problems which prevent or delay the successful placement of children in homes. In February 2021 a proposal for a "From Cribs to Loving Arms" initiative was made public; the initiative aims to ensure that children below the age of three who are taken into state care are immediately placed in foster care, rather than a childcare facility.[4]

However, these efforts are marred by consistent reports of abuse and sub-standard living conditions, which have come to typify characterizations of state care in Jamaica. There are an estimated 4,875 children in state care in Jamaica, ranging from ages 0-18. If these children are being ill-served, as the existing research suggests,[5] their rights are being abused, their development is encumbered, and they will be ill-equipped as adults to participate in social, civic, political, and economic life. These reports[6] raise several questions, among them: does the removal of a child in crisis to state care, particularly to a residential facility, further their best interests? Where is the evidence that changes have been made that remedy the ills that the reports have pointed out? What is it about Jamaica's management of its care for children in its custody that consistently returns these adverse conclusions?

The reports on state care in Jamaica all point to the weak governance of the

1   Nicole Petrowski, Claudia Cappa and Peter Gross, "Estimating the Number of Children in Formal Alternative Care: Challenges and Results," *Child Abuse & Neglect* 70, (August 2017), https://doi.org/10.1016/j.chiabu.2016.11.026.

2   UN General Assembly, Convention on the Rights of the Child, *United Nations, Treaty Series* 1577 (November 1989): 3, www.refworld.org/docid/3ae6b38f0.html.

3   Convention on the Rights of the Child.

4   "CPFSA to Roll Out 'From Cribs to Loving Arms' Initiative," *Gleaner*, February 3, 2021, http://jamaica-gleaner.com/article/news/20210203/cpfsa-roll-out-cribs-loving-arms-initiative.

5   Child Development Agency, "Performance on Report into Conditions in Children's Homes and Places of Safety 2003 (Keating Report)," January 2012, www.cda.gov.jm/sites/default/files/content/Keating%20Status%20Report.pdf.

6   Keating Report.

Article 7 of the United Nations Convention of the Rights of the Child (CRC) states that children have a right "to know and be cared for by his or her parents." However, there are many practical instances where children cannot live with their parents.

state care programme. Weak governance results in, among other undesirable outcomes: vague and inadequate case management and monitoring protocols which fail to document the individualized needs of children entering state care; monitoring practices that lack legislative enforcement; and several reports of abuse and neglect that are not addressed. Further, since the Child Care and Protection Act (CCPA) was passed in 2004, aside from an amendment in 2007, there has been no legislative reform, nor have there been overarching policy changes, that would have the "teeth" to create and enforce accountability.

This report focuses on state care for children, specifically on state care as provided in facilities, and the governance and management structures that shape, administer, and oversee the state's provision of care for children in need. The report endeavours to answer the questions:

To what extent are the rights of children in care being observed?

How effective is the current structure and procedures with regard to the best interests of the child?

How has the system been reformed, particularly in response to official investigations, and extra-governmental reports?

What governance changes could improve the quality of care the state provides to children in need of care and protection?

The first section of the report details the research methodology, followed by relevant background information on state care: defining state care, identifying a universal standard for assessing the quality of care, and highlighting the value of robust governance in service provision. The second section provides a contextual understanding of state care in Jamaica, describes the governance structure, and identifies the strengths and weaknesses of the state care programme. The third section highlights the gaps in the system, and their impact on the programme's effectiveness, and on the capacity to protect children from harm and successfully return them to a family environment. Finally, the report offers policy recommendations towards creating a robust and sustainable collaborative governance system to improve the quality of care for children in the custody of the Jamaican state.[7]

Methodology

This attempt to highlight the gaps in the current governance structure, and their impact on the overall quality of state care for children in Jamaica, occurs in the context of limited available documentation on the structure and procedures of the state care programme in Jamaica. A qualitative approach is thus most suitable.[8] A desk review, archival research, and semi-structured interviews were the methods used to capture a detailed and context-specific understanding of the governance approach of the state care programme in Jamaica. Eight in-depth interviews were conducted with stakeholders of state care in Jamaica, ranging from policymakers to academics. That information provided for the identification and analysis of the governance approach, in terms of the policy and protocols that govern the programme, and their implementation.

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7   There are limitations to the generalisability of the study, particularly as regards the collection of data, specifically access to interviewees and relevant archival research. The limited availability of documentation has been mentioned. This limited availability was compounded by delays in accessing the documents, even through Access to Information (ATI) requests to various government agencies. As well, many of the monitoring reports that were available were incomplete or outdated.

8   Margaret Sallee and Julee Flood, "Using Qualitative Research to Bridge Research, Policy, and Practice," *Theory Into Practice* 51, no. 2 (April 2012): 137-144, https://doi.org/10.1080/00405841.2012.662873.

The report offers policy recommendations towards creating a robust and sustainable collaborative governance system to improve the quality of care for children in the custody of the Jamaican state.

2 Jamaican Children in Need of Care and Protection

It is estimated that for every

3 months

spent in care, between the ages of 0–3 years

1 month

of development is lost

Jamaican children, who comprise 40 percent of the population,[9] grow up surrounded by violence, and many of them are victims of violence. Eighty-five percent of children experience violence in their homes and communities, particularly in poorer areas.[10] Eight out of ten Jamaican children under the age of 15 are subject to severe punishment, such as corporal punishment and psychological aggression.[11] The majority of rape victims are between the ages of 10 and 17. One out of five girls between the ages of 15 and 19 have been subjected to sexual violence.[12] Approximately 14 deaths per 100,000 children between the ages 10 and 19 are as a result of homicide.[13] A 2016 Women's Health survey found that one in three women victim-survivors witnessed intimate partner violence during their own childhood, as but one indication of the possible long-term consequences of experiencing violence.[14] Experiencing this kind of violence as a child has poor outcomes for adulthood. Between the ages of two and four, violence has detrimental effects on brain development, producing elevated levels of cortisol, thus limiting production of brain cells.[15]

Removing children from violent situations, rescuing children who suffer from neglect, and taking into custody children in need of care and protection, is the responsibility of the state. The Jamaican state, in accordance with this role, has ratified the United Nations Convention of the Rights of the Child (CRC), and has passed and implemented its own national legislation: The Child Care and Protection Act (2004), Children's Home Regulations (2007), and the Maintenance Act (2005).[16] There are several state agencies whose role it is to care for children in need, including by taking them into state care.[17]

State care for children in Jamaica, however, is wanting. The Office of the Children's Advocate (OCA), a state entity mandated to protect children's rights, has consistently reported high child-to-social worker ratios, placement of children in adult institutions, and the creation of

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9   Caribbean Policy Research Institute, "Situation Analysis of Jamaican Children," Kingston: UNICEF, June 2018, www.unicef.org/jamaica/reports/situation-analysis-jamaican-children-2018.

10   UNICEF, "Childhood in Jamaica: Stained by Violence," September 2019, www.unicef.org/jamaica/reports/childhood-jamaica-stained-violence; UNICEF, "UNICEF Country Profiles," data.unicef.org/country/jam/.

11   "Childhood in Jamaica: Stained by Violence."

12   "Childhood in Jamaica: Stained by Violence."

13   "Childhood in Jamaica: Stained by Violence."

14   "Childhood in Jamaica: Stained by Violence."

15   Research indicates that younger children from the poorest households in Jamaica are subject to more severe forms of punishment that older children or children from wealthier households. "Childhood in Jamaica: Stained by Violence.

16   "Situation Analysis of Jamaican Children."

17   Residential care is defined as "care provided in any non-family based group setting, such as places of safety for emergency care, transit centres in emergency situations, and all other forms of short and long term state care facilities, including group homes." UN, 2010: Article29a [iv].

Children in long-term institutional care suffer from reduced physical, cognitive, and hormonal development, as well as issues around attachment security. They are at increased risk of physical and psychological abuse, and neglect.

State Care for Jamaican Children

Throughout the world, including in Jamaica, the primary goal of the state child system is family reunification, based on the premise that the best place for a child is with his or her biological family. The UN Guidelines for the Alternative Care of Children identifies the family as "the fundamental group of society and the natural environment for the growth, well-being, and protection of children; efforts should primarily be directed to enabling the child to remain in or return to the care of his/her parents, or, when appropriate, other close family." More specifically, paragraph 14 notes that the removal of a child from their home is not ideal: "Removal of a child from the care of the family should be seen as a measure of last resort and should, whenever possible, be temporary." Jamaica's CCPA affirms these principles.

There are, however, circumstances where a child cannot be with his or her biological family. There are a range of reasons that children enter state care, including abandonment, being orphaned, poverty, abuse, and disabilities.[19] The CCPA indicates that children who are deemed "uncontrollable" may also be placed under state care. The majority of these "uncontrollable" children are often detained in juvenile correctional centres, but the legislation permits this cohort to be placed in state care as well.[20] It is thus understood that children in state care are particularly vulnerable and have additional needs, beyond the average child, to consider.

As of September 2018, 4,443 of Jamaica's estimated 1,184,467 children were in state care,[21] or, as it is otherwise termed, were "wards of the state." There are a variety of state care options in Jamaica where children might be placed (see Appendix). Fifty-six percent of wards of the state are living in a family environment (foster care or family reunification), whilst the

state institutions that are inadequately staffed and resourced to meet the needs of Jamaican children, particularly those with special needs.[18]

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18   Government of Jamaica, "National Plan of Action for an Integrated Response to Children and Violence (NPACV) 2018-2023," 2018, www.end-violence.org/sites/default/files/paragraphs/download/Action%20plan%20jamaica.pdf.

19   Petrowski, Cappa and Gross, "Children in Formal Alternative Care."

20   "Situation Analysis of Jamaican Children."

21   Nickieta Sterling, "Gov't Placing Focus on Foster Care," *Jamaica Information Service*, February 11, 2019, jis.gov.jm/govt-placing-focus-on-foster-care/.

rest are in places of safety or children's homes.[22] In Jamaica, there are nine government-owned and run children's residential facilities, and over 45 private children's homes.[23] Forty-four of those private facilities are children's homes and one is a place of safety. Of the nine government institutions, five are places of safety and four are children's homes. The government owned institutions are run by the Child Protection and Family Services Agency (CPFSA), the principal government agency for children. The CPFSA provides oversight for all facilities, whether private or state-run.[24] Children in these facilities are considered wards of the state, which means the state assumes all parental responsibilities, such as medical and educational support. All care homes are meant to adhere to the standard of care outlined in the CCPA, as well as its associated regulations.

Advantages and Disadvantages of State Care

Where there is a need for a child to be removed from an unsafe home environment, short-term residential care can prove to be advantageous. [25] It provides suitable accommodation for the temporary removal of a child from harm, and for the provision of the child's fundamental needs; it also allows for continued opportunities for

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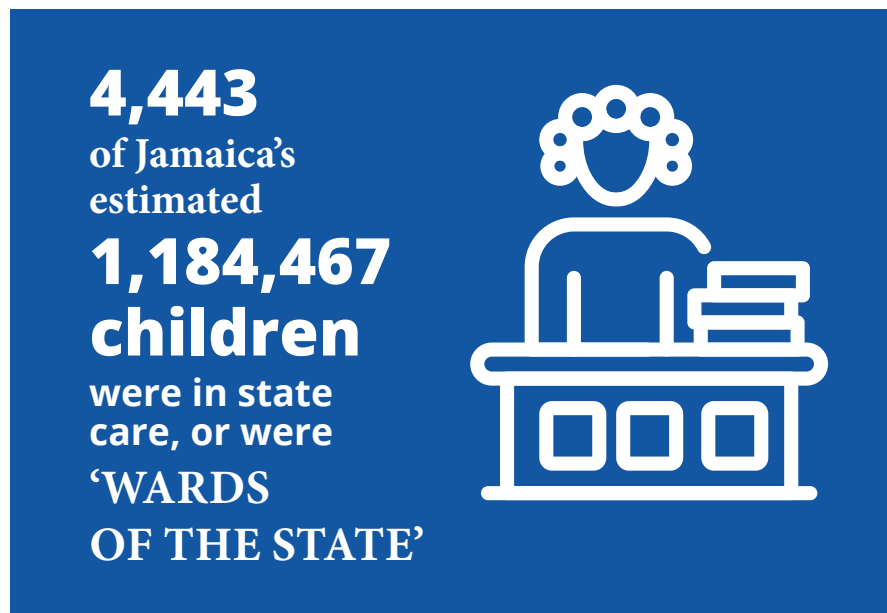
social development because of children's access to school and positive adult role models. High quality state care has shown improvement in relationships between child and family, and increased likelihood of family reunification.[26]

However, extended time spent in state care, which is intended to be temporary is likely to have a negative impact on a child's development, regardless of the standard.[27] Children in long-term institutional care suffer from reduced physical, cognitive, and hormonal development, as well as issues around attachment security. They are at increased risk of physical and psychological abuse, and neglect.[28] It is estimated that for every three months spent in care, between the ages of 0 - 3

years, a month of development is lost. Research on state care in developing states such as Haiti and Cambodia noted that children in care are more vulnerable to health risks, and often have poorer growth trajectories, and lower social and emotional cognitive functioning.[29] Long term state care, even in higher income jurisdictions, leads to poor outcomes: outcome data for children care from the Boys Town Initiative, which has over ten locations across the United States, shows that their high school dropout rates are as high as 75 percent, their use of hard drugs is 50 percent higher than the average population, and up to 80 percent are likely to have mental health or behavioural problems.[30]

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22 Sterling, "Foster Care."

23 Government of Jamaica, "Children's Homes to be Renovated," last updated February 18, 2021, https://moey.gov.jm/children's-homes-be-renovated/. However these numbers vary across different reports, highlighting the poor monitoring for state care in Jamaica.

24 Sterling, "Foster Care."

25 Michael Little, Amelia Kohm and Ronald Thompson, "The Impact of Residential Placement on Child Development: Research and Policy Implications," *International Journal of Social Welfare* 14 (2005): 200–209.

26 Elizabeth Fernandez and Jung-Sook Lee, "Accomplishing Family Reunification for Children in Care: An Australian Study," *Children and Youth Services Review* 35, no. 9 (2013), https://doi.org/10.1016/j.childyouth.2013.05.006.

27 Little, Kohm, and Thompson, "Residential Placement."

28 UNICEF, "Data Gaps on Children in State Care Leave the Most Vulnerable Unaccounted For," June 1, 2017, www.unicef.org/press-releases/data-gaps-children-residential-care-leave-most-vulnerable-unaccounted.

29 Beth L. Rubenstein, Matthew MacFarlane, Celina Jensen and Lindsay Stark, "Measuring Movement into State Care Institutions in Haiti after Hurricane Matthew: A Pilot Study," PLOS One (April 2018), https://doi.org/10.1371/journal.pone.0195515.

30 Ronald Thompson, Jonathan Huefner, Daniel Daly and Jerry Davis, "Why Quality State Care Is Good for America's At-Risk Kids: A Boys Town Initiative," Boys

The nearly two dozen reports on state care in Jamaica, over several years, detail abuse, neglect, and sometimes even inhumane living conditions that are tantamount to a range of human rights violations. In 2008-2009, there were 2,028 reports of child abuse in children's homes made to the CDA.[31] Measured against current numbers, that is one report each for nearly half of all children in care. The reports describe weak governance systems, with particular reference to poor monitoring and oversight of care homes. They also account for the impact of those lacking systems, such as poor implementation and poor outcomes for children in care.

The details of the reports are generally disturbing in their documentation of the failure of the state to meet its responsibilities towards children under its care. The 2004 Jamaican government-commissioned Keating Report, an inquiry into the state of children's homes, noted consistently high incidences of abuse, the placement of children in adult detention centres, and lack of access to medical care and schooling. In 2009, a Jamaicans for Justice (JFJ) assessment of state care for children documented and analysed over 1,600 incidents over ten years, including physical and sexual abuse, attempted suicides, and self-harming by children living in institutions; 558 of these incidents took place within a five-year period.[32] The report also highlighted poor monitoring practices, such as missing case files, failure to document instances of abuse, or child deaths. The 2014 Auditor General's report found that the CDA had failed to monitor

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15–19

**HAVE BEEN SUBJECTED
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the licensing requirements of children's homes, as 35 of the 49 privately run children's homes were operating without licenses for at least two years and were unable to provide up-to-date information for the other 13 operational homes. These are but a sample of over 14 national and international reports that have been done since 2003. The broad implication of these consistently damaging accounts and reports is that the Jamaican state lacks the political will to make the necessary changes recommended within these reports to adequately protect the children in its care.

The existing options for Jamaican children in need of care and protection, as they have been set out above, contain gaps that forestall the state from providing high quality care to children in need, and looking about the child's best interest, particularly with regard to

their being securely raised in a family environment. What is there for children is at best lacking and at worst swapping the difficult conditions from which they have been removed to situations that, while different, may be just as damaging to them.

But what does high quality state care look like? How does Jamaica compare to such standards? In the following section, we outline human rights as a normative framework for assessing the quality of state care for children, with a focus on governance. This framework will form the foundation of the examination of the impact of governance on the state's capacity to provide quality care for children in Jamaica. Good governance is at the core of any successful high-performing organisation or system,[33] and governance is critical to state care outcomes.[34] Many developing countries' child care systems lack robust governance structures, as exemplified by vague policies and guidelines, limited involvement of stakeholders, lack of monitoring and evaluation, and poor administrative capacity. Particularly in the public sector, governance provides the foundation of sound planning and consensus, the setting of achievable goals by identifying capacity, accountability through effective monitoring, and sustainability by way of consistent evaluation and improvement. The consideration of these factors not only leads to successful outcomes for stakeholders, but increased public confidence in and resilience of the programme itself.

Town, 2020, www.boystown.org/quality-care/Documents/why-quality-care.pdf.

31 Keating Report.

32 Syranno Baines, "Hazards in Homes - Study Finds More Than 1600 Critical Incidents in Childcare Facilities," *Gleaner*, June 28, 2018, jamaica-gleaner.com/article/lead-stories/20180629/hazards-homes-study-finds-more-1600-critical-incidents-childcare.

33   John Bennett, "Early Childhood Education and Care Systems: Issue of Tradition and Governance," *Encyclopedia on Early Childhood Development*, rev. ed., February 2011, www.child-encyclopedia.com/child-care-early-childhood-education-and-care/according-experts/early-childhood-education-and-care.

34   Emelie Shanks et al., "Impression Management in the Market for State Care for Children and Youth in Sweden," *Journal of Social Policy and Administration* 55, no. 1 (2020), https://doi.org/10.1111/spol.12613.

3 Human Rights as a Normative Framework for Evaluating State Care for Children

Good governance is:
participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive,
and it follows the rule of law

Human rights (HR) are a useful framework for assessing the overall quality of state care for children, including the quality of governance. The standards outlined by international and regional human rights instruments provide a framework for evaluating the current governance approach to state care in Jamaica, as well as identifying best practice. Human rights are defined as "rights, not benefits, duties, privileges or some other perhaps related practice" that individuals are entitled to due to their status as human beings, or "deriving from the inherent dignity of the human person."[35] They are a universal set of principles that have been applied across jurisdictions with varied social, economic, and political differences.[36]

With regard to children who lack agency and require special protection, the human rights approach aims to meet children's fundamental needs for development as human beings. These rights are based on a set of principles: freedom from discrimination, the right to life, the right to survival and development, and respect for the views of the child.[37] Jamaica, in its own constitution, and in its ratification of international treaties, guarantees every child the right to protection. Key rights secured by the Jamaican charter include the right to equitable and humane treatment by any public authority in the exercise of any function, the right to information, and the right to privacy and protection of family life.[38] Jamaica has ratified seven of the nine core international human rights treaties, including the Convention for the Rights of the Child (CRC).

Human rights guidelines are consistent with evidence-based research. Much of the universal principles and specialised HR treaties reflect the research and best practices developed across jurisdictions that could be adapted and incorporated to create standards to fit local context. In addition to universal goals, these instruments also articulate the importance of stakeholder participation, monitoring and evaluation mechanisms, as well as the consideration of contextualised responses, all of which are elements of collaborative governance.

Collaborative Governance

Governance refers to "structures and processes that are designed to ensure accountability, transparency, responsiveness, rule of law, stability, equity and inclusiveness, empowerment, and broad-based participation. Governance systems set the parameters under which management and administrative systems operate. Governance is about how power is distributed and shared, how policies are formulated, priorities set, and

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35 Jack Donnelly, "Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights," *The American Political Science Review* 76, no. 2 (June 1982): 303-316.

36 Alejandro Bendana and Tanja Chopra, "Women's Rights, State-Centric Rule of Law, and Legal Pluralism in Somaliland," *Hague Journal on the Rule of Law* 5, no. 1 (March 2013): 44 - 73, https://doi.org/10.1017/S1876404512001029.

37 "Situation Analysis of Jamaican Children."

38 Constitution of Jamaica, section 13 (3).

Good governance minimizes corruption, takes the views of minorities into account, ensures that the voices of the most vulnerable in society are heard in decision-making, and is responsive to the present and future needs of society.

An ideal governance framework for state care for children,

that meets human rights standards, comprises the following characteristics:

ADMINISTRATIVE CAPACITY, particularly with regard to monitoring and evaluation of internal processes and policies;

stakeholders held accountable."[39]

Good governance is characterised by eight characteristics. It is participatory, consensus-oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive, and it follows the rule of law. Good governance minimizes corruption, takes the views of minorities into account, ensures that the voices of the most vulnerable in society are heard in decision-making, and is responsive to the present and future needs of society.

Collaborative governance is defined as "the processes and structures of public policy decision making and management that engage people constructively across the boundaries of public agencies, levels of government, and/or the public, private, and civic spheres in order to carry out a public purpose that could not otherwise be accomplished." With regard to state care for children, collaborative governance is an approach to governance that is consistent with the normative framework of human rights in terms of emphasis on contextualisation, sharing,

and evidence-based practices.[40]

Collaborative governance is considered a modern approach, particularly in its emphasis on networking, where governments engage in multi-agency approaches involving partnerships with non-governmental stakeholders. Under a traditional hierarchical mode of governance, policymaking is likely to be a top-down process. However, collaborative governance is characterised by the creation of networks of all stakeholders that have comparable consideration in decision-making.[41] This is a growing trend across the world, where state responsibilities are increasingly outsourced to the voluntary sector and civil society, at the same time as a shift in the role of government from origination to regulation, steering, collaboration, and integration.

Collaborative Governance in State Care for Children

The concept of collaboration is a

key feature of many human rights instruments, in particular those that bear relevance to children in state care and is generally identified as the ideal. Consistent with evidence-based research, the UN Guidelines for Alternative Care expand on the key characteristics of collaborative governance.

Human rights governance guidelines reinforce the importance of administrative capacity and strong leadership in creating successful state care programmes, and consistent monitoring and evaluation of such programmes. Many of the guidelines reinforce this emphasis on monitoring and supervision of both interaction between children in care and their families, as well as the auditing of the training and ethical fitness of care providers within homes. In fact, Section D of the guidelines focuses specifically on inspection and monitoring of state care programmes by a public authority as well as independent monitoring bodies.

Central to the success of collaborative governance is the involvement of stakeholders. While the level and type

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39   "Concept of Governance," UNESCO International Bureau of Education, undated, www.ibe.unesco.org/en/geqaf/technical-notes/concept-governance.

40   Melanie Zurba, "Levelling the Playing Field: Fostering Collaborative Governance Towards On-Going Reconciliation," *Environmental Policy and Governance* 24, no. 2 (2014), DOI: 10.1002/eet.1631.

41   Kim Moloney, "Governing Without Collaboration: State and Civil Society Relations in Jamaica," *International Public Management Review* 14, no. 1 (2013).

STAKEHOLDER INVOLVEMENT in decision-making;

INSPECTION AND MONITORING of state care programmes by a public authority as well as independent monitoring bodies;

Use of EVIDENCE-BASED, CONTEXT-SPECIFIC POLICIES and programmes for children in alternative care

of involvement will vary according to the situation, it is particularly important that all parties that have a stake in the outcome are involved, as their various contributions work towards the development of a contextualised response. As it regards state care for children, where stakeholders are actively involved in decision-making, programmes are more likely to be responsive to the needs of children, as there is a clear understanding of the issues being faced by the stakeholders, as well as pooling of resources, and innovation to respond to these issues, and guidelines based on proven success elsewhere.[42] Academics, CSOs, and business sector stakeholders share unique expertise and resources through collaborative governance. CSOs provide volunteerism, advocacy, and cost-effective benefits of service provision, while academics provide evidence-based solutions.[43]

Throughout the UN Guidelines, there is consistent reference to the importance of contextualisation of policy and programmes, particularly as it relates to being cognizant and respectful of parents' and children's religious,

economic, and gendered differences. This contextualisation also pertains to individualised care plans for all children. Paragraph 6 of the UN Guidelines recommends that all decisions and initiatives should be carried out on a case-by-case basis, by taking views of children and families into account. It states that every effort should be made to enable consultation, and emphasises the importance of considering race, language, religion, and gender.

The Guidelines go on to highlight the importance of using evidence-based research to support this contextualisation. Section D (130) (b) of the Guidelines recommends that policies and programmes developed for children in alternative care should be based on research findings on child protection, health, development, and care. The research should be inter-disciplinary and inclusive, to create evidence-informed context-specific policies, programmes, and solutions. Article 23 (4) of the CRC, for example, specifies co-operation with other authorities and other countries as a means of accessing information from multiple spaces, ranging from public

health to vocational services, to ensure the appropriate treatment of children with disabilities.

Thus, an ideal governance framework for state care for children, that meets human rights standards, comprises the following characteristics:

1. Administrative capacity, particularly with regard to monitoring and evaluation of internal processes and policies;

2. Stakeholder involvement in decision-making;

3. Inspection and monitoring of state care programmes by a public authority as well as independent monitoring bodies; and

4. Use of evidence-based, context-specific policies and programmes for children in alternative care

To what extent does Jamaica's state care system possess these characteristics? And where it doesn't, what can be done to meet those standards?

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42 Michael Shafer, Deadly Paradigms: *The Failure of U.S. Counterinsurgency Policy* (Philadelphia: Princeton University Press, 1989).

43 Moloney, "Governing without Collaboration."

4 Governance of State Care for Children in Jamaica

The average caseload globally is
20 cases
per social worker.

The average caseload in Jamaica is
150 cases
per social worker.

This section compares the current governance of state child care in Jamaica to the framework of collaborative governance discussed earlier, as consistent with human rights standards.

The Jamaican state has traditionally utilized a paternalistic, top-down approach to governance, with a history of weak institutional capacity, utilising policy as a political tool, limited sharing of information and awareness, and limited engagement with non-state stakeholders.[44] The policymaking process has been dominated by state and international actors, that is, those who are typically most disconnected from and unaffected by policy outcomes.[45]

Efforts have been made to create a more collaborative governance framework in terms of establishing consensus of objectives and increased stakeholder participation in the child protection sector. In addition to the development of national legislation, there is a stated prioritization of family placements across relevant agencies, the introduction of a multi-agency approach to investigations and other operational matters, as well as indications of an increased involvement of non-state stakeholders, particularly children and the voluntary sector.

Weaknesses within the governance structure nevertheless persist. The approach remains fragmented, lacks adequate capacity to protect children in care, fails to incorporate the views of non-state stakeholders into policies and protocols, and does not embrace consistent, robust monitoring and evaluation mechanisms. These are not the opinions only of NGOs and international organizations; the Jamaican state itself has documented these issues. Most recently, the 2017 National Action Plan for An Integrated Response to Children and Violence 2018-2023 spoke to the limited resources and ongoing lack of collaboration and coordination between state agencies as it relates to matters relating to children.

The Existing Framework: Legislation

Since 2004 the Child Care and Protection Act (CCPA) is the legal instrument governing the management and treatment of children in state care. The CCPA incorporates the UN best interests principle, as articulated in Article 3 of the UN Convention on the Rights of the Child (CRC): in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be the primary consideration. Jamaica has also committed to embracing a rights-based approach to state care in

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44   Jamaica is a post-colonial society that has a history of government using policy as a political tool to gain favour and funding from developed states and the wider international community. Historically, policy has become a political tool for regaining public trust; during election periods, politicians seek to demonstrate their commitment to change by presenting policy ideas. The literature notes that these efforts are often superficial, as many policies are rarely implemented effectively. Moloney, "Governing without Collaboration."

45   Gavin Daley, "Beginnings for Understanding the Politics of Public Policy in Jamaica," *International Journal of Political Science and Development* 2, no. 10 (2014): 237-247.

NCR has been using Microsoft Word to collect intake reports, including generating the numbering, anonymizing, and other requisite document classification. This limits the capacity for the NCR and other agencies to collate data and develop quantitative data, which is essential for monitoring and analysis of the state care programme.

Jamaica, having signed on to the Inter-American Convention of Human Rights (IACHR), and ratifying the ratification of the CRC in 1991.[46]

The Child Care and Protection Act (CCPA) ascribes child protection roles to a number of state agencies. Primary among these is the "agency with responsibility for children." At the time of the Act's creation the Child Development Agency (CDA) assumed that role, though it was not explicitly named, and in 2020 the CDA's successor, the Child Protection and Family Services Agency (CPFSA).[47] The CCPA also established the Office of the Children's Advocate (OCA) and the Office of the Children's Registry (OCR) as other key agencies responsible for children, and refers to other ministries, departments, and agencies as playing specific statutory roles. At the time of the Act's passing, the CDA pertained to the Ministry of Health. In 2012 it was moved to the Ministry of Youth and Culture. In 2016 it was reassigned to the Ministry of Education, Youth, and Information (MOEYI), and remained there through the second term of the JLP government that began in September 2020. (The Act does not name a portfolio ministry.) Subsidiary legislation was added to the CCPA in 2007.

The CCPA has been amended once. A review of the CCPA was embarked on in 2012, overseen by an inter-sectoral working group, including non-governmental stakeholders. The review was undertaken in light of the emergence of new issues such as trafficking, child prostitution, child pornography, and missing children, and to clarify who has jurisdiction over children who are in detention and remand centres. There was also the matter of uncontrollable children, where approximately 60 percent of children and families who accessed the services of the CDA were for children who were referred to as uncontrollable as a standard practice. However, that term was not defined in the CCPA, and as such, there was no standard criteria for such children to enter into state care. Thus, the necessity for a review to be done to take such issues into account and to ensure that the Act is in alignment with other pieces of legislation.[48] An extensive consultative process led to a review document that was submitted by the consultant in March 2014. As of March 2021, no further action had been taken on the review of the Act.

Structure

The governance structure of the state care system has experienced a number of iterations over the last two decades, with the stated intention of improving efficiency and effectiveness of child protection systems.

Figure 1. Governance Structure of Children in Care Programme in Jamaica (2004-2017)

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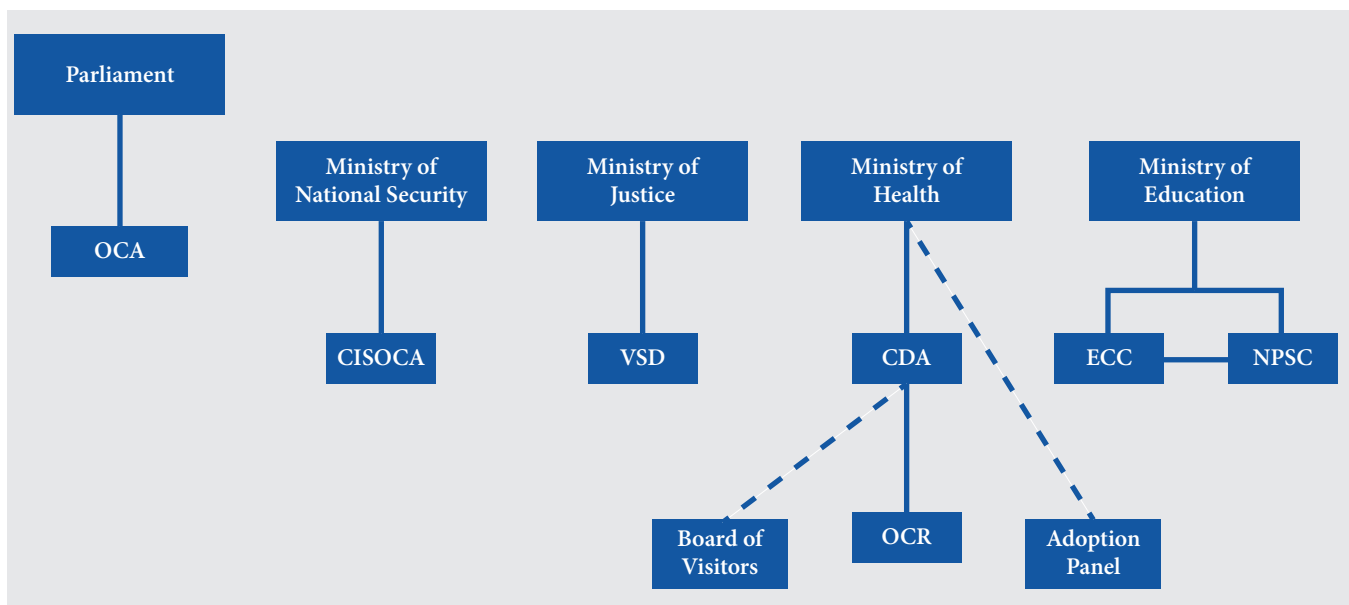
46 "The Development of Child Protection Systems in Jamaica," Child Protection and Family Services Agency, undated, childprotection.gov.jm/mission-vision-core-values/history/.

47 A weakness that was pointed out in the act review ten years later was that the Child Development Agency having not been named or provided with a specific mandate under the Act, left ambiguities and differences in opinion regarding what the organisation should and should not be doing. Child Development Agency, "A Policy to Amend the Child Care and Protection Act & Children's Homes Regulations (draft)," March 14, 2014.

48 Child Development Agency, "Review and Preparing Recommendations for Amendments to the Child Care and Protection Act (2004) and the Children's Home Regulations (2005) Terms of Reference," July 31, 2012.

Figure 2. Governance of Children in State Care 2017 to Present
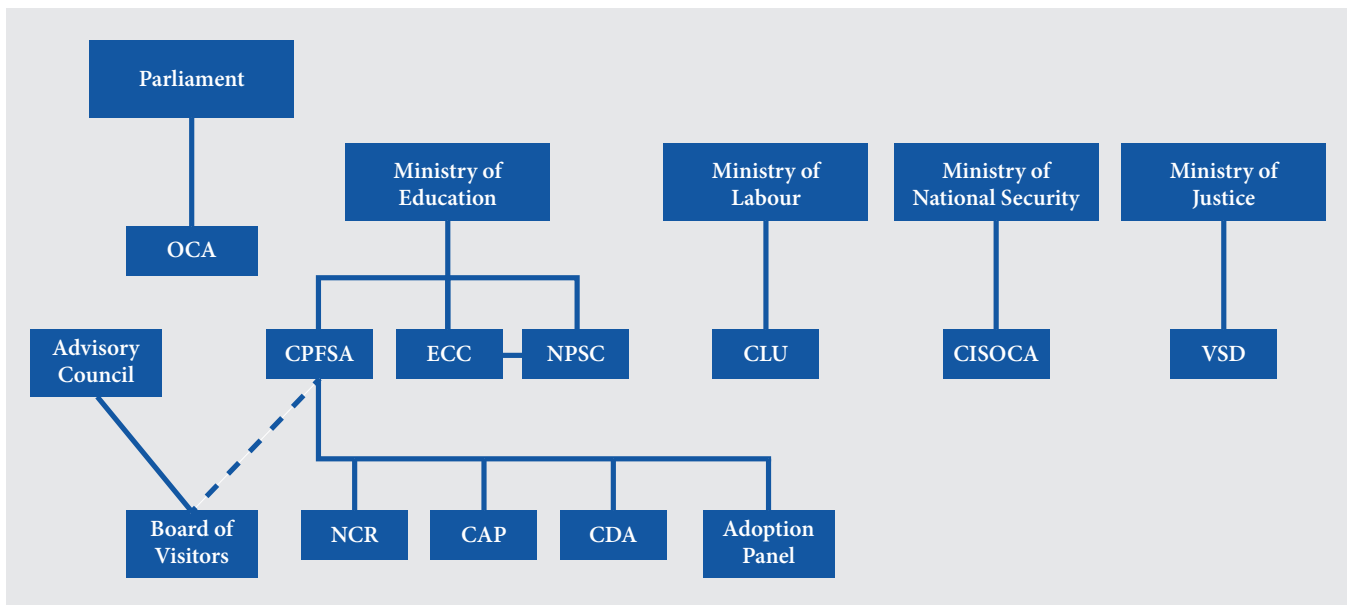
The current governance structure of the CFPSA is not wholly dissimilar from the previous one. The OCR has become the NCR and now sits alongside the CDA, under the CPFSA. That is, the CDA is no longer in control or has oversight of the NCR, but rather it operates as its own entity to work collaboratively with the CDA. In addition, the CPFSA now operates under the MOEYI. The operational boards and panels identified, the adoption panel (the Adoption Board), and CAP all operate under the CDA, whilst the Board of Visitors reports directly to the Advisory Council[49] as a means of creating a more robust approach to independent monitoring and oversight.

CPFSA (formerly CDA)

The principal entity with responsibility for children in Jamaica is the Child Protection and Family Services Agency (CPFSA) (formerly CDA), which was created in 2016 as a merger of the OCR and the CDA. The CDA was itself created out of a merger of the Child Support Unit, the Child Services Division, and the Adoption Division in 2004, and was designed to be the agency responsible for children, as specified in the CCPA. It is an executive agency, which in the Jamaican context means that it does not have a board of directors nor a chair of the board, but it has an advisory board with no executive power. The CPFSA's CEO is not obliged to report all or any matters to nor accept the advice of that advisory board. The full executive authority and total accountability for the management of the Agency is reposed in the position of the chief executive officer, who ostensibly reports directly to the responsible portfolio minister. However there is no structured or legislated reporting mechanism within the minister's office or the MOEYI more broadly. The Agency's budget is administered directly from the Ministry of Finance, without (formal) input on the budget or how it is spent from the MOEYI, and the Agency's leadership staff is hired by the Services Commission.

The Agency handles all aspects of children in need of care and protection. It takes reports of harm against children in Jamaica, from intake to investigation, through to coordination of response, and overall case management. It manages all the care requirements for children in state care or in family placements, ranging from licensing of homes, coordination of access to medical and educational support, submitting reports to local and international bodies, monitoring of the state care programme, as well as strategic planning for the development of various policies, protocols, and procedures to enhance protection of children.

However, there is no statutory mandate as to how the CPFSA should operate; the CPFSA has no explicit guidance as to what is core to its functionality, nor any standard to compare for effectiveness. For example, there is no named policy authority or guiding entity for child protection standards across government, but this has fallen to the CPFSA by default.[50]

The Office of the Children's Registry's original mandate was to receive reports

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49 This Advisory Council is yet to be convened.

50 "A Policy to Amend the CCPA."

regarding instances of abuse and neglect of children, ranging from physical abuse to incest and human trafficking, and to then refer the cases to the relevant entities. In addition to acting as the conduit for reports to be made, the OCR was to maintain a national registry or repository, to maintain a record of all reports, keep track of the status of the reports, and collate relevant statistics on instances of child labour, missing children, human trafficking, and child abuse and neglect.[51] The merger of the OCR and CDA was intended to build the Agency's governance capacity, and improve the accountability, transparency, and predictability of its operations.[52] (The Jamaican Parliament approved the merger in 2017.)[53] The OCR's functions were brought into the CPFSA's remit with the merger.[54]

The Office of the Children's Advocate (OCA) acts as a type of independent ombudsman that has legal powers of investigation for the overarching protection of rights of children in Jamaica. Established in 2006 by an independent commission of Parliament, the OCA is the only body specifically named in the CCPA. Their stated mission speaks to the safeguarding of children through advocacy and public awareness, provision of necessary interventions for children in need of care and protection and ensuring the safety and successful development of children in state care.[55] The legislation ascribes several roles to the OCA as the sole organization mandated to investigate other state entities, as part of ensuring the protection of children in Jamaica.

In 2012, the amount granted to PRIVATE CHILDREN'S HOMES was

J\$5,000

PER CHILD PER WEEK

In 2013, it increased to

J\$6,000

HAS NOT INCREASED

The OCA is the state party responsible for providing legal representation to any children who appear before the court. They should contribute to legislative reform and general oversight of the state care programme. They are tasked with building awareness among a variety of stakeholders, sharing information through reports, monitoring visits, and providing training. The OCA is required to provide annual reports to be tabled at Parliament. As an independent body created by Parliament, the OCA maintains its independence from the CPFSA.

There are other state organizations that work with the CPFSA to carry out its mandate. These include the Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA), which was established as part of the Jamaica Constabulary Force in 1989 to handle sexual offences and gender-based violence. The CCPA empowers CISOCA to investigate all matters of child abuse. CISOCA works with the Victims' Services Division (also referred to as the Victims' Services Unit) in the Ministry of Justice to provide advocacy, emotional support, and counselling services to victim survivors. It is one of the few state agencies involved in state care that operates across all 14 parishes.[56] Other entities that have mandates related to child protection are the Early Childhood Commission (ECC) and the National Parenting Support Commission (NPSC); these organizations provide oversight, policy advice to government, and stakeholder coordination according to their respective sectors. They both are appointed by the Minister of Youth, Education, and Information.

When the CDA and the OCR were merged in 2017, the opportunity was taken to reform the agency's internal structure with a view to making it less hierarchical. The Secretariat is a division of the CPFSA that comprises of the Legal Officer, Public Relations Unit, and Internal Auditor in order to provide oversight of policy decisions and the organisation in general. The former CDA Secretariat had departments reporting to the executive. The current CPFSA structure has an Executive Secretariat group that works alongside the other internal departments to increased collaborative working.

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51   According to a senior executive at OCR, these statistics formed part of the quarterly report that OCR submits to the cabinet. He indicated that the trends that emerged from the data informed various activities undertaken by the CPFSA. , where the data showed a spike in sexual abuse in Port Royal, the CPFSA implemented a campaign with the Port Royal Association as well as Youth ambassador programmes. Similarly where the data indicated a human trafficking issue, a task force was developed to carry out a response.

52   "New Agency Replaces CDA and OCR," *Gleaner*, November 2, 2017, www.jamaicaobserver.com/news/new-agency-replaces-cda-and-ocr_115796?profile=1373.

53   Child Development Agency, "CDA Annual Report 2016–2017," 2018.

54   Child Development Agency, "CDA Annual Report 2007-2008," May 2008.

55   Ministry of Education Youth and Information, ATI Request "Strategic Review of Residential Care for Children in State Care," 2012, accessed October 6, 2020.

56   As will be discussed, there are many state organisations that are hampered by their limited physical location.

At the same time that the merger was planned and implemented (2003-2017), five new sub-groups were proposed to initiate a more collaborative approach, by working in partnership with a range of stakeholders including civil society, other government ministries, and children to fill the gaps in service delivery. For instance, the Children's Advisory Panel, which became operational prior to the merger, sought to directly engage primary non-state stakeholders, where previously there was limited engagement.

Administrative Capacity: internal monitoring and evaluation

Strong leadership and a collaborative approach are essential for collaborative governance. The internal administrative structure of a state's child care system indicates the attempted multi-agency approach, as well as the capacity of the organisation to carry out its objectives. Much of the policymaking literature highlights the disadvantages of a "top-down" structure, which does not encourage diversity of thought or consider the issues that are faced at different levels of the organisation.[57] The top-down approach creates general principles that are often abstract in nature and applies them through a centralised authority. Goals are not developed collaboratively, which may make staff feel disconnected from the organisation's mission, since they were not involved in creating them. This is reflected in low staff retention.[58]

The restructuring was also intended to increase information sharing within the agency. The executive secretariat meets monthly and is usually joined by their internal auditor, the CEO, and the legal officer, as well as the regional coordinators. According to a senior executive of the CPFSA, regional teams meet quarterly, the senior teams meet quarterly to undertake a performance review, and all team members meet at an annual general meeting.[59]

The introduction of the multi-agency approach to operational matters ostensibly lends itself to increased communication with parties external to the agency, less duplication of effort, and better capacity for problem-solving. This ought to manifest in consistent information sharing, and more collaborative working modes, and, ideally, to improved consensus-building and the reduction of duplication of efforts.

However, there are elements of the administration of state care for children that remain consistent with a top-down approach. When the CPFSA was created, the various agencies working on child protection, namely, CDA, Victims Services Division, Early Childhood Commission, and CISOCA, were spread across five ministries: Justice, Health, Education, Labour, and National Security respectively. None of these ministries had terms of reference or documentation of established communication pathways, terms of engagement, nor information-sharing protocols. Many of the interviewees for this report indicated that their agencies report directly to their respective ministers. There are no reporting mechanisms in place for ministers and their teams to be notified of the work being done by other agencies outside of their purview. Thus, while plans are collaborative in principle, they

do not, in practice, have the mechanisms in place to facilitate the collaboration.

As one example, the National Plan of Action for an Integrated Response to Children and Violence (NPACV) 2011-2016 attempted to coordinate a multi-sectoral response to violence against children. However, while the NPACV was meant to reduce fragmentation of efforts in this area, the National Plan of Action for Child Justice (NPACJ) 2010-2014, had similar objectives in its aim to create comprehensive multi-agency responses to child justice. Despite having similar objectives, the plans were developed and implemented in different ministries with no communication between the two efforts.[60] There was a duplication of effort, where collaboration might have allowed for a pooling of resources to ensure shared objectives were met. Perhaps expectedly, many of the recommendations from neither the NPACJ nor the NPACV have been completed.

However, even with the new structure, much of the pre-existing disconnection persists. The merger brought the CDA and NCR (the NCR previously was a body operating under the CDA, instead of alongside it) to the MOEYI portfolio (see Figure 1.5), so that in principle, these agencies sitting within the same ministry should encourage collaboration and increased information-sharing.

Other agencies such as CISOCA and VSD, which are heavily involved in child state care remain under the MNS and MOJ respectively. There are still few mechanisms in place to facilitate information sharing between these agencies. There are no consistent strategic meetings where the various ministries and agencies discuss policy planning,

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57 Bennett, "Early Childhood Education and Care Systems."

58 Bennett, "Early Childhood Education and Care Systems."

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60 "Situation Analysis of Jamaican Children."

Many countries lack functional systems that are capable of monitoring state care programmes, which limits their capacity to create programmes that deliver an acceptable standard of care

or simply increase collaboration and information-sharing.[61] Executives from both the CPFSA and NCR indicated that strategic meetings took place around the planning of the merger and legislative reviews. However, there are no consistent multi-agency meetings in place. Similarly, executives from the CPFSA and OCA indicated that, due to delays in receiving audited financials from the Auditor General, they have been unable to complete and publish reports over the past three and six years respectively, which would be available to other agencies and the public. In fact, there are no annual reports available online after 2008, with the exception of CDA Annual Report 2016-2017 (which itself speaks to issues of transparency and accountability).

Other advances, such as the CPFSA's stated intention to embrace a more integrated approach to service delivery, are also not fulfilling the potential nor meeting the need. Though there are two CPFSA officers placed at CISOCA's Kingston offices, their investigations are not collaborative. CISOCA and CPFSA officers carry out their interviews separately, which does not necessarily improve efficiency, and could exacerbate the victim's traumatized state. Further, the arrangement between the CPFSA and CISOCA is limited to Kingston, because of staffing resource constraints. Similarly, the OCA does not have an officer stationed at CISOCA, which would improve information-sharing and would streamline investigations.[62]

There was no change to the extant lack of oversight with the merger and change in structure. No new mechanism for internal accountability was created, nor was any external accountability measure included. Indeed, accountability problems could be said to have worsened with the merger. The CPFSA has, in some ways, become both the regulator and the operator of state care. The CCPA sets out that the NCR is to refer cases of abuse to the "agency named as responsible for child care and protection." The NCR should not be operating under the CPFSA, as it has cases referred from children's homes that the CPFSA is responsible for. There is an inherent conflict of interest presented by the CPFSA (and ultimately the minister, to whom it reports) investigating its own staff, without any independent scrutiny for the CPFSA to hold staff accountable.[63]

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61   Child protection stakeholder, Zoom video call, October 20, 2020.

62   OCA Official – Zoom Video Call, October 16, 2020

63   NCR Official – Zoom Video Call, October 15, 2020.

Resource Constraints

Administrative resource shortages in general hamper the state child care system's work. As but one example is that there is no comprehensive case management system operating in the sector. All of the interviewees from the CPFSA, OCA, and NCR cited the lack of a comprehensive database management system as a major obstacle in service delivery. In 2017 the CPFSA purchased the Social and Health Management (SOHEMA) software through the externally funded Transitional Living Programme for Children in State Care,[64] and it has been in use since 2018. The implementation of this database management system has significantly improved their uploading of cases easier and more efficient, whilst also reducing the amount of paperwork involved.

However, the SOHEMA database management system has not been implemented across the other agencies, such as the NCR and the OCA, which presents an obstacle to their work. As of 2019, NCR has been using Microsoft Word to collect intake reports, including generating the numbering, anonymizing, and other requisite document classification. This limits the capacity for the NCR and other agencies to collate data and develop quantitative data, which is essential for monitoring and analysis of

the state care programme. This weakness is well acknowledged: a senior executive from the OCA noted that access to an integrated system which all three agencies could access would improve efficiency of investigations and overall communication.

The inadequacy and unavailability of professional and financial resources undermine the work and mandate of many of the agencies that are responsible for childcare and protection in Jamaica. Similar to other low-resource jurisdictions, lack of access to professional resources has a direct effect on administrative capacity. One example, albeit one that is at the heart of many of the Agency's challenges, is the inordinately high caseload that CPFSA's social workers must manage. In March 2020 the CPFSA had about 100 social workers, each with an average case load of about 150 children, with some managing as many as 200 children, depending on the programme that they worked in.[65] The international standard recommended caseload sizes per social worker working with children and families range from 20 to 30 cases for more low intensity services, 10 to 20 cases for moderately intensive services, and five to 10 cases for highly intensive services.[66] These staff challenges make it impossible for investigations to be completed within the prescribed three-month period stated

by the OCA,[67] or with any reasonable time period.

Limited finances is a problem unto itself, but is also directly related to the paucity of professional resources, which limits the capacity of the agencies and programmes for children in care.[68] As of 2018, there were only three monitoring officers responsible for all the courts across the island. In 2020, there were four psychologists serving all of the 5,890 children in care, making access to psychological support almost non-existent. Also in 2009 across four childcare facilities, the teacher-student ratio was 1:61.[69] This has particular impact on children with cognitive disabilities. In 2011, the CDA admitted that they were not aware of how many children in residential facilities had special needs, "Currently, we are not adequately trained and equipped to deal with children with mental health challenges" [70] There is a general shortage of specialists to deal with children with mental illness in the island as a whole: there are approximately 10 professionals equipped to address the over 50,000 children with different types of mental problems such as anxiety, depression, and schizophrenia.[71] Monitoring capacity is also impacted by the dearth of professional resources. In 2014, only five monitoring officers were allocated to

64   "Child Development Agency Launches Child Case Management System," University of the West Indies Open Campus, August 2017, www.open.uwi.edu/child-development-agency-launches-child-case-management-system-ccms.

65   Sharlene Hendricks, "Social Workers Tackle Mental Health Crisis Among Children," *Observer*, March 1, 2020, www.jamaicaobserver.com/news/social-workers-tackle-mental-health-crisis-among-children_188417?profile=1373.

66   "Literature Review on Caseload Size in Best Practice Case Management 2011," Ministry of Social Development, New Zealand, September 2019, www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/research-archive/literature-review-caseload-size.pdf.

67   CPFSA representative – Zoom Video Call, October 16, 2020.

68   "Jamaicans for Justice, "Non-Governmental Organisations Report to the UN Committee on the Rights of the Child," 2015, http://tbinternet.ohchr.org/Treaties/CRC/ Shared%20Documents/JAM/INT_CRC_NGO_JAM_18947_E.pdf.
 67 Jamaicans for Justice, "NGOs Report."

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70   "Gross Violation! A Number of Children in State Care are Not Going to School," Sunday *Gleaner*, November 27, 2011, http://jamaica-gleaner.com/gleaner/20111127/lead/lead6.html.

71   Jamaicans for Justice, "NGOs Report."

monitor 60 childcare facilities across the island.[72] In 2018, Jamaicans for Justice (JFJ), a human rights NGO, noted that one of the biggest setbacks of children in state care is the lack of resources allocated to the OCA as the main body responsible for monitoring of children in care. There were approximately 10 members of staff assigned to monitoring over 50 homes and the 1,772 children occupying them.[73]

The OCA experiences a perpetual challenge with regard to staffing resources. While they recently increase their cadre of monitoring investigators by 150 percent, there was no concomitant increase in the complement of legal officers to manage the cases received from investigators. Staff challenges preclude their engagement in multi-agency collaboration and communication, for example, placing legal officers or investigators at CISOCA. A reduction in caseload per staff member would enable them to carry out their duties at a higher standard and reduce the backlog of cases. There is also a backlog at the NCR, which has been attributed, in part, to human capital shortages, as well as to the limited reach of the registry.[74]

The inadequacy of financial resources has an ongoing impact on the capacity of the CPFSA, the Ministry as a whole, and other relevant MDAs mandated to protect children, to carry out activities, including the implementation of the CCPA.[75] The budget allocated to the children in care programme has not increased to meet the needs of those children. The money allocated to institutional and foster care is also limited. In 2012, the amount granted to private children's homes was J$5,000 per child per week. In 2013, it increased to J$6,000. That amount has not increased for the now 1,377 children in private children's homes, despite the proposed increase to J$10,000 per week in 2018.[76]

Stakeholder Involvement in Decision-making

Consistent with best practice, there have been efforts to increase interaction amongst state stakeholders, by way of embracing a multi-agency approach at the operational level. In 2012, the CDA began to work collaboratively with other state agencies to address reports of abuse and neglect. The Multi-Agency Strategic Development Plan for Child Protection project was established in the South East region of the island to address children who came into care through the juvenile justice system, and to handle cases of child abuse, with special attention to sexual abuse cases.[77] This created an individualised approached to dealing with crimes, as all agencies were present to contribute to the handling of the case, dependent on the needs of the parties involved. While there has not been any formal evaluation of this process, senior executives of both the CPFSA and the OCA noted the effectiveness of this approach in terms of its capacity to resolve cases expeditiously and with reduced trauma to victims.

After a review of 142 monitoring checklists from 20 childcare facilities, 113 checklists had no mention of educational programmes, indicating a lack of oversight over the standard of education being received by children in residential care

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72   Child Development Agency, "Auditor General's Report Activity-Based Audit Report," 2014.

73   "Auditor General's Report."

74   A senior executive of the OCA and NCR confirmed the organizational issues with staff to case ratio and backlog. However, this system was only implemented in Kingston, due to understaffing, infrastructure and lack of financial resources.

75   Joy Moncrieffe, "British Council Activity in Justice and Security in Jamaica: Background Paper," March 31, 2014, Caribbean British Council, https://caribbean.britishcouncil.org/sites/default/files/british_council_activity_in_justice_and_security_in_jamaica.pdf.

76   Child Development Agency, "Report on Walker's Place of Safety," 2018.

77   Keating Report.

Engagement with civil society is less productive and appears to be limited to consultation and service delivery. A 2010 announcement that the CDA was working with civil society organisations to create an inspectorate to carry out independent annual assessments of children's homes and places of safety never came to fruition. The National Action Plan (NAPCV) also notes intentions to strengthen collaboration with CSOs and international funding partners, but only mentions it in relation to providing assistance to build awareness, deliver training, and funding and technical assistance.[78]

The private sector and academic institutions are not integrally involved in policy making or programme delivery, and their engagement has even been deemed superficial. Service on a CPFSA board or committee, while ostensibly a suitable medium of engagement for non-state stakeholders, often is limited to attending functions and other ceremonial activities, rather than true participation in decision-making.[79] Academic studies on child care-related topics are also not routinely considered, nor does research appear to systematically inform policy or decision-making, if at all.[80]

Engagement with children, perhaps the primary stakeholders in state care, has been insubstantial, though efforts to improve this are ongoing. Article 12 of the CRC states that children have a right to be heard in all matters affecting them. The CCPA acknowledges children's participatory rights, but does not specifically speak to their involvement in decision making. The National Consultation Code mandates that all Jamaican citizens, including children, should be consulted on the development of national policies and programmes. The Children's Advisory Panel (CAP) was established in 2012 and comprises children from different stakeholder groups (including children in care) with the intention of incorporating the voice of the children into policy decisions that affect their own well-being. CAP is mandated to advise the CEO of the CPFSA on matters that affect children within the system.[81] The group meets periodically to discuss issues that impact children and offer recommendations to be incorporated into policy plans, and programmes.[82] The CAP's focus thus far has been to build awareness and engage in consultation with their peers, and to execute projects.[83] For example, in 2014 the CAP spearheaded a "Plant-A-Tree" initiative, where panel members visited various children's homes and planted a tree as a symbolic gesture.[84] There is no specific reporting mechanism, though the CAP Handbook states that the panel will relate with the CEO of the CPFSA to advise on various matters. A senior member of the CPFSA is assigned to sit in on the meetings, as do CPFSA's PR officials. It is presumed that they provide updates to the CPFSA decision-makers, though there is no formal or legal obligation to do so.

78   GOJ, "National Action Plan for An Integrated Response to Children and Violence."

79   Child Care Stakeholder interview - Zoom Video Call, December 21, 2020.

80   Child Care Stakeholder interview - Zoom Video Call, December 21, 2020.

81   Elaine Hartman Reckord, "Children's Advisory Panel: Making an Impact," Jamaica Information Service, March 29, 2014, jis.gov.jm/childrens-advisory-panel-making-impact/.

82   CDA Children's Advisory Panel Representative – Zoom Video Call, October 14, 2020.

83   A CPFSA executive indicated that in 2019, they coordinated a National Children's Summit, with the intention of engendering peer engagement. It was stated that this information would be used to inform the CPFSA'S Corporate Strategic Plan and other policy frameworks.

84   Hartman Reckford, "Children's Advisory Panel."

Inspection and monitoring by a public authority and/or independent monitoring bodies

There is a lack of accountability as evidenced by lack of a legislative framework, and by weak monitoring and evaluation of the Jamaica's state care programmes. Nor is there a framework within which those individuals and agencies who fail to protect children are held accountable. Nearly all of the 20+ external evaluations of Jamaican state care that have been conducted make specific reference to poor monitoring and oversight of children's homes. In the case of monitoring and oversight of state care for children in Jamaica, there is no independent oversight body that monitors breaches and that is empowered to take legal action in the case of a breach. There is no other legal guidance on quality of care, no particular body responsible for ensuring adherence to the law, nor accountability measures in case there is a failure to uphold the law.

This is not unique to Jamaica: a 2016 UNICEF study found that many countries lack functional systems that are capable of monitoring state care programmes, which limits their capacity to create programmes that deliver an acceptable standard of care, protect children from additional vulnerabilities they may be exposed to in care, respond effectively to children's needs, and achieve the intended goal of family reunification.[85]

Where there is provision for greater oversight, it is not effectively utilised. An Advisory Board has always existed, as per

Section 5 (1) of the Executive Agencies Act (the CDA was, and the CPFSA is, an executive agency). That board ostensibly has oversight responsibilities by way of advising the Ministry on all strategic and business planning of the Agency. However, neither the CPFSA nor the Ministry are obliged to accept the advice offered by the Advisory Board. In 2010, the CDA indicated that they were working in partnership with civil society organisations towards the development of an inspectorate to carry out independent assessments of children's homes and places of safety annually; this had not been implemented. The Advisory Council set out in the Child Care and Protection Act was never convened.

What this amounts to is that the CPFSA is answerable only to the portfolio minister. (As mentioned earlier, that reporting relationship is itself undermined by other aspects of the Agency's governance.) That minister is usually an elected official (at least going back to 2007 the minister has been a member of parliament). This is a function of the executive agency model as it was implemented in Jamaica in the early 2000s, and so all executive agencies— the National Land Agency, the Natural Environmental Protection Agency, the Passport, Immigration, and Customs Agency, to name a few—operate with this chain of command and reporting. The notion that a political representative, who likely does not have pre-existing technical (or other) expertise in his or her assigned portfolio, should be expected to effectively oversee and direct the highly specialized work of an agency such as the CPFSA, is implausible. In the case of the CPFSA it is even more problematic, as the CPFSA is the only regulator of children's

homes, including its own.

With regard to human rights broadly speaking, Jamaica has not ratified the optional protocol of the CRC, which allows individuals to make complaints against the state for violations of any of the UN human rights treaties. The UN is thus not welcome to conduct any inquiry procedures, where there is a claim against the state, thereby reducing any accountability created by ratifying HR treaties. Also, there is no standing invitation for UN bodies to conduct visits. Therefore, UN bodies must be asked by the Jamaican government to investigate human rights matters.[86]

Outside of built-in oversight and accountability mechanisms, there are few other entities that can demand access to the information required to do an investigation, whether into a reported breach or an ad hoc enquiry. There is some oversight in place by way of the CRC itself, which requires signatory countries to provide regular reports; two years after acceding to the Convention and every five years thereafter. But even that Committee is limited by the information provided: it examines the reports given by the CDA and provides recommendations.[87] The last submission from Jamaica to the CRC was in 2015; that submission was long overdue as it was originally to have been done in 2008. The MOEYI established an Oversight Committee for the Early Childhood Sector in 2017, one of whose mandates is to monitor the implementation of programmes and services for young children. The Committee is assigned to report directly to the Minister.[88] However, there is no indication that the Committee, which would have had oversight of the

85   Petrowski et al, "Children in Formal Alternative Care."

86   International Justice Resource Center "Jamaica – Country Factsheet Series," February 15, 2018, https://ijrcenter.org/wp-content/uploads/2018/04/Jamaica-Factsheet.pdf.

87   UN Refugee Agency, "UN Committee on the Rights of the Child – Jamaica," www.refworld.org/publisher,CRC,,JAM,,,0.html.

88   Chris Patterson, "Oversight Committee Established for Early Childhood Sector," Jamaica Information Service, May 12, 2017, https://jis.gov.jm/oversight-committee-

standard of educational programmes being implemented within the state care system, was ever formed.

Use of evidence-based, context-specific programmes and policies

The inherent disadvantages to children in state care in Jamaica are compounded by the absence of rigorous and systematic data collection and analysis, ranging from not having accurate numbers of children in care, to not monitoring their quality of life, no trend analysis of precipitating factors for entering state care, nor gathering of outcome data on how children fare in different state care settings. For example, a review of seven studies on children's social care programmes in the UK found that there were limited differences in outcomes between institutional and foster care placements, where evidence-based practices were used.[89] We have no such evidence to inform decisions about what is best for children in need of care and protection in Jamaica. The UN CRC Committee raised concerns about Jamaica's continued advancement of national plans without consideration of evidence-based approaches to state care.[90]

For example, consistent data on neither adoption nor foster care is not available. Beyond numbers of adoptions each year, there is no consistent breakdown of the different types of adoptions each year. There is no analysis of the data that goes in the case files that identifies risk factors for children being relinquished. There is no follow up on children who have been adopted to ascertain outcomes. Similarly, for foster care, besides an unavailability of consistent numbers of children, and no documented information on the different scenarios that children in foster care encounter, there is also no systematic interrogation of what trends exist in relation to children in foster care, regarding their need for placement in a foster family, the foster family experience, nor outcomes, particularly as compared to their peer wards of the state who are not placed in foster families, nor to a control group of children who are not wards of the state.

established-early-childhood-sector/.

89   "Comparing the Outcomes of Residential Care With Other Types of Placement, Such as Foster Care," 2015, What Works for Children's Social Care, whatworks-csc.org.uk/evidence/evidence-store/intervention/residential-care/.

90   "Situation Analysis of Jamaican Children."

5 Consequences of Weak Governance

The shuffling of the state care programme to different ministries MIGHT BE SEEN TO IMPACT the consistency of leadership and the capacity to provide **protection to children at risk**

The absence of collaborative governance is manifested in disjointed systems with limited capacity that suffer from lack of enforcement mechanisms, and a general deficit of collaboration with a range of stakeholders, which all together have a negative impact on children in state care.

Administrative Capacity

The system's administrative capacity is hampered by a lack of legislation to give authority to the various bodies responsible for child care and protection in Jamaica. The shuffling of the state care programme to different ministries might be seen to impact the consistency of leadership and the capacity to provide protection to children at risk. Further, the "split" governance and administrative system, where responsibilities are divided among several ministries, is detrimental to state child care services, as it tends to result in fragmentation and a lack of coherence in delivery of services.[91]

The lack of an integrated database system compounds the lack of capacity to conduct adequate intake services, and monitoring and evaluation of programmes. There is no clear coordinating function between the agencies at a strategic level. There are no comprehensive communication mechanisms in place for agencies and their respective ministries to work collaboratively. There is no clarity regarding responsibility for handling the myriad issues that arise from state care. Some children in care are placed in detention centres as well as rehabilitative spaces. While the ambit of the MOEYI covers the protection of children in care generally, the ministries of Justice & National Security are mandated with the responsibility of all children in rehabilitation centres. CISOCA and the Ananda Alert for missing children both play roles in state care for children, but pertain to different ministries. This disjointed administrative situation is grounded in the extant governance structure. In falling short of meeting children's needs, there is no capacity

to adequately monitor the child care programme, nor hold individuals or agencies accountable for breaches.

As one example of how such weaknesses can manifest, with terrible implications for children: the 2012 CDA Organisational Review noted the presence of wards who were living in state care but who were not documented as present in the home. This was not an isolated incident: the 2009 JFJ Report to the IACHR cited a number of instances where children in care were "lost in the system" because case files were not maintained, or there was a breakdown in communication between agencies responsible for delivering care. The Adoption Board has reviewed applications for children who spent years in a childcare facility without being accounted for.[92] Effectively those children had no treatment plans, nor was work was being done to reunite them with their family of origin nor to free them for adoption. This is tantamount to a complete failure to protect children adequately, thereby increasing the risk posed to them, and most certainly jeopardizing their

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91   Bennett, "Early Childhood Education."

92   Former Adoption Board member.

The "split" governance and administrative system, where responsibilities are divided among several ministries, is detrimental to state child care services, as it tends to result in fragmentation and a lack of coherence in delivery of services

prospects for favourable outcomes.

The limited access to financial and professional resources impacts the capacity to deliver an acceptable standard of care to children in state care. Many children cannot be accommodated by the system. In 2013, the then-Minister of Youth acknowledged that the country was in breach of the UN CRC because they were housing children (who had not yet been convicted of a crime) in adult correctional institutions, and that 148 children had to be removed from adult remand centres.[93] Managers of children's homes consistently complain about the inadequate financial support given by the state. They depend on inconsistent voluntary support for delivery of services such as education and medical support, and those services are of varying quality. Children with special needs and pregnant teenagers are not provided with the additional financial, psychological, and medical support they need. Children with these perceived disadvantages are less likely to be fostered, adopted, or leave state care at all. In a broad national context of lack of services for people with disabilities, the majority of wards with disabilities are even more disadvantaged, and do not go on to live productive lives as adults because they are unable to leave the home without the support and resources needed to support living independently.[94] In 2011, the Office of the Children's Advocate found that the

foster care programme was severely under-resourced.[95] Foster care parents highlighted a lack of communication with the CDA, lack of financial support, and delays in receiving cheques and getting their foster children.[96] Whilst the majority of funds are spent on institutional care, which is the least effective form of state care, foster parents receive only J$6,500 per week. [97], [98]

The insufficient psychological, educational, and medical support to children in state care results in poorer outcomes for them. The 2009 Foster Care Report indicated a lack of criteria and minimum standards for foster parents and recommended the development of minimum standards for parents. The report showed inferior performance in schools by children. Only 19 percent of children indicated that they were doing well at school and 30 percent of students admitted to having problems at school.[99] There were also reports that children were denied access to education as punishment for poor behaviour.[100] In 2009 a monitoring report from Alpha Boys Home (which has since been closed) noted that a number of boys were not involved in any educational or vocational programmes. After a review of 142 monitoring checklists from 20 childcare facilities between 2011 and 2014, 113 checklists had no mention of educational programmes, indicating a lack of oversight over the standard of

education being received by children in residential care.[101]

Poor Monitoring and Oversight

The lack of legislative enforcement is correlated with the quality of monitoring and oversight, which means that children are less protected. The failure to establish and implement accountability measures further weakens monitoring and oversight and contributes to a disparity between policy and practice. Where programmes are implemented, the monitoring and evaluation is weak, so there is no certainty as to outcomes, or "what works" (or doesn't work).

The CPFSA has a team of monitoring officers who are tasked with making scheduled and unannounced visits of children's homes and places of safety. However, the evidence suggests that they do not regularly or comprehensively do this. JFJ assessed the monitoring reports from five children's homes in 2009. They found that, despite the fact that monitoring officers had the requisite training and had attempted to visit, the process was hampered by inappropriate use of templates and limited guidance. Officers were not required to detail accounts of critical incidents, follow up on critical incidents via interviews with staff or children, and forms did not give room for officers to document

93   Tyrone Thompson, "Inmates on the Move - Removal of Juveniles Leads to Decline in Prison Population," *Gleaner*, May 15, 2015, http://jamaica-gleaner.com/article/news/20150531/inmates-move-removal-juveniles-leads-decline-prison-population.

94   Private Children's Home Representative – Zoom Video Call, December 21, 2020

95   Jamaicans for Justice, "NGOs Report."

96   Jamaicans for Justice, "NGOs Report."

97   This amount is lower than the foster care stipend in other Caribbean countries such as Trinidad and Tobago, where foster parents receive anywhere between J$8,000 and J$26,475 per week, with compensation being made for children with special needs.

98   A pilot programme called "For the Child" programme was implemented, which granted foster parents J$26,000 per child per month. However, as a pilot programme, this was only extended to new foster parents. "Foster families to be granted $6,500 weekly by Family Life Ministries," Loop News Jamaica, May 19, 2019, www.loopjamaica.com/content/foster-families-be-granted-6500-weekly-family-life-ministries.

99   Office of the Children's Advocate, "A Study of the Foster Care Programme in Jamaica," last updated February 4, 2010, www.welcome.oca.gov.jm/media/The-Foster-Care-Programme-in-Jamaica.pdf.

100 Jamaicans for Justice, "NGOs Report."

101 Jamaicans for Justice, "NGOs Report."

their investigation or demonstrate how incidents were resolved. In 2012, the CDA Organisational Review noted the children's homes were not adequately documenting their intake procedures nor that any consistent monitoring mechanism was in place.[102] When monitoring visits are done, there was very little interaction with children themselves.

Further, the visits are inconsistent. The SOS Children's Home in St. Andrew, for example, only had two monitoring reports between 2002 and 2009. In 2011, monitoring officers only made 80 of the 128 visits (63 percent) to eight facilities. While there was an increase in visits in 2013, no visits were recorded to any homes in the second half of 2014.[103] The monitoring officers themselves reported that they were denied access to homes, and when they did gain access, they noted that care plans were missing from case files.[104] In 2009, 16 percent of foster care parents reported that there was little to no monitoring visits by CDA officers, and 53 percent of children said that they had little to no interaction with CDA officers.[105]

The 2014 Auditor General's Report provided an audit of the monitoring practices of the CDA.[106] The report indicated that the CDA was note fulfilling its reporting responsibilities. Officers were not meeting their targets in terms of visits to the homes. There was evidence that the education programmes within homes were not being monitored and majority of the homes were operating without licences.[107] It is possible that children were being educated through inappropriate and unauthorised teaching materials, which contributes to the poorer educational outcomes seen amongst children in care. These all speak to systemic issues at the root of this critical aspect of governance.

Inadequate accountability poses risks to children in care. Between 2006 and 2010, a pattern of abuse within children's homes emerged, where there were 500 reported cases of abuse in both state run and private childcare institutions. Many of these were perpetrated by members of staff working within institutions (see Figure 2.2). In 2018 Jamaicans For Justice (JFJ), based on information provided by the CPFSA, reported that between 2008 to 2018 there were more than 1,600 documented cases of critical incidents in residential childcare facilities, 558 occurring in the previous five years,[108] yet the CDA monitoring reports from January to June 2014 reported no signs of abuse from 42 children's homes.[109]

Figure 3. *Documented Incidences of Physical Abuse (by Staff) (2006-2010)*[110]

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

102 "Auditor General's Report."

103 "Auditor General's Report."

104 "Auditor General's Report."

105 "Auditor General's Report."

106 "Auditor General's Report."

107 The Board of Visitors was intended to enhance the monitoring capacity of the CDA, through routine inspections of homes, where they could interview children, make enquiries regarding complaints, and make remarks to the Advisory Council and the Minister, as necessary. The Advisory Council in addition to receiving annual reports from the Board of Visitors, is tasked with advising the CEO of the CDA on strategic planning. The CCPA Advisory Council should also report to the minister on the implementation of CCPA, and receive reports from the BOV. Despite stated intentions, the CDA did not have a Board of Visitors in place until November 2014. While the CDA Advisory Board was established and met regularly, there was no Advisory Council in place in accordance with the CCPA. Subsequently, the CDA advised that the Advisory Board subsumed the responsibilities of the Advisory Council (Advisory Board Representative, email correspondence, March 1, 2021).

108 Baines, "Hazards in Homes."

109 CDA officers were denied access to one of the facilities and did not provide monitoring reports for 11 other facilities.

110 Jamaicans for Justice, "NGOs Report."

The CDA also documents the number of critical incidents taking place in homes (Figure 2.3). A 2015 report found that one-third of girls in state care were infected with sexually transmitted diseases (STDs).[111] In 2017, the CPFSA Child Health and Wellness Study in Residential Child Care Facilities, reported that the average age for intercourse was 11 years and four months. Upon testing 60 girls, 19 were found to have sexually transmitted infections (STIs). An additional 120 tested afterwards yielded more positive STD results.[112] In January 2018 a fire at the Walker's Place of Safety resulted in the death of two children.[113] The monitoring officers reported that the majority of protocols were being followed, but weaknesses were found with the management of the home, including absence of job descriptions, proper records, and the standard of care within the home.[114] No one has been held responsible for the fire. These are not the only incidents, but they are stark examples of the harm that is inflicted on children in state are, in the absence of adequate and appropriate accountability measures.

Figure 4. *Number of Critical Incidents between April 2005 to March 2018.*[115]

Regions	Year													Total	%
	2005/06	'06/07	'07/08	'08/09	'09/10	'10/11	'11/12	'12/13	'13/14	'14/15	'15/16	'16/17	'17/18		
South-east	106	234	279	248	272	289	124	172	164	103	98	59	39	2,187	53.5
North-east	29	57	71	112	56	44	48	23	8	66	54	7	9	584	14.3
South-ern	65	90	102	91	144	132	40	27	46	11	0	2	0	750	18.3
Western	19	60	49	40	63	60	54	93	64	30	17	16	3	568	13.9
Total	219	441	501	491	535	525	266	315	282	210	169	84	51	4,089	100.0

Lack of Stakeholder Engagement

Within the Jamaican child care state programme, the absence of communication pathways between state and non-state entities, can often result in duplication of efforts or a failure to address issues altogether. The limited collaboration with non-state stakeholders is a missed opportunity to offset the problem of limited financial and professional resources. Even where there is a suggestion of increased involvement of non-state stakeholders, it does not rise to the level of true collaboration, but often fluctuates between placation and cooperation.[116] Even though there is a Children's Advisory Panel, many stakeholder groups amongst children are not consulted. The membership for CAP is exclusive to children who are successful in school and demonstrate leadership skills, thus excluding a substantial cohort of children in state care, including children who suffer from mental and physical disabilities and pregnant teens, children in conflict with the law, and academically underperforming youth. This failure to truly involve persons who are most affected has a direct impact on the state's capacity to meet their needs.

Key stakeholders who ought to be integral to reconciling child abuse cases, such as academic experts, and civil society organisations continue to be under- and inconsistently utilised.

111 "Situation Analysis of Jamaican Children."

112 Ryon Jones, "'Care-Less' With Our Kids - Experts Call For Rethink Of Measures Surrounding Children Sexuality," *Gleaner*, September 29, 2017, jamaica-gleaner.com/article/lead-stories/20171001/care-less-our-kids-experts-call-rethink-measures-surrounding-children.

113 Improvement in monitoring has been reported. It was indicated that they had an "informal open door policy" with monitoring officers, who do visit monthly. However, the monitoring responsibilities did not include routine direct interaction with the children. The manager indicated that officers look at critical incident books, and speak to caregivers and administrators. While she indicated that some officers will follow up on children who are hospitalised, it was not an expected responsibility. (Private children's home representative, Zoom video call, December 21, 2020).

114 CDA, "Walker's Place of Safety,"

115 CPFSA, ATI request "Critical Incidents Statistics," accessed February 2021. (These statistics must also be considered in tandem with reports of poor monitoring and failure to address critical incidents adequately.)

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This lack of collaboration results in a lack of resources for service delivery, particularly for vulnerable groups. The head of a private children's home noted that many of their resources are provided by sporadic support of varying quality from international volunteers. At the same time there is no structured vetting or due diligence conducted on foreign volunteers, who may have unsupervised access to children in care. Many of the children are affected emotionally when volunteers, to whom they had become attached, leave. The lack of consistent, standardised care for children with special needs leaves them susceptible to various forms of abuse. According to CDA reports, this lack of professional resources has led to abuse from the caregivers and the other non-disabled children.[117] This means that this vulnerable cohort, who are not likely to ever leave state care, might be subject to lifelong abuse.[118]

As a consequence, there are many overlapping and unsustained activities taking place and many recommendations unaddressed. Policymakers have acknowledged serious resource constraints, but maintain that better use could be made of what is available.[119] They point out the unnecessary costs of duplicated activities, such as public education. They also note that savings could be gained by working with and through effective CBOs and NGOs in

The lack of consistent, standardised care for children with special needs leaves them susceptible to various forms of abuse.

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117 Jamaicans for Justice, "NGOs Report."

118 As will be discussed, other jurisdictions such as the UK work collaboratively at both strategic and operational levels to ensure that there is a system in place that allows for individualised treatment of cases through accessing a variety of stakeholders.

119 "Situation Analysis of Jamaican Children.

order to reach communities and families, and also underlined the ways in which cumbersome bureaucratic procedures produce waste. While there is a consensus that it is "important and urgent to find concrete ways of maximizing on scarce resources," this has not led to any material change.[120]

Finally, the lack of true engagement with the views of children, and the empirical work of academics and researchers, means that legislation and policies are not evidence-based, nor informed by the realities of the individuals they are supposed to serve.

Policies and Programmes Not Informed By Evidence

The continued formulation of policies and programmes for children, without considering relevant empirical evidence, undermines the potential of those policies and programmes to be effective, and to deliver desired outcomes. As but one example, in spite of evidence from around the world that demonstrates the improved outcomes for children in family environments, and the Jamaican state's declaration of and increased focus on

deinstitutionalization of state care, there continues to be a significant disparity in the amount spent on state care, with limited increase in resources driven towards foster care.[121] As a consequence, the number of children adopted or placed in foster care has not increased substantially. In 2011, there was a notable decline in foster care applications, in part, because of the lack of support for parents from the state; two years later, in 2013, the Foster Parent Association said that the foster care programme was failing.[122]

Figure 5. *Expenditure on State Care (2014 - 2020)*[123] *(Expressed in millions)*

	2014	2015	2016	2017	2018	2019	2020
Private Children's Homes	$527M	$538M	$608M	$673M	$628M	$632M	$657M
Foster Care	$85M	$83M	$96M	$108M	$140M	$196M	$129M
Percentage difference spent on state care vs foster care	72%	88%	72.6%	72.2%	63.4%	52.2%	67.2%

Legislative Framework

The legislation pertaining to children in need of care and protection, in particular the CCPA, but also the Adoption Act, needs to be revised and updated with evidence-informed best practice legislation, and relevant proofs of concept. There are several instances where this is manifest. As one example,

the obligation to consult children as stakeholders and academics for empirical data is not enshrined in the legislation.

There are other legislative weaknesses that should be addressed. Under the CCPA and Child Diversion Act, there is no official definition for the term "uncontrollable," leaving room for interpretation.[124] As a result a child can be deemed uncontrollable for reasons

ranging from sexual promiscuity to having a disability. This runs counter to the definition of children in need of care and protection. In fact, Section 8 of the Child Care and Protection Act, defines a child in need of care and protection as one who is "falling into bad associations; exposed to moral danger (found destitute, wandering without any settled place of abode and without visible means

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120 Jamaicans for Justice, "NGOs Report."

121 CPFSA Representative – Zoom Video Call, October 16, 2020

122 Judith A. Hunter, "Foster Care Can Make a Difference," Jamaica Information Service, February 25, 2020, jis.gov.jm/features/foster-care-can-make-a-difference/.

123 Figures prior to 2014 were not available, even through ATI request.

124 Even without definition, it is clear that the concept of an uncontrollable child should be indicative of their need for the state's protection. Section 8 of the Child Care and Protection Act, defines a child in need of protection as "falling into bad associations; exposed to moral danger or beyond control."

of subsistence, begging or received alms for loitering for that purpose), or beyond control." Not only are children in need of protection being taken from their family environment at the discretion of authorities, but they can also be subject to punishment as severe as life imprisonment by the justice system for behavioural issues,[125] which may be due to mental health issues.[126] The failure to enshrine the definition of uncontrollable within legislation means that children can actually become subject to offences that adults are not. Despite research and calls from civil society organisations indicating the potential harm caused to children and its contravention of the human rights framework, this has thus far remained unaddressed. [127, 128]

There are no provisions for special protections for children with disabilities and mental illnesses within the CCPA. As a result, there is no impetus or best practice guidance to follow that would require the provision of additional financial and professional resources for this cohort of children.

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125 The Keating Report highlights the imposition of adult sentences on deviant children, with little consideration for the underlying causes for their behaviour.

126 A 2012 MOEYI Review found that uncontrollable children are usually victims of abuse, have been witness to violent behaviour in the home, or have grave psychiatric issues. Ministry of Education Youth and Information, ATI Request "Strategic Review of Residential Care for Children in State Care," 2012, accessed October 6, 2020.

127 The lack of consensus on the definition of uncontrollable, leads to children being detained without justice cause. This is a violation of Article 9 of the CRC, which prevents children from being incarcerated, creating a direct conflict between national legislation and human rights instruments.

128 State Minister in the MOEYI announced in February 2021 his commitment to amending legislation so as to prevent judges from designating children as uncontrollable. "Morgan Commits to Pushing Legislation to Protect Children from Being Designated 'Uncontrollable,'" Nationwide News, February 8, 2021, https://nationwideradiojm.com/morgan-commits-to-pushing-legislation-to-protect-children-from-being-designated-uncontrollable/.
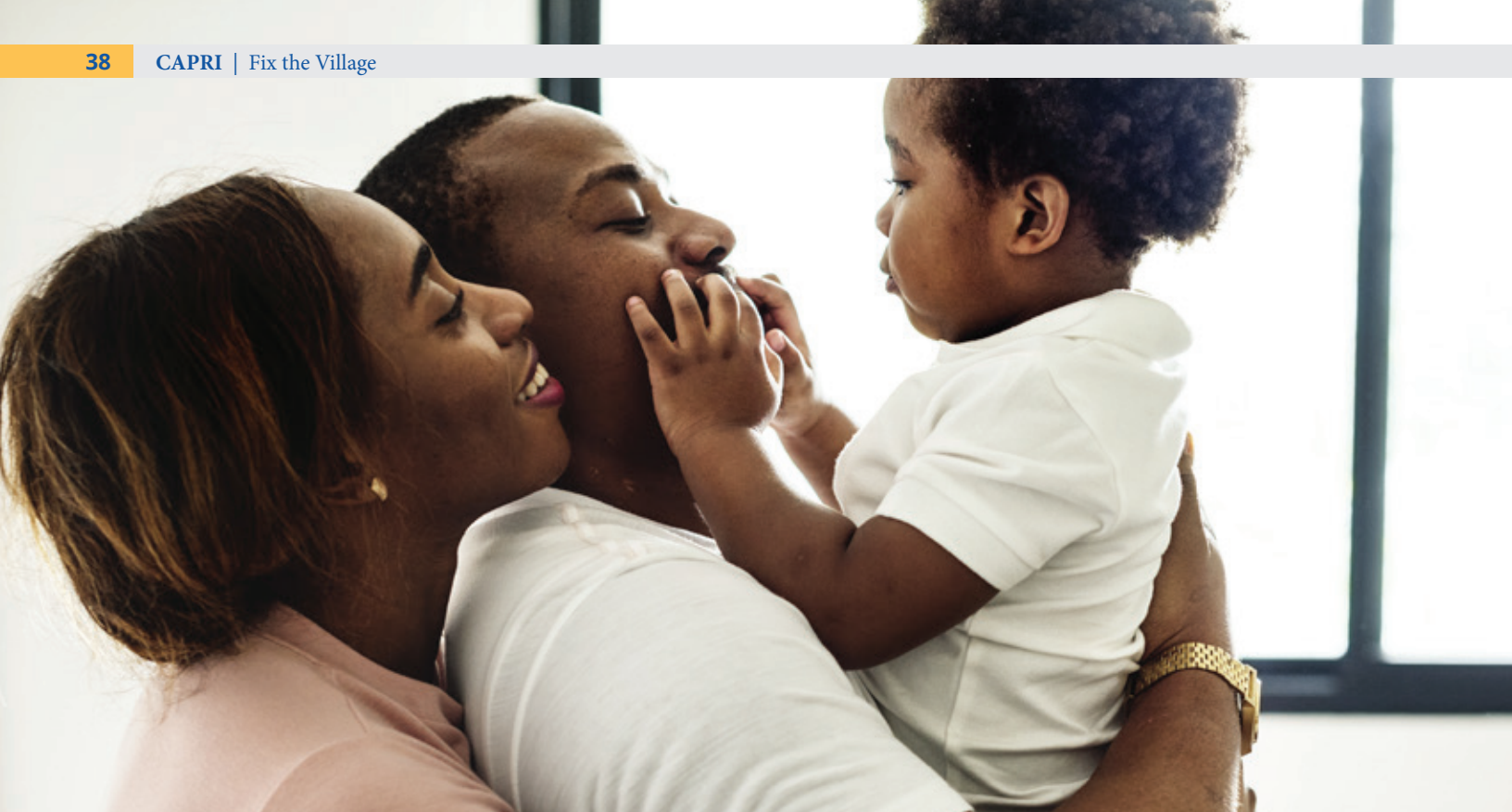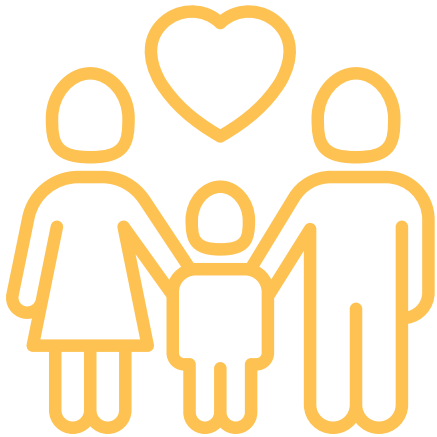
6 Case Study: Adoption

In 2017, only

27 of 4,536

CHILDREN IN STATE CARE
were selected to go through the
ADOPTION PROCESS.

In 2014, there were

311 approved adopters

dating from 1999

Adoption in Jamaica is governed by the Adoption Act (1958)[129]. The CCPA does not make any reference to the adoption of children, despite the fact that issues related to adopted children, as well as to foster care, often intersect with each other and more generally, with child care and protection and the provisions under the CCPA.

Inadequate and Outdated Legislation

That the Act should be reviewed and updated is well acknowledged. In 2008, the CDA's Annual Report noted that the Adoption Act should be amended to remove the functions of the Adoption Board, so that the agency's own Adoption Committee would be legally responsible for making recommendations.[130] It stated that a review was underway with the support of a multi-sectoral team.[131] The

Committee on the Rights of the Child in its 2015 periodic report on Jamaica expressed concern about the lengthy process for adoption, and the need for sufficient officers to handle adoption cases, conduct investigations, and prepare the requisite documents. The main recommendation was that Jamaica ought to review current legislation and policies on adoption, to ensure that the best interests of the child are of primary consideration, and that relevant legislation and policies are in line with the Convention on the Rights of the Child.[132] Jamaica's own policymakers have publicly highlighted the need for review and amendment of the adoption laws.

Since then, there has been some movement, but no action. An Act review exercise was undertaken, and a report completed in 2014. In 2017 the then-portfolio minister made utterances regarding the need for an amendment to the Act to allow the courts to make a child

available for placement where it has been determined that the parents have "clearly abandoned" their child, a matter that was not addressed in the 2014 review. In 2018, that same minister publicly acknowledged that the Act was outdated,[133] and stressed the need for adoption to be in line with the developments and rights protection as set out in the CRC and CCPA. He identified several issues to be examined, none of which had been addressed in the Act review. In January 2019 the CPFSA informed the Adoption Board that a cabinet submission was being prepared recommending an amendment to the Act; it was presumed but not clear if that submission and recommendation were based on the 2014 report. No updated consultations had been done though five years had passed. In April 2019, the then-minister indicated that the laws were being amended to speed up the process governing adoption, an issue

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129 The full name of the legislation is Children (Adoption of) Act, 1958.

130 CDA, "Annual Report 2007-2008."

131 "Situation Analysis of Jamaican Children."

132 Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Jamaica CRC/C/JAM/CO/3-4, March 2015, paras 40, 41.

133 Latonya Linton, "Gov't Taking Steps to Make Adoption Easier," Jamaica Information Service, September 10, 2018, jis.gov.jm/govt-taking-steps-to-make-adoption-easier/.

The CCPA does not make any reference to the adoption of children, despite the fact that issues related to adopted children, as well as to foster care, often intersect with each other and more generally, with child care and protection and the provisions under the CCPA.

that was also not addressed in the 2014 Act review. No cabinet submission has been made, and no change has occurred. Several new issues have come to the fore since 2014, that should be considered and incorporated into any amendments.

The CCPA review, which has followed a similar timeline as the Adoption Act, having been completed in 2014 and gone no further, does not address any of these legislative and procedural problems. That review has the word "adoption" only once in the 93-page document, and that is to recommend that a two-year period be enshrined in an amended act, during which time the parents (or other relatives) of a child in state custody "shall have the opportunity to improve the home environment to facilitate the return of the child." At the end of the two-year period, if the parent has made no significant progress in improving the home environment or making preparations for the return of the child, or has neglected to fulfil their visitation or other requirements imposed by the court, the parent shall be deemed to have relinquished their parental rights. The child shall then be deemed to be available for adoption.[134]

Since 2005 there has been a discrepancy between provisions in the Adoption Act in relation to executive and governance functions and which entity actually undertakes these functions. The Act designates the Adoption Board as the sole legal authority and responsible body for the receipt of adoption applications, investigations in respect of those applications, and the arrangements of adoption of children in Jamaica. However, since 2005, those functions have been carried out by the CDA and later the CPFSA.[135] The Adoption Act should have subsequently been revoked or amended, in tandem with the redesignation of the Board's role given the subsuming of its functions to the CDA.[136] This having not been done, the Adoption Board retains its function to approve the adoption application before it is submitted to the court for the adoption order, which finalises the adoption process.[137] There is no legal relationship between the Board and the CPFSA, and the Board has no power to direct the CPFSA nor hold it accountable for its actions with regard to adoption, despite its legal mandate.

The Act does not provide any specific guidance on how assessment and approvals for adoptions should be carried out, nor is there any regulation or policy document that delineates parameters for decision-making. There are no best practice guidelines. These critical assessments are thus left to the discretion of the CPFSA and the Adoption Board, are uninformed by evidence, and can be unpredictable and even without legal support. The Act does not establish criteria for being appointed to the Board; directors are appointed by the minister. Since 2016 the respective ministers

The Act does not provide any specific guidance on how assessment and approvals for adoptions should be carried out, nor is there any regulation or policy document that delineates parameters for decision-making.

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134 Though it did not explicitly refer to adoption, there is one other proposal in the CCPA review that pertains to adoption, which was to amend the law to promote the more routine and diversified use of the recognisance order, to provide a systematic approach to identifying parental commitments related to returning the child into the home, which is related to the process of declaring a child eligible or free for adoption. The implementation of these commitments will be monitored by CDA and integrated into case management and will be subject to court-ordered sanctions. The law (or regulations) will provide for the identification on a case-by-case basis of visitation standards and commitments for parents having children in the care or custody of the state.

135 The CPFSA's carrying out the functions of the Adoption Board stems from a 2000 Cabinet decision, as part of the process of consolidating children's services at the time.

136 "Modernisation Plan – The Children's Services Division, Final Report," Office of the Ambassador, Special Envoy for Children, September 7, 2000, 22.

137 When the court makes an adoption order, the parents or guardians of the child lose all rights, duties, obligations, and liabilities in respect of the future custody, maintenance, and education of the child. These rights, duties, obligations, and liabilities are vested in the adopter. Children (Adoption of) Act, Section 15.

have used their prerogative to appoint directors who bring specific skill sets and experience to the Board; however this requirement to have representation from certain set sectors should be a function of the Act, not the minister's discretion.

Administrative Weaknesses

Many reports, including the 2008 and 2012 CDA reports, attributed the slow rate of adoption to the significant backlog of cases. The CDA publicly committed to addressing this backlog,[138] which it succeeded in doing. Since 2014, intra-family and other such adoptions, which constitute the bulk of adoptions in Jamaica, take only three to six months from the start of the process to finalization in court.[139]

These improved timelines do not, however, pertain to the adoption of children who are wards of the state, what the CPFSA calls "Request Cases." Adoption is the least employed approach to placing children into a family environment. In 2017, only 27 of 4,536 children in state care were selected to go through the adoption process.[140] In 2014, there were 311 approved adopters, dating from 1999; as at October 2020 there were over 138 approved adopters waiting for a child to be placed with them, the longest having been approved in 2011.[141] While the agency claims that most children in care are not available for adoption, there is other evidence which suggests that the work (investigations, administration) to make those children available is not being

done.[142] Because of the lack of oversight and accountability, however, concerns that CPFSA could place far more children for adoption with request applicants have no way of being addressed outside of ministerial directive.

For the children who are likely to be available, such as newborns relinquished at the hospital, and children who have been in care for several years, the amount of time to place them with approved adopters seems inordinately long. A newborn left at the hospital takes, on average, two years to be placed with an adoptive family. Most approved adopters wait, on average, five years for a child to be placed with them. Almost all young children placed for adoption are in a facility for the entire time from they were left at hospital to when they were placed with their adopters.[143] The long process to make a child available for adoption means that children in care lose the opportunity to grow up in a family environment, and their crucial first years are spent in an institution.

These long timeframes may be in some part attributed to the agency's lack of capacity to process these children's cases efficaciously, given the too-high case load per social worker. There are other factors that account for the long periods of time that children who might be placed in adoptive families spend in state care. These include a historic policy emphasis on the institutionalisation of children.[144] The agency's practice is to first resolve uncertainties and place the child later. With babies these uncertainties are, primarily, the possibility of people

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138 Moncrieffe, "British Council Activity."

139 The Adoption Board (Jamaica), "Report on the Adoption Process," 2014.

140 Former Adoption Board member, author interview, November, 2020.

141 Former Adoption Board member.

142 Former Adoption Board member

143 Former Adoption Board member.

144 "A Policy to Amend the Child Care and Protection Act & Children's Homes Regulations," draft dated March 14, 2014.

coming forward to retrieve the baby at a later date, and the obligation to find the baby's father. The agency considers two years an acceptable length of time for these uncertainties to be resolved for a newborn, meanwhile the child is in an institution.[145] This consideration coincides with agency practice, and rhymes with the CCPA review recommendation to formalize a two-year waiting period before a child be made available for adoption.

Policies and Programmes that are Not Evidence-Informed

The recommendation in the CCPA Act Review that a child should be institutionalized for two years, with a possible extension of a third year, while its biological family sorts itself out, is contrary to best practice around the world, and could be argued to be against the child's best interest. The review's proposal of two years is congruent with the Agency's existed stated timelines. The question arises, however: why two years? Is it what the agency perceives is realistic given its capacity and its experience with prior cases? What are the outcomes for children who are institutionalized for two years while their biological family is supposed to be changing their lives to accommodate them? How many children are taken by their biological families at the end of the two-year period? What are the prospects of family reunification based on

As at October 2020 there were over

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APPROVED ADOPTERS

waiting for a child to be placed with them, the longest having been approved in 2011

an analysis of a sample (or all) of family reunifications in the agency's experience? Whether resolving uncertainties while the child is in a facility rather than in a family is in the best interest of the child, as opposed to placing the child with an approved family while resolving the uncertainties, is a matter of opinion, in the absence of evidence. Opinion should not be the basis of such decisions, but in the absence of any empirical research on any aspect of these issues, policies are based on the perspective and experience of only the agency's decision-makers, over whom there is no oversight, and who are not held accountable for their decisions or actions. This is one concrete example of the Agency's failure to utilize evidence to inform policy.

Another example is with regard to older

children who are adopted by Americans, and who join their adoptive families, often in predominantly white, conservative areas of the United States. There is no follow up or outcome data on these children to know whether their being adopted into an alien and possibly racist culture is in their best interest, whether in and of itself, or relative to them living out their childhood in a facility.[146]

The absence of evidence-informed decision-making is also felt in the Agency's decision that children who may be eligible for adoption should not be placed in foster care.[147] That is, children in foster care are, by the agency's definition, not eligible for adoption.[148] CPFSA's policy, decided internally, is counter to the internationally accepted precept that foster care is not intended to preclude adoptive care.[149] It was based on the views of Agency officials that foster parents would not get as attached to children as prospective adopters would, and therefore they would be less upset should the child be returned to their biological family. Foster care in Jamaica is not legislated or governed by any statute. There is no legal framework nor guidelines for placement in foster care.[150]

The 2014 CCPA review set out to provide, in the amended act, for the development of foster care regulations. The recommendations were practical and obvious: the creation of a foster parent registration system; the development of standards and protocols for children

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145 Older children also get stuck in state care. With older children the uncertainties that prevent them from being made eligible for adoption often amount to biological parents who continually make commitments that they do not keep. For older children these uncertainties can and often do take even longer. Several age out of the system and never get adopted. Former Adoption Board member.

146 Former Adoption Board member.

147 In February 2021, the Minister of State in the MOEYI announced an initiative that would remove the proscription that approved waiting adopters not be allowed to foster. "CPFSA to Roll Out 'From Cribs to Loving Arms' Initiative.".

148 Former Adoption Board member.

149 Article 11, 1986 United Nations Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally A/RES/41/ which expressly states that foster family care, may continue, if necessary, until adulthood but it should not preclude adoption.

150 Nevertheless, the Adoption Board does review and approve adoption applications for foster children. Eight out of 139 cases reviewed between January to August 2013, and seven out of 81 applications that were approved between January and October 2020, were for foster children. For the most part foster children who are adopted have been in their foster family for most of their lives. Former Adoption Board member.

in foster care; the establishment of legal rights of foster parents and children relative to the rights of the biological parent; limitations on the guardianship rights exercised by foster parents; the role of child participation in making Fit Person Orders, as well as determining the scope of foster care; reporting mechanisms for breaches of standards; a Critical Incident Protocol; the creation of monitoring systems; and delineation of the duties of the agency's officers towards foster parents and foster children. That these recommendations pertain to such basic functions of a foster care programme indicates the gap that presently obtains, as these enforcement and monitoring instruments do not exist at all.

Similarly, in 2016, a Joint Select Committee was appointed to review inter alia the CCPA and heard proposals by the then-CDA on this very issue. In the committee's report (submitted to the House of Representatives in 2019 and the Senate in 2020) the recommendation was made that foster care regulations should be developed, including a foster parent registration system, standards and protocols for children in foster care, as well as reporting mechanisms for breaches of standards, legal rights of foster parents and children relative to the rights of biological parents, and duties of CDA officers towards foster parents and/or foster children.[151] However, this recommendation has not been fulfilled, leaving practitioners and other stakeholders without any guidance for best practice, clear consensus of objectives and goals, or pathways for accountability.

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151 "Report of the Joint Select Committee Appointed to Complete the Review of the Sexual Offences Act along with the Offences against the Person Act, the Domestic Violence Act, and the Child Care and Protection Act," Houses of Parliament: Kingston, 2019, https://japarliament.gov.jm/attachments/article/2050/JSC%20Sexual%20Offences%20Report.pdf.

7 Successful State Care System Governance Reforms

Research on the effects of
long-term state care
in Botswana pointed to the need for
community involvement
FOR SERVICE DELIVERY
in partnership with relevant NGOs

Effective state care programmes for children are built on a foundation of theoretical and practical evidence, and an appraisal of the situation in which those programmes are to be implemented. Such an assessment would consider the cultural and social values, political opportunities and constraints, and the specific history of the child in need of care and protection.[152] Political will, research, funding, and administrative capacity are necessary catalysts for change in state care programmes. The Jamaican state should embrace a more collaborative approach to governance, which would improve accountability, service delivery, and overall efficiency of the programme to provide a higher standard of state care, and greater efficacy in placing children in permanent family settings. Reform of the state care programme should facilitate increased access to resources, a robust monitoring and evaluation framework, as well as the incorporation of stakeholders at a strategic level. Embracing a multi-agency approach to operational and strategic planning is essential to creating a programme that has shared consensus, accounts for limited resources, and strengthens capacity.[153] Jamaica needs to update legislation that explicitly identifies the bodies responsible for state care and the protection of children generally, requires multi-stakeholder participation, and creates mechanisms for accountability.

There are several examples from developing countries around that world that have reformed or innovated their systems for children in need of care and protection. Many of the examples feature increased engagement with other state agencies, civil society organisations, the private sector, and academic institutions. These entities can provide strategic and operational support, thereby addressing the obstacle of access to fundamental needs, such as education and medical support.

Evidence from developing country jurisdictions demonstrates the advantages of collaborative arrangements and the interdependent management of collective issues to build capacity.[154] These examples feature community-based mechanisms, where community members are directly involved in the welfare and protection of children in care.[155] In several Sub-Saharan African countries, where there are large numbers of children in care and varying access to resources, communities have created childcare committees, who offer support to families and children, and supervise placements in family environments. In Tanzania, the government engages in collaboration with local villages to strengthen their capacity for food provision and sustainability for provision of care, which responded

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152 "Comparing Outcomes," What Works.

153 Peter Sidebotham, "Continuity and Change in Child Protection: Challenges in Research and Practice," *Child Abuse Review* 25, no. 3, (2016) https://doi.org/10.1002/car.2440.

154 Ellen Rogers and Edward P. Weber, "Thinking Harder about Outcomes for Collaborative Governance Arrangements," *American Review of Public Administration* 40, no. 5 (2010), https://doi.org/10.1177/0275074009359024.

155 At a 2009 conference on family-based care in Africa, the importance of creating opportunities for children to have family care was recognised across all participating African countries.

Reform of the state care programme should facilitate increased access to resources, a robust monitoring and evaluation framework, as well as the incorporation of stakeholders at a strategic level.

to a lack of professional and financial resources in the alternative care system for children.[156] Research on the effects of long-term state care in Botswana pointed to the need for community involvement for service delivery in partnership with relevant NGOs.[157] In Kenya, local Nylouro groups manage small credit schemes to support families, whilst also managing the services offered to children in care.[158] Rwanda provides a useful example of how collaboration, particularly with the public, can improve child care. In order to reconcile a lack of both professional and financial resources, the government embraced a collaborative approach, which was community-led and supported by the state. In creating a structure that was largely dependent on volunteerism, 29,674 community volunteers were recruited, 1,102 foster carers were trained, and 68 social workers and psychologists provided services to

the state. 70 percent of children in care were placed with families.[159] While these examples may appear, at first glance, to be incongruent with the existing childcare infrastructure, there have been similar models of community-based service provision in Jamaica, including for the disabled in rural and poor communities.

Monitoring systems can be strengthened by engaging civil society. Many countries value the inclusion of non-state stakeholders in building administrative capacity, rather than recreating a top-down approach of independent monitoring mechanisms, which is controlled by the state. In 2011, a UNICEF report on residential childcare in Serbia noted that effective monitoring was achieved through the creation of detailed protocols, and by setting up systems for citizens' monitoring and management of staff accountability, and participation of

civil society organisations on governing boards.[160] This led to an almost one-third reduction of children in care.[161]

Legislative enforcement is a key element of increasing accountability in state care. Effective legislation provides clear guidelines for agencies and practitioners to follow and increases accountability for state agencies. A comprehensive multi-agency approach to child protection has been embraced in Bulgaria through the adoption of the Child Protection Act (CPA) in 2000, which sets child protection at the centre of public policy. This regulates the rights, principles, and measures for child protection authorities. The act also calls for participation of non-profit organisations and individuals in provision of child protection services. By adopting the CPA, Bulgaria introduced the systems approach where child protection measures are complemented

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156 However, this capacity building was hampered by the failure to involve local stakeholders equitably and form effective partnerships. A. Wallis, V. Dukay, C. Mellins, "Power and Empowerment: Fostering Effective Collaboration in Meeting the Needs of Orphans and Vulnerable Children," *Global Public Health* 5, no. 5 (2010): 509-22.

157 Kabo Diraditsile and Gosego I. Mmeanyana, "Perceived Effects of Prolonged State Care for Children: Botswana Experience," *African Journal of Social Work* 9, no. 2 (2019), https://pubmed.ncbi.nlm.nih.gov/19626505/.

158 150 Kabo and Gosego, "Perceived Effects of Prolonged State Care."

159 UNICEF, "Situation Analysis of Children in Rwanda: Summary Report," Kigali: UNICEF, 2018.

160 Redžić, 2011.

161 Redžić, 2011.

by and implemented with other laws focused on children and families, such as the Education Act, and the Act to Combat Delinquency of Minors, as well as the relevant regulations for the implementation of the CPA, such as the Ordinance criteria and standards for social services for children. The national legislation includes a large number of regulations, including guidance for the implementation of the laws and rules. All of the regulations require multiagency cooperation. throughout policy development and implementation, including in individual cases.

Increased public participation should increase public trust: direct involvement and creating a sense of ownership of the problem brings about increased cooperation with state-led decisions. Public participation can thus improve transparency and increase public determination to reconcile problems in partnership with the state, instead of seeking their own remedies outside

of the law. In 2007, Liberia formed an Association of Reunified Children, which consisted of young people and adult who had previously grown up in care. This group informed the state as to the context-specific problems faced in care and how they might improve their services to reconcile them.[162] In addition, the government facilitated the building of a robust civil society network, which was responsible for gathering evidence to advance the reform of the adoption system. This evidence-based approach led to a comprehensive review of laws, policies, and practices associated with inter-country adoption. Similarly, in Ghana, their Young Adult Support services is led by youth from similar backgrounds to provide direct support to young people who are transitioning out of care.[163] They also strengthened this contextual approach by gathering evidence during the national state care mapping, which highlighted gaps in the system and validated the need for reform

to the National Care reform initiative.

Enshrining partnerships in policy helps to establish stakeholder collaboration as best practice and creates some level of accountability for administrations that fail to engage accordingly. In Australia, there is a "Supporting Children in Out-of-home Care Policy" that provides guidance on the creation of partnerships with schools, the Department of Education, and other educational bodies, and how to effectively share in the commitment of maintaining a standard of education for children in care. These obligations include the appointment of a learning mentor as well as a peer support group.[164] Although Serbia has no single specific child protection law, it has adopted the General Protocol for Protection of Children from Abuse and Neglect, as a comprehensive multiagency mechanism for the protection of children, consistent with Article 19 of the CRC. This document was the foundation for the creation of protocols that clearly

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162 UNICEF, "Country Care Profile - Liberia," January 2015, www.bettercarenetwork.org/sites/default/files/Country%20Care%20Profile%20-%20Liberia_0.pdf.

163 "Multi-Agency Working in Child Protection: A Review of South East Europe," Child Protection Hub, March 2016, https://childhub.org/sites/default/files/library/attachments/multi-agency_working_in_child_protection_2016_08_09.pdf.

164 Australian Ministry of Education, "Supporting Students in Out-of-Home Care," Victoria State Government, last updated June 15, 2020, www2.education.vic.gov.au/pal/supporting-students-out-home-care/policy.

define the responsibilities of stakeholders and provide mechanisms for cooperation among institutions from different systems.[165]

As a developing nation with fiscal constraints, state funding is limited and inadequate for state care for children, and access to grants is unsustainable. Collaboration with the private sector may ameliorate this issue of funding. Private investment may be sought through collaboration with the diaspora and private sector.[166] Many large-scale northern NGOs use this method of acquiring financial resources. CAPRI's earlier research on the contribution of the diaspora community found that Jamaicans abroad have about US$400 million invested in the country.[167] Jamaica could replicate the efforts as seen in NGOs is Venezuela, who established a group of private investors throughout the globe who contribute monthly. In Jamaica, those concerned with state childcare, particularly those who are former wards of the state, could solicit donations through international aid.

Rwanda has committed to improving the situation of children in the country, and has made progress towards the removal of structural barriers to the development and implementation of effective policy.[168] The protection of children is mandated by the National Integrated Child Rights Policy to one ministry: the Ministry of Gender and Family Promotion.[169] Rwandan children's policies clearly stipulate the need for multi-agency collaboration, and are accompanied by dedicated budget lines, clear targets, specific accountabilities, and staggered implementation strategies. The Rwandan government created a National Commission for Children in 2011, with clearly outlined responsibilities. The Commission is tasked with the sole responsibility for monitoring and evaluation of legislation, policies, and interventions, while the National Commission for Child Rights is dedicated to advocacy. Rwanda has also ratified and incorporated the CRC, as well as other related human rights instruments including the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), into domestic legislation. The Rwandan government, in pursuing collaboration, incorporates the voices of government ministries, international partners, CSOs, and children who suffer from a range of vulnerabilities. As part of this collaborative approach, young people are directly involved in decision-making about their care. Beyond awareness building, children are involved in regional decision-making, identification of priorities, and monitoring the implementation of various interventions. The Rwandan government works closely with vulnerable households through a range of social protection programmes. These programmes provide community-based health insurance, education and skills training. As a result of these improvements including the Tubrarerere Mu Muryango programme, Rwanda reported only 3,323 children in state care, after having transitioned 2,993 children into family-based care. Almost all children of age were successfully enrolled in school programmes, with 91 percent of them being reunited with their families. In addition, their Care Reform strategy placed both social workers and psychologists in 19 of the 30 districts, complemented by a community-based initiative, where 30,000 volunteers were trained to provide additional monitoring of child-rights violations.

The various initiatives highlighted above have one commonality, a necessary attribute for reform: political commitment.

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165 Australian Ministry of Education, "Supporting Students in Out-of-Home Care."

166 "Adopt-a-Clinic" is a programme in Jamaica's Ministry of Health and Wellness that has successfully used the model of soliciting private sector and diaspora citizens' donations to rehabilitate health clinics throughout the island.

167 Evidence suggests that most Jamaicans in the diaspora are affluent, with 80 percent having tertiary education, and 70 percent earning more than US$40,000 per annum. CAPRI, "The Economic Value of the Jamaican Diaspora," May 2017, https://capricaribbean.org/sites/default/files/public/documents/report/economic_value_of_the_jamaican_diaspora.pdf.

168 "Situational Analysis of Children in Rwanda."

169 Similar to Jamaica, responsibility for the delivery of policies for children's lives is spread across several ministries. However, a National Integrated Child Rights Policy was adopted in 2011 to coordinate and align efforts of these organisations and provides a framework for the development and implementation of policies promoting child rights to create standardisation and consensus across them.

8 Conclusion and Policy Recommendations

3 years

after child-related agencies were merged, there has **not been an evaluation** of the impact of the merger on the **EFFICIENCY OF STATE CHILD CARE** and its capacity to protect children.

The Jamaican government has, over time, improved its approach to children in state care. Relative to other countries within the region, the Jamaican state care programme has had some successes. These include the influence of international human rights agreements on domestic legislation and policy, where Jamaica is one of only five Caribbean countries to have legal regulations to govern state childcare, as well as one of the few to provide early childhood programmes and transitional living spaces for young people leaving state care.[169]

There is a dearth of data, however, to gauge the state's performance on any specific indicators of the quality of care provided to children in need of care and protection. For example, the introduction of a multi-sectoral approach to investigations was intended to strengthen the capacity of relevant agencies to respond to cases within a three-month period, with less strain on victims, but there is no quantitative, qualitative,

comparative, or longitudinal research to show if any changes occurred. Three years after child-related agencies were merged, there has not been an evaluation of the impact of the merger on the efficiency of state child care and its capacity to protect children. There is no evaluation or progress report on the implementation of the Children's Advisory Panel and the increased participation of youth into decision-making about children. There are statements and reports about what has been done, but nothing to indicate impact, outcomes, or effects.

What we do know is that the quality of state care in Jamaica and the state's inefficacy in placing children in family settings continues to be a cause for concern. We have established that the state care programme for children suffers from a range of issues, including insufficient administrative capacity, an outdated legal framework and inadequate legal enforcement, a lack of professional and financial resources, poor sharing of information, and weak monitoring

systems. We have also provided evidence to show that the limited involvement of stakeholders and the failure to take an evidence-based, context-specific approach to policy development and implementation ultimately results in policies that are not optimally suited to children's best interests, and have lower prospects for positive outcomes, than would otherwise obtain. However, these findings are not new. Several reports over the past two decades have drawn similar conclusions.

What is the reason for this ongoing inability to make meaningful changes, when the need for change has been so clearly identified? The initiatives highlighted in the previous chapter, the examples of successful reforms in state childcare systems in several different countries, have one commonality, a necessary attribute for reform: political commitment.

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169 Priya Anaokar, Kathi-Ann Thomas, Joan Thomas, Ceceile Minott, Marva Campbell & Julie Meeks Gardner, "Preparing Jamaican Children in State Care for Independent Living: A Situation Analysis," *In Global Perspectives*, 2016, www. bettercarenetwork.org/library/principles-of-good-care-practices/leaving-alternative-care-and-reintegration/preparing-jamaican-children-in-state-care-for-independent-living-a-situation-analysis.

What we do know is that the quality of state care in Jamaica and the state's inefficacy in placing children in family settings continues to be a cause for concern.

Recommendations

Long-term changes

There are a number of legislative changes that, if made, would clearly identify and define roles and responsibilities across agencies and create independent oversight and a pathway of accountability within the state care programme:

1. Conduct a review exercise, which considers empirical research in addition to stakeholder consultations, to order to amend the Child Care and Protection Act, so that it is consistent with evidence-based research and a contextualised perspective.

2. Similarly, undertake an updated review of the Adoption Act, informed by evidence and best practice in other jurisdictions.

3. Requirements as part of all legislative reform to include youth and community representation on all agency boards, as a means of ensuring their involvement in the development and implementation of all related policies and all other strategic decision-making. This could be achieved through the inclusion of former wards of the state, a representative from the foster parent association and/or the parenting commission, as well as relevant CSO representatives.

4. Ratify the optional protocol to the Convention on the Rights of the Child (which allows the CRC to carry out monitoring procedures), and incorporate the CRC, and the UN Guidelines on Alternative Care into domestic legislation.

Medium-term changes

While legislative change is necessary, there are several policy actions that can be done ahead of a change in legislation, a process which can take several years.

5. Implement the software package SOHEMA across all relevant state agencies, with the requisite training and change management.

6. Design and implement a data collection system with protocols for capturing data on all applications and all case reports. Whether by adding capacity or by re-directing existing personnel such as the existing CPFSA statisticians, make data collection and data analysis a routine aspect of all the CPFSA and other agencies' work, as well as the preparation and presentation of regular reports analysing the data. Undertake a project to digitize existing case files, at the same time as cleaning the dirty data that those case files contain to create data sets.

7. Engage in research on child care in Jamaica, comparing the effectiveness of each stream of the state care programme (institutional, foster care, adoption, transitional), as well as an evaluation report on the effectiveness of the existing ancillary programmes.

8. Establish and institutionalize an information sharing mechanism between the CPFSA, NCR, OCA, and CISOCA. That mechanism should allow for and facilitate input from academia, civil society, the private sector as relevant, and the Children's Advisory Panel. A similar multi-sectoral investigation mechanism should be designed and implement.

Short-term changes

There are also changes to programmes and agencies that are already in operation or near implementation that can be amended to improve efficiency.

9. Appoint and convene the Advisory Council and the Board of Visitors, as set out in the CCPA (and Regulations). These will require dedicated administrative support, housed in and directed by a body other than the CPFSA, to be effective as an independent oversight mechanism.

10. Currently, participation in the Children's Advisory Panel is dependent on the educational performance of children. Change the terms of reference regarding the membership of the Children's Advisory Panel, so that the needs of the most at-risk are represented, such as the disabled and pregnant teens.

Appendix:
State Care Options

Children's Homes and Places of Safety

Approximately 36 percent of children in alternative care in Jamaica live in children's homes and places of safety. Of the 54 safe residential spaces for children, 45 are privately owned. Forty-four of those private facilities are children's homes and one is a place of safety. Of the nine government institutions, five are places of safety and four are children's homes. Children in these facilities are considered wards of the state, which means the state assumes all parental responsibilities, such as medical and educational support. All care homes are meant to adhere to the standard of care outlined in the CCPA, as well as its associated regulations.

L.I.F.E

Life in Family Environment (L.I.F.E) is the CPFSA's flagship programme for children to be placed in families. It takes several forms. In accordance with best practice across jurisdictions, the Jamaican government has identified foster care as the ideal choice for alternative care as it as proximate to a family setting as possible, in the context of state care. It is also the most cost effective for governments as foster care expenditure would not bear expenses accompanied by residential care including infrastructure, payment of service providers and monitoring officers. Following court proceedings and an investigation carried out by the CPFSA, children are placed with an individual or couple, who are not necessarily biologically related, but who have expressed interest in provide a nurturing environment for a child or children in need. Foster parents are given a stipend to support their maintenance of their foster child. Currently, the stipend given to foster parents $6,500 per week. This is inadequate considering the minimum wage is $7,000 per week. This figure is lower than the stipend that is received in other Caribbean countries such as Trinidad, where foster parents receive anywhere between $J8,000 and J$26,475 per week (with compensation being made for children with special needs). It is also grossly underwhelming in comparison to the UK, where foster parents receive J$83,075 dollars (£450) per week to offset their parenting costs.

Family reintegration is considered a transitional process, whose aim is to gradually return a child to their biological or regular family environment. The family reintegration programme offers counselling and other forms of assistance, such as education and financial support, to support a successful family reunification.

Another variation of L.I.F.E is a Supervision Order, where the child is placed in the care of a relative (not the parent) under the supervision of a CPFSA Children's Officer. The CCPA stipulates that a child may be placed under supervision for a period not exceeding three years. This is usually in response to a child committing an offence, being identified as "uncontrollable," or at the discretion of the Minister. The supervision order also places the child under the supervision of a probation or an after-care officer, who is responsible for meeting with the child regularly. The officer has the remit to bring the child before the court and recommend their placement in a juvenile correctional centre.

Lastly, adoption is a legal process which involves the permanent transfer of parental rights to someone who has applied to take on the role of a parent in the child's life. In Jamaica, the Adoption Board is responsible for making the recommendation to the court to grant an adoption application. Between the ages of six weeks and 18 years old, children can be adopted by Jamaican citizens, as well as persons living in other Commonwealth countries, the United States, Sweden, and Denmark. Birth parents are required to give consent to adoption, unless they are deceased, missing, incapable of giving consent, or the child is a ward of the state.

Fix the Village
Governance and Accountability for Children in State Care in Jamaica

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