



# 5 years of *Protecting* and *Enforcing* the *Rights* of Children

"Small team...but mighty" - UNICEF

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## Preface

This review was conducted to commemorate the Office of the Children's Advocate's (OCA's) Fifth Anniversary (2006 - 2011) and to trace its evolution from a provision in the Child Care and Protection Act (2004) to its current situation. It captures the history of the OCA, including many of its challenges, accomplishments and changes over the years.

The review seeks to capture the current situation of the Office at this major milestone of five years and also seeks to set the tone for the work for the Office in the coming years, building on what has gone on before.

It is also envisioned that the review can provide important lessons for other countries that may be looking at establishing a mechanism to strengthen its ability to provide oversight around child rights and child protection. The review speaks to the governance of the Office but also examines the manner in which the OCA has created and fostered partnerships with government agencies, as well as civil society organizations.

One of the greatest challenges of the Office is to ensure that child rights are promoted and upheld in every sphere of the Jamaican society and that there is buy-in by all partners on the role and responsibilities of the government and civil society. Regardless of any changes that may happen in the future, the imperative is to ensure that every policy, programme and plan developed and implemented by the Jamaican government and approved by Cabinet and Parliament keep children and child rights at the forefront of the of agenda and in the minds of every service provider, parent, caregiver and child.

When we do this, we will know that Jamaica is truly living into its commitment made when we ratified the Convention of the Rights of the Child in 1991. When we do this, we will know that every child will have the experience of a safe, secure and loving environment for them to grow, play, explore and develop into the future citizens that we want for our country.

The Office of the Children's Advocate, despite its achievements of the past, recognizes there is still much more to be done to get to that Jamaica.

Mary Clarke (Mrs.)

Children's Advocate

## Executive Summary

To commemorate its fifth anniversary, the Office of the Children's Advocate (the OCA) commissioned a review of the Office to include the perspective of staff and partners.

Using a mixed methodology approach the review documents the evolution, accomplishments and challenges of the Office. It was envisioned that the document would serve as a useful reference for government agencies, civil society, students and the donor community in Jamaica as well as a 'how- to' guide for other countries who may be considering emplacing a Children's Advocate.

The provisions for the establishment of an Office of the Children's Advocate in Jamaica were made in the Child Care and Protection Act (2004) that stated that a Commission of Parliament known as the Children's Advocate would be established "for the purpose of protecting and enforcing the rights of children". The key functions mandated under the legislation are to review the adequacy and effectiveness of laws and practices relating to the rights and best interests of children, to review the services for children, to give advice and recommendations to Parliament, ministries and relevant authorities on children's issues, to make children aware of the Office and its location and to ensure that the views of children are taken into account.

The process to operationalize the Office began in 2004 with a 15 member committee that met until 2006. The committee reviewed similar posts in Canada, the USA and Europe and also benefited from a visit of the Norwegian Ombudsman. The core functions and staff capabilities for the Office were identified as a strong legal team and multidisciplinary investigative team, database management, public education, project planning and public policy functions. The recruitment for the Children's Advocate began once the terms of reference for the key staff members were completed and approved.

The process consisted of two rounds of open advertisement, followed by the shortlisting of candidates. The shortlisted candidates went through a four-part interview process that consisted of an adult panel, a children's panel and written and oral presentation. Based on the interview process the first Advocate, Mrs. Mary Clarke, was appointed in 2006.

For the next few years the Advocate balanced the responsibility of the Office with the tasks associated with the establishment of the Office culminating in a staff complement of 17, situated in the Air Jamaica Building on Harbour Street. The core functions of the Office are carried out by the Advocate, assisted by the Deputy Advocate, a retired judge, two legal policy officers and two investigators who received complaints, represented children and conducted investigations all over the island. The other activities of the Office included the public education programme, rigorous research and data collection programme and the support services necessary for the smooth functions of the Office.

The Office established a Journal of Complaints that received all complaints made to the Office- in writing, phone calls, in visits, to the media or referred by other agencies. Once the complaint is logged in the journal, they are reviewed by the legal policy officers to determine jurisdiction.

At this time the cases are either:

1. Referred to the relevant authority, if it is not the jurisdiction of the OCA, or
2. Logged in the Register of Complaints the sent to the investigation Department for further action.

Each year the number of cases assigned to be investigated by the OCA staff increased, from 87 in the first year of operation to 472 in the 2009-10 fiscal year. These investigations resulted in children being represented in court by the OCA staff, legal aid attorneys or by private attorneys who partner with the Office. The investigations also resulted in children being reintegrated in schools in cases where they may have left the school system due to pregnancy or suspension, in parents or guardians being able to access social security benefits and in children being removed from their primary residence and placed with guardians or in state care.

The Office also produced an annual report on the Office and the status of children and child services, conducted a number of research studies and prepared a number of papers and reviews of relevant authorities. Many of the research documents were tabled in Parliament and included a number of programme, policy and legislative recommendations for consideration by Parliament. Examples included the closure or refurbishing of residential child care facilities, amendments to the Justice Reform Programme, changes to the Child Care and Protection Act and calling for the review of the Education Act and Regulations. The Office also contributed to policies and programmes that were being developed to ensure that they operate in keeping with a rights-based approach to children. These took the form of participation on committees or through the review of the draft documents including the National Parenting Policy, the National Framework of Action for Children, the Incest Punishment Bill, the Offences against the Person Bill, the Trafficking in Persons Bill and the Child Pornography Bill.

The Office conducted in number of public education programmes targeting children in care, parents and guardians in the school setting, faith-based organizations and the general public. In many of these public education programmes the Office used the opportunity to raise awareness of child rights and the situation of children in Jamaica as well as to speak to specific issues that the target groups might be facing. In the five years over 20,000 persons were exposed to the work of the OCA and child rights in Jamaica.

A major focus of the Office was consultation with, and partnership building between, key stakeholders. The Office worked with various groups from civil society, government agencies and donor partners to create or strengthen alliances around child rights issues. Of note is the participation of the Office in the Caribbean Child Rights Conference, both on the organizing

steering committee and as a presenter at the conference and coordinating a Parliamentary Submission paper on children and violence with the NGO community.

As the Office looks towards the next five years it expects to build on its successes and assume a strengthened role for child advocacy. This is predicated on having the staff and financial resources to support the activities. Having built awareness of the situation of children with respect to child rights the Office can now select three or four priority areas for committed advocacy. This would include commissioning research papers, partnership building with the key stakeholders and working more closely with Parliament and Cabinet to ensure the development and enactment of appropriate policies, programs and legislation. The Office can also strengthen its public education programme around child rights and the roles and responsibilities of duty-bearers, including a strong framework for monitoring and reporting on child rights issues in Jamaica. The Office will also strengthen its role as a coordinating entity for child rights organizations and as a leader in promoting meaningful child participation in its work and in the work of all relevant authorities.

## Acknowledgements

The Office would like to thank the many partners, colleagues, parents, children, media personnel and well-wishers that have contributed to the work of the Office and to the fulfillment of child Rights in Jamaica throughout the years.

At this time we say a special thank you to CVSS and EFJ who funded this review, to the staff and partners who participated in the study and to Mrs. Brigitte Levy, Independent Consultant who conducted the research and wrote the review and Mr. Dwayne Cargill for managing the process.

The OCA also thanks the Environmental Foundation of Jamaica for funding the review and the Council for Voluntary Social Services for administering the Fund.



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## List of Abbreviations

CARICOM	Caribbean Community
CBO	Community Based Organization
CCF	Child Care Facility
CCI	Child Care Institution
CAMP	Child Abuse Mitigation Project
CISOCA	Centre for Investigation of Sexual Offences and Child Abuse
CCPA	Child Care and Protection Act
CDA	Child Development Agency
CGC	Child Guidance Clinic
CI	Correctional Institution
CH	Children's Home
DFID	Department for International Development
DCS	Department of Correctional Services
EFJ	Environmental Foundation of Jamaica
EC	Early Childhood
ESSJ	Economic and Social Survey of Jamaica
IDP	International development Partners
JCPWD	Jamaica Council for Persons with Disabilities
JSLC	Jamaica Survey of Living Condition
KSA	Kingston and St. Andrew
MoE	Ministry of Education
MoH	Ministry of Health and Environment
NGO	Non-Governmental Organization
OCA	Office of the Children's Advocate
OCR	Office of the Children's Registry
OPM	Office of the Prime Minister
PoS	Places of Safety
PIOJ	Planning Institute of Jamaica
PSA	Public Service Announcement
RCCF	Residential Child Care Facility
SALISES	Sir Arthur Lewis Institute for Social and Economic Studies
UN	United Nations
UNICEF	United Nations Children's Fund
UWI	University Hospital of the West Indies
VPA	Violence Prevention Alliance

## Chapter 1:

### Introduction and Overview

In 2006, Jamaica appointed its first Children's Advocate. This historic appointment was the culmination of the efforts of many persons and institutions and took place over a number of years. The Children's Advocate was mandated as a creature of Parliament in the Child Care Protection Act of 2004. At her appointment, the Children's Advocate was tasked with the operationalization of the Office in order to fulfill the mandate as laid out in the Child Care and Protection Act, 2004 (CCPA).

In existence for five years now, the Office has cause to reflect on its journey from infancy to a dynamic and robust entity, which gives a voice to the vulnerable of the society, the nation's children. It is also an opportune time to share the achievements of the Office, highlighting the many recommendations which have influenced policy decisions with a wider audience. Inclusive in this retrospective is the acknowledgement of the Office's partners, who were encouraged to share their experiences of working with the Office and their vision for the way forward.

### Purpose

This document was written to commemorate the fifth anniversary of the Office of the Children's Advocate (OCA). The primary purpose was to trace the historical evolution of the OCA, from its conceptualization through to its current status, including the transformation, accomplishments and challenges of the Office over the period. The document also seeks to capture the perspectives of the staff and partners, who work with the Office and gives a reflection on the way forward for the Office.

The intended audience for the review is policymakers and analysts, government agencies and civil servants, and partners in civil society and the donor community, who has worked with and may work with the Office of the Children's Advocate in the future. It also seeks to inform members of the general public, who have shown interest in and supported the work of the OCA on its quest to fulfill its mandate. It is also hoped that this review will be a learning tool for students to fully understand some of the programmatic implications of promoting and protecting child rights, and for other countries, who may not have a Children's Advocate and may be considering emulating a similar body.

### Methodology

The approach taken for the review involved a mixed methods technique, integrating a review of existing documents, key informant interviews and group discussions. The review of the literature focused on documentation and reports generated by the Office; records of the various meetings and partnership opportunities involving the Office; and, a review of the major research papers that were produced by the Office. The review also extended to include, documents from partners on the work of the Office. Interviews with all staff members were incorporated in order to document their role and function in the process of advocacy as well as their reflections on how their work and activities have contributed to the achievement of the mandate of the OCA. It was also requested of staff members to provide thoughts on how their positions could be modified in order to enhance their ability to make a greater contribution to fulfill the stated mandate of the Office.

Stakeholders formed another key source of information for the report. The stakeholders included government ministries, departments and agencies that interact with the Office of the Children's Advocate in different ways; some as partners, others as relevant authorities [Appendix 1] to whom the Office may be required to submit reports and request information or documentation based on the complaints received. Other stakeholders represented persons with whom the OCA partnered in order to achieve its mandate. These were non-governmental organizations, donor agencies and members of the academia. The overarching approach to the report was a highly participatory one, that ensured that all key stakeholders were given the opportunity to share their views and that the recommendations of all concerned were captured in the way forward. [Appendices 2, 3 and 4]

#### Organization of the Report

The report continues with Section 2 that outlines the mandate of the Office of the Children's Advocate as stated in the Child Care and Protection Act (2004), and also gives the mission, vision and strategic objectives selected for the Office for the period under review. The next chapter traces the steps towards the establishment of the Office of the Children's Advocate through the formation of a Steering Committee by the Honourable Minister of Health to the emplacement of the Children's Advocate in 2006. The subsequent section examines the growth and evolution of the Office which is followed by a review of the various functions that the Office conducts as it seeks to carry out its obligations. The final two sections focus on the impact of the work of the Office, the partnerships that it pursued in order to carry out its obligations and also contains a brief reflection of the efficacy of the Office and looks ahead to some of the activities that may be incorporated in the future to ensure that the Office fulfills its mandate for upholding and protecting child rights and protection, while strengthening children's services in Jamaica.

## Chapter 2: Responsibilities of the OCA

The Child Care and Protection Act (2004), made provision for the establishment of the Office of the Children's Advocate in Section 4, which reads in part– Section 4(1) For the purpose of protecting and enforcing the rights of children, there is hereby established a commission of Parliament which shall be known as the Children's Advocate.

This gives the mandate for the OCA as “the protection and enforcement of the rights of children”. The Act further outlined the responsibilities of the Children's Advocate, in Sections 4(2) and (3) that read:

4(2) The provisions of the First Schedule shall have effect with respect to the constitution and functions of the Children's Advocate.

4(3) Where in any proceedings a child is brought before the court and it appears that the child is in need of legal representation in those proceedings, the court shall –

- (a) refer the case to the Children's Advocate or, if the court thinks fit, grant legal aid certificate in such circumstances as may be prescribed;
- (b) if the court thinks fit, adjourn the proceedings until such time as the court considers sufficient to allow for, as the case may be–
  - (i) the Children's Advocate to consider the case; or
  - (ii) the necessary arrangements to be made for the child to obtain legal representation pursuant to the legal aid certificate; and
- (c) cause to be delivered to the Children's Advocate a notice of its determination under this section.

The functions of the Children's Advocate are set out in Part II of the First Schedule to the Act. They read as follows:

- (a) Keep under review the adequacy and effectiveness of laws and practices relating to the rights and best interest of the child
- (b) Keep under review the adequacy and effectiveness of services provided for children by relevant authorities
- (c) Give advice and make recommendations to Parliament or any ministry or relevant authority, on matters concerning the rights or best interest of children.
- (d) Take reasonable steps to ensure that children are aware of the functions and location of the Office of the Children's Advocate and also that they are aware of the ways in which they may communicate with the Children's Advocate
- (e) Take reasonable steps to ensure that the views of children and persons having custody, control or care of children are sought concerning the exercise by the Children's Advocate of her functions under this Part.

Other provisions in Part II include –

- (a) The Children’s Advocate may provide assistance (including financial assistance) to a child in making a complaint to or against a relevant authority
- (b) The Children’s Advocate may conduct an investigation into a complaint made by a child, his or her parent, guardian, or any other individual who has the child’s best interest in mind
- (c) The Children’s Advocate may after consultation with relevant bodies issue guidance on best practice in relation to any matter concerning the rights and best interest of children
- (d) The Children’s Advocate may in any court or tribunal bring proceedings, other than criminal proceedings, involving law or practices concerning the rights and best interests of children
- (e) The Children’s Advocate may intervene in any proceedings before a court or tribunal, involving law or practice concerning the rights and best interests of children
- (f) The Children’s Advocate may in any court or tribunal act as a ‘friend of the court’ in any proceedings involving law or practice concerning the rights and best interests of the children.

The Office now has guiding principles, a vision and mission, as follows:

The Guiding Principles of the OCA

The core values that guide the operation of the Office of the Children’s Advocate are:

1. Respect for all
2. Professionalism
3. Transparency and Integrity
4. Excellence
5. Cooperation and Partnership

#### **The Mission**

We are committed to promote the rights and best interests of children through vigilance, strategic partnerships and the provision of timely, efficient and quality service to all our clients.

#### **The Vision**

Children in Jamaica enjoy their rights to survival, development, protection and participation as well as consideration of their best interests at all times.



Strategic objectives derived from the Child Care and Protection Act are developed each year to guide the work and function of the Office. These include:

- Undertake measures to strengthen the system of Governance and Management of the OCA;
- To continue to review and monitor existing laws and services to ensure their relevance and effectiveness in protecting and upholding the rights and best interests of the child;
- To provide legal representation as required and or identified;
- To promote awareness of the rights and best interests of children; the role and functions of the OCA; and to undertake consultations with stakeholders, primarily children;
- To receive complaints and conduct investigations on behalf of the child; and,
- To give advice and make recommendations to Parliament and relevant authorities on matters concerning the rights and best interests of children.

### Chapter 3: Establishment of the Office

#### Steering Committee

The Child Care and Protection Act (2004) brought together many child focused legislation within the context of a rights based framework. The Act also made provision for two new entities to be created, the Office of the Children Registry and the Office of the Children's Advocate (OCA). In July, 2004, the Child Development Agency (CDA) convened a steering committee to examine the provisions of the Act around the Office of the Children's Advocate. The committee was charged with:

1. Reviewing the statutory mandate of the OCA;
2. Developing an organizational structure to support the effective execution of the mandate;
3. Reviewing work and mandate of child advocates and ombudsmen in other Jurisdictions;
4. Creating job descriptions for the advocate and the staff of the Office;
5. Creating an initial budget for the Office; and,
6. Making recommendation to the Honourable Minister of Health and the Speaker of the House on suitable candidates for recommendation to the Governor General.

The Committee met from July 2004 to December 2005. The 15 member committee was chaired by Mrs. Carol Samuels from July 2004 to June 2005 and Mrs. Brigitte Levy from June 2005 until January 2006 when the Committee was dissolved. The Committee was supported by the Executive Director, the Human Resource Development, and the Policy and Planning Departments of the Child Development Agency. Technical assistance was provided by Ms. Tania Chambers and financial support was given by the United Nations Children's Fund (UNICEF) Office in Jamaica.

The Committee commissioned a scan of similar offices operating in a number of jurisdictions across the developed world, namely Sweden, Norway, France and the states of Michigan, Connecticut and Washington in the USA in order to enhance knowledge of best practices. Once these practices were identified, the Committee set out to craft the way forward for the Office of the Children's Advocate. The key points for consideration were:

1. Ensure a balance between networking and image building between government and non-governmental communities. While networking within government was important because of policymakers, children's groups, activists and caregivers should also be able to identify with the Office;
2. The Office of the Advocate should not duplicate existing services but rather should have oversight and foster collaboration between agencies;
3. Create opportunities for regular access to expert opinions/working groups;
4. Recommendations and decisions should always be based on empirical data;
5. Mandate mechanisms for child participation to ensure that the advocate speaks for and on behalf of children; and,

6. The Advocate needs to be a well respected professional who can interact with all levels of policymakers, decision-makers, programme implementers and beneficiaries, including children and their parents.

The second best practice pointed to the need for the Committee to commission a scan of advocacy and protection services provided by other agencies. The results of this second scan showed that the agencies working in this area included:

1. The Child Development Agency, whose responsibilities encompass safeguarding children from becoming at risk through advocacy around child rights, the development of Jamaican policies and standards related to child welfare, and implementing the Foster Care and residential care programmes for children.
2. The Early Childhood Commission, that was created to bring practices, standards and regulations pertaining to daycare and early childhood development under one institutional umbrella.
3. The Ministry of Education Youth and Culture, (now Ministry of Education and Ministry of Youth, Sports and Culture), with responsibility for the provision of education for children and for youth development through the implementation of Jamaica's National Youth Policy and National Centre for Youth Development.
4. The Ministry of Health, in terms of the areas that relate to healthy lifestyle promotion in schools, sexual and reproductive health, and the right to high levels of nutrition and mental health.
5. Ministry of Justice that oversees important institutions affecting children such as Family Court, and the juvenile and correctional systems.
6. The Ministry of National Security as it relates to the investigation, detention and arrest of children who may be both victims and perpetrators of crime
7. The Minister of Labour and Social Security, with special responsibility for the protection of children against oppressive child labour, trafficking, sexual exploitation and pornography.
8. The Ministry of Labour and Social Security also administers the Programme of Advancement to Health and Education (PATH) that offers financial support for needy and at risk groups, families and children.
9. The Bureau of Woman's Affairs, which provides advocacy in relation to children and the threat of sexual exploitation domestic violence incest and other forms of child abuse.

It was noted that the CDA's area of responsibilities included functions undertaken by Ombudsman's Offices in other jurisdictions, such as child rights advocacy and public education and policy advice on issues relating to children nationally as well as collating and disseminating statistics on issues relating to children.

This scan also revealed that there were a number of non-governmental and faith based organizations that work to support and uphold the rights of children in Jamaica. These agencies conducted activities that included the provision of remedial education; assistance for children with disabilities and street children; support for teen mothers and their families; child rights education and advocacy; violence prevention activities; awareness building for the prevention of abuse; reproductive health; and, drug abuse information.

### Tasks of the OCA

Guided by these framework documents, the Committee recognized the importance of ensuring that the Office of the Children's Advocate had a unique emphasis as a public watchdog for the upholding of child rights in Jamaica as well as providing legal representation for children and their families that may have no other recourse. The importance of avoiding duplication of efforts was noted while acknowledging that the Advocate's role in communicating with the nation's children and influencing the legal and policy frameworks were tantamount. As such, the Committee developed the initial core functions of the Office to be:

1. Receiving and investigating complaints against relevant authorities;
2. Providing legal representation and related assistance;
3. Law and policy advocacy;
4. Holding formal Tribunals or Commissions of Enquiry for investigation of systematic complaints; and,
5. Influencing public and political opinion around child welfare issues.

It was felt that by focusing on these core functions that the Office of the Children's Advocate would fulfill its statutory mandate while avoiding replicating programmes and services provided by other agencies. The Committee went on to define the key organizational capabilities that would be necessary to fulfill the mandate. These were:

1. A strong legal team to support the representation, the Tribunal functions and the legislative review;
2. A multidisciplinary investigative team with expertise in the operations of the child care and protection services;
3. Information management capabilities to develop the database to record and to track the complaints;
4. Strong policy public education and communication skills;
5. Project management planning and coordination skills; and,
6. Access to child participation facilitation skills.

The Committee then looked at the optimal structure and staffing for the OCA. The Committee developed a minimalist structure to begin the work of the Office of the Children's Advocate while recognizing that over time, based on changing and emerging needs would be need for the review and revision of stated organizational structure. Within this structure, the Committee concluded that five key functional areas would need to be developed and they are as follows:

1. A legal and investigative department;
2. A policy and research department;
3. A section to look at issues related to public education and public awareness;
4. Administration and office management; and,
5. Financial functions of the office.

The proposed organizational structure of the OCA:

**Figure 1 Proposed Organization Structure for the OCA**

***Selecting the First Children's Advocate***

The Committee then proceeded to create the job description for the Children's Advocate. There was rigorous debate on the qualifications for the Advocate. The two main requirements were either for the Advocate to possess a legal or social background. It was decided that both could work but which ever skill the Advocate had would need to be supported by the other skill set in the form of the Deputy Advocate. With this agreed, a job description was created for the Advocate in terms of the roles and responsibilities, and range of qualifications. Subsequent to the completion and approval of the job description, the job was advertised.

**Profile of the Child Advocate**

- Professional with substantial experience and a proven track record in advocacy with the legal policy or public opinion focus;
- Experience and understanding of child rights issues and the developmental needs of children;
- A leader who is able to coordinate multidisciplinary skills for maximum productivity and national impact;
- A strategic thinker who can devise and successfully implement projects and interventions towards sustainable and holistic child development; and,
- Diplomatic assertive and able to speak to and institute controversial positions without alienating stakeholders.

A number of members of the Committee resigned in July 2005, indicating their intention to apply for the post. A subcommittee was established for the recruitment of the Children's Advocate. There were two rounds of advertisements. The applications received were reviewed by the subcommittee with regards to the qualification and experience criteria. This resulted in forty (40) being sent to the full committee for consideration. Ten (10) were short-listed. The shortlisted candidates were invited to be part of the interview process. They were invited to participate in a two-day interview process at the Cabinet Office of Jamaica that consisted of:

1. A written policy brief on a selected child rights related issue;
2. A presentation and question-and-answer session to a group of children;
3. Observation by the interview panel on the interactions and approaches taken; and,
4. A panel interview with seven senior civil servants, non-government, and private sector representatives

At this time three candidates declined so seven candidates in total went through the interview process. The scores from all four panels were weighted with the written section accounting for 30%; interaction with the children totaling 30%; and, the interview panels combined scores accounted for 40% of the total.

In November, 2005 the Committee made their recommendation on the top three candidates from the recruitment process to the Honourable Minister of Health. The Advocate was appointed in January 2006 and assumed office in February 2006.

### **Box 1: Getting an Ombudsman for Children**

In keeping with a rights based approach for children, it was mandated that the development of the Child Care and Protection Act should include provision for two new agencies:

1. An ombudsman who could focus on Child rights issues
2. An office to record and report on child abuse

Following initial reviews of international best practices, it was quickly determined that the ombudsman needed to have a clear and specific focus on children, so the term of reference for a Children's Advocate was drafted for review.

The subsequent public Consultations on the Child Care and Protection Act spoke to the need for and the roles of the Children's Advocate, and a special sub-committee reviewed the outcomes from the Consultations and made the recommendations for the final wording, for an Office of the Children's Advocate.

This was accepted in the final consultations, approved by Cabinet and passed by Parliament.

Audrey Budhi, CDA

### ***Establishment and Growth***

The newly appointed Advocate, Mrs. Mary Clarke, assumed her position in February 2006. Infused with a clear vision, the Advocate sought to develop the capacity for the Office to meet its service delivery requirements.

The first task was to locate suitable office space. The UNICEF office in Jamaica housed the Advocate for a short while, after which the Office was moved to a temporary location on Seatonhurst Avenue before finding a permanent home on the Ground Floor of the Air Jamaica Building on Harbour Street, Kingston.

A key consideration for the location of the Office was its accessibility for members of the public, especially children and caregivers, who may need to visit the Office in order to access services.

Next on the agenda was the recruitment of the necessary personnel within the organizational structure crafted by the Steering Committee and the budget. In these formative months, the Advocate was assisted and supported by the staff of the Child Development Agency and an Administrative Assistant, Mrs. Norma Newman, especially as it related to human resource management and in securing and equipping the Office.

The steering committee had created an initial structure and budget estimate for the first year of operations that had been approved for funding out of the Consolidated Fund. The estimate made

provisions for costs, recurrent expenses such as the initial staff, rent and utilities. The Budget and Estimates also made provisions for capital equipment that would be needed in the course of outfitting the Office. The budget figures for the office were guided by the recently equipped office for the National Plan of Action for the Juvenile Justice System. The recommended budget allocation made was for \$20 Million, with the expectation that additional sums would be committed by International Donor Partners (IDPs). The actual allocation was for a capital budget of \$3.5 million with recurring expenditure amounting to \$9.8 million.

### ***The evolution of the budget and staffing of the Office***

The budget and staffing of the Office of the Children's Advocate have come a long way over the past five years. The Office began with one member of staff, the Advocate, when it was established in 2006. The first budget was modest, with an allocation of \$13million and has since grown to \$57,253,000.00. The details of the budget allocations to the Office of the Children's Advocate are shown in the following table below:

**Table 1: OCA's Budgetary Allocation over 2006 -2011 period**

### ***Staffing***

The Office has made significant strides in developing the staff structures that were needed to support its mandate. At inception, the staff complement approved by Cabinet was less than that recommend by the Committee. During the five years, additional posts were approved. At this time, the Office has two Legal/Policy Officers (LOs) and two Investigation Officers (IOs) who report to the Deputy Children's Advocate, a retired Justice. These staff members are assisted by a senior secretary. The LOs and IOs carry out the legal and investigative functions of the OCA's mandate. A Public Education and Special Projects Manager and a Research Officer work with the Children's Advocate to facilitate awareness building, policy recommendations and review of services. The Advocate is assisted by an Administrative Assistant. These core functions are supported by an Accountant and an Accounting Technician as well as a receptionist/telephone operator, driver/messenger and an office attendant. In 2007, two additional staff posts were created and filled, a Human Resource/ Office Manager and a Records Officer. These posts brought the staff complement to 17.

**Figure 2 - OCA Organizational Chart as at January 2011**

In 2009 a review was conducted indicating that additional staff was needed to be able to fulfill the mandate of the OCA and that some current posts would benefit from being reclassified. The job descriptions were developed, the posts classified and approved. The OCA now has budget approval to fill the posts and is currently in the process of recruiting for the next fiscal year.

**Figure 3: Proposed Organizational Structure of the OCA for April 2011**



In the year 2008-09, the Office had its first planning retreat, and has subsequently continued the tradition annually.

The Office is seeking to increase its staff complement in order to ensure that it can fully perform its mandate. While undertaking this process, the Office needs to ensure that it can continue to retain suitably qualified staff. With this in mind, the Office is seeking to have the staff in posts enjoy the benefits given to central government and other agencies. These entitlements would include provisions for motor vehicle duty concessions, payments in lieu of pension, access to salary advance and loans for cars, insurance and computers.

### ***Training***

The OCA as part of its staff development programme, participated in a number of staff development programmes that were ranged from in house, local to international offerings.

### ***The Consultative Committee***

The Office of the Children's Advocate, though not a legal entity, sought to emplace a Consultative Committee that could guide the work of the Office as well as act as a sounding board for the key issues and policy recommendations highlighted. Two attempts to establish a Consultative Committee were made. The first, just as the Office was established, saw the Children's Advocate inviting persons to serve on her committee. The Advisory Board met for just over 18 months approximately once every two months, and then due to a number of reasons, ceased meeting.

In 2010 the Office once again reconstituted the Consultative Committee and they have been meeting regularly since that time. The Committee [Appendix 7] continues to advise the Children's Advocate on priority areas for her attention, and to work with the Office to review documents and recommendations created. It is interesting to note that the members of the first Advisory Board were drawn from many government agencies over which the Office would have oversight and that the current reconstituted Advisory Board has more non-governmental representation.

## Chapter 4: Operational Functions

The OCA performed a variety of functions and executed a range of tasks, all in support of the mandate of the Office. The activities range from receiving and investigating complaints from the public to identifying and reporting on issues of national concern as it relates to the rights and best interests of children. The work of the Office falls into five main categories. The first of which is receiving, logging and documenting complaints, then secondly, investigating complaints and ensuring that appropriate actions are taken. The third category entails representing children in court. The OCA also conducts extensive policy research, including policy and legislative reviews, and service assessments that serves as the basis for its advice to government Agencies, Ministries, Departments and Parliament on child rights issues. And finally, the Office undertakes public education activities relating to issues that it encounters and on the work of the Office itself. This chapter reports on the activities of the Office in these areas.

### ***Receive Complaints***

The Office of the Children's Advocate has the mandate to receive complaints from children and caregivers and ensure that the issues are resolved in a timely acceptable and appropriate manner. The public can make complaints to the Office in person, on the telephone, in writing, or through the OCA website, [www.ocajamaica.com](http://www.ocajamaica.com). Additionally, complaints can come to the attention of the OCA through the media or by referral from other agencies or organizations. The OCA currently maintains mutually beneficial relationships with the Child Development Agency and the Office of the Children's Registry exchanging correspondence and referrals frequently.

All complaints received are documented and logged into the Journal of Complaint. Once the complaint is received, the OCA then determines jurisdiction and the appropriate action. For example for year 2006-2007, the following responses were made for the calls received:

#### ***Table 2: Responses made to calls received, 2006-07***

Of the two hundred and seventy five complaints received by the Office in the first 15 months of operation, 61.7 per cent of the cases (187) were referred to relevant authorities. The breakdown of the 187 cases referred in the first 15 months is outlined in the table below:

#### ***Table 3: Cases Referred 2006-2007***

Over the years, the number of complaints received has grown, due in part to the increased public education and awareness about the role and function of the Office. The complaints received by years are shown in Table 4:

#### ***Table 4: Complaints received at the OCA 2006-2010***

In addition to the complaints received directly, the OCA received 72 and 79 complaints from the Office of the Children's Registry (OCR) in 2008-09 and 2009-10 financial years respectively.

The OCA now has a system in place to monitor the actions of the relevant authorities on the complaints sent to them annually.

### ***Investigating***

In the first years, the two Investigation Officers were responsible for:

- Documenting all complaints received at the Office;
- Providing information and assistance to all stakeholders, especially children;
- Undertaking investigations; and,
- Making recommendations for corrective action.

The Records Officer now has the responsibility to document the complaints and to maintain the Journal of Complaints. All cases in the Journal of Complaints are referred to the Legal Department to determine jurisdiction. For those cases that are deemed to fall under the jurisdiction of the OCA, they are entered in the Register of Complaints, which is maintained by Investigation Officers. There are some matters however, which are not entered in the Register of Complaints in the first instance, but as the investigations progress and there are indications that the child's rights have been infringed and merits further investigation this matter may be included in the Register.

### **Table 5: Cases Investigated and Closed, 2006-2010**

The two Investigation Officers are required to investigate cases island-wide. During the process of investigation they may be required to conduct interviews with children, caregivers and responsible adults; go on-site visits, review reports and administrative records, collect statements and convene meetings of relevant parties. The investigators may also have meetings with officers or duty bearers in the relevant authorities. The investigators then prepare reports detailing the matter, and including recommendations for further action and for the resolution of the issue. The goal of each investigation is to have the injustice or infringement of rights remedied in an equitable manner. The investigators endeavor to negotiate where appropriate, a non-adversarial resolution to the matters investigated.

The law requires that for all complaints received, persons are notified in writing as to the outcome of the investigation and the recommendations for actions and resolution of the injustice. This is not always possible due to resource constraints; however the Office, seeks to ensure that the parties are informed of the steps taken and necessary actions required by the complainant. In cases where no or limited investigations are conducted, relevant parties are also notified and given the reasons for the limited investigations.

### **Representing Children**

Section 14 (1) in the First Schedule of the Child Care and Protection Act states that the Children's Advocate may in any court or tribunal –

- (a) bring proceedings other than criminal proceedings, involving law or practice concerning the rights and best interests of children;

- (b) intervene in any proceedings before a court or tribunal, involving law or practice concerning the rights and best interest of children;
- (c) act as amicus curiae in any such proceedings.

#### **Table 6: Court Appearances on behalf of children, 2006-2010**

In all years, the majority of children represented by the OCA in court were from St. Catherine, Kingston and St Andrew. Using 2009-10 to illustrate the parish breakdown, Table 7 shows that these three parishes accounted for approximately 54 per cent of the cases taken to court.

#### **Table 7: Representation in Court by Parish, 2009**

Outside of the court setting, the OCA has made interventions in numerous matters. For instance, the OCA provided legal representation where there was none, on behalf students in a matter before the Board of a high school in St. Catherine, where a teacher allegedly sexually harassed female students. The Legal team also gave advice and/or information to members of the public on the phone, or in person, as it relates to the Child Care and Protection Act, the rights of children, parental rights in custody and maintenance matters, inter alia. Many of these calls or visits resulted from referrals from relevant authorities.

#### ***Reviewing law, services and practices***

Section 11 of the First Schedule of the CCPA states that the OCA shall –

- (a) Keep under review the adequacy and effectiveness of –
  - (i) law and practice relating to the rights and best interests of children;
  - (ii) services provided for children by relevant authorities.

Table 8 provides a listing of legal opinions given and legislation which the OCA has provided comments on. The table also includes the various inter-ministerial committees on which the OCA served.

#### **Table 8: legal opinions and committees 2006-2011**

#### ***Make recommendations***

Another method used by the Office is the conducting of unannounced site visits followed by the preparation of relevant reports and or meeting with the relevant authority. For example, in 2009, the staff made a number of field visits to child care facilities, and then prepared reports for the relevant authorities that included assessments of practice with respect to best practices. The OCA staff also conducted a number of school visits. The table below gives a summary of the visits to RCCF for 2009-10:

#### **Table 9: Field Visits by Children's Advocate and Staff**

## ***Research Studies***

The Office also undertook several research studies in the area of child rights and child welfare. These are reflected in the table 10.

**Table 10: Research Studies produced and tabled in Parliament, 2006-2010**

## ***Public Education and Awareness Building***

Section 11(c) of the Child Care and Protection Act requires that OCA take reasonable steps to ensure that –

- (i) Children are made aware of the functions and location of the Office of the Children's Advocate and the way in which they may communicate with the Children's Advocate;
- (ii) The views of children and persons having custody, control or care of children, are sought concerning the exercise by the Children's Advocate of his functions under this Part"

To fulfill that mandate, the OCA created awareness campaigns for children and all groups in society through direct interactions, mass media and through the distribution of educational materials.

**Table 11: Public Education Activities, 2006-2010**

A user friendly website ([www.ocajamaica.com](http://www.ocajamaica.com)) was developed in 2008 and launched in 2009, to provide information on child rights and responsibilities; child abuse and ways of preventing abuse; and, the roles and functions of the OCA and how to contact the Office.

In 2008, the Office developed a series of Public Service Announcements (PSAs) focusing on child rights and the need to protect children from abuse. These were aired on radio and television stations, some of whom – LOVE 101, LOVE TV, RJR and Nationwide continued to run the PSAs long after the funds were depleted. For this the OCA records its appreciation.

## ***Consultations***

### **Children**

In the first year of their operations, the OCA had a series of consultations with students, children in residential care facilities, and teachers and principals. Arising out of the consultations was a series of recommendations that were addressed in different ways. Some passed to the relevant authorities, while others as policy recommendations. Some of the areas that emerged as priorities for action were:

1. Development of Guidelines on school discipline and punishments for offences against students;
2. Development of a participatory evaluation system for teaching methods and student teacher relationships;
3. Establishment of a system to identify and assess disruptive students in order for referrals for appropriate interventions; and,

4. Recommendation for the review of the guidance teacher to student ratio, and the need for social workers.

In 2007-08, the OCA held five (5) regional consultations with children in St. James, St. Ann, Kingston, St. Catherine and Manchester, seeking audience with over 500 children in the 6 to 12 year old age group and their teachers. The issues raised were shared with the Minister of Education, the Child Development Agency and the Jamaica Constabulary Force.

The year 2008-09 saw the Office continue its efforts to consult with children, conducting five consultations with children, including children in residential child care facilities (RCCF) and places of safety.

The Office of the Children's Advocate also consulted with the National Secondary's Schools Council and with secondary students in the development of its corporate plan, operations plan and to review the policy recommendations to Parliament. For 2009-10, the OCA continued its public education activities with children by hosting four (4) seminars in Kingston, St Andrew and Manchester for children in state care to introduce the CCPA and child rights.

Beginning in 2010 and culminating in a workshop session in 2011, the Office of the Children's Advocate sought to put in place a Children's Consultative Panel that has as its role to advise the Office on issues of priority for children. The Panel will also serve as a sounding board for the research papers and policy recommendations developed within the Office and through their review and feedback will strengthen the recommendations and best practices proposed by the Office. Interestingly, the Panel also indicated that they wanted to work with the Office in terms of public education programmes on the situation of children in Jamaica and child rights and in assisting the Office to create child friendly versions of the many important documents that the Office produces. The Panel will be given their instruments of office during the Fifth Anniversary celebrations of the OCA.

### ***Other stakeholders***

The OCA worked with other stakeholders, who are involved in work around the protection and promotion of child rights. In 2009-10, the OCA also accepted the invitation of the OCR to partner with them to host Consultations with the Jamaica Constabulary Force. This was in an effort to strengthen the capacity of members of the Jamaica Constabulary Force to understand child rights and to work with children in child friendly ways. Approximately 200 police men and women participated in six (6) parishes.

The result of the collaboration was increased awareness of the different roles that the various agencies of government that worked with children have; the responsibilities of the Jamaica Constabulary Force as it relates to these government agencies; and, an increased sensitivity to the needs of children and their parents when they make a report at the police station or have to interact with policemen in any setting. Another positive outcome of this intervention was the development of a formal arrangement between the Jamaica Constabulary Force and the CDA for the appropriate care of children, who come into the police stations at night.

In 2009 – 10 a similar initiative was conducted with social workers and clerks in the court system. Again the outcome was that staff was made more aware of the plight of children who come before them, and the best practices in working with children to ensure that they have the best experience possible given the circumstances of being in court.

In the 2008 financial year, the OCA met with church leaders in four regional meetings. These sessions led to wide-ranging discussions on the role of the Children's Advocate, the role of churches in society as well as mechanisms for the OCA to liaise with churches and faith-based organizations around child rights. These consultations on the basis of the OCA education programme within church setting help establish the ground work for future collaborations.

In the current financial year the Office of the Children's Advocate worked to strengthen the capacity of non-governmental organizations and private sector organizations to network. The specific objectives of the project were to create opportunities for nongovernmental organizations to network with private sector organizations in order to increase collaboration and information sharing between them; and to increase the awareness and willingness of private sector organizations about the necessity of corporate social responsibility; and, to build bridges between the community of non-governmental organization and private sector organizations for future collaborations.

The initiative had a number of positive outcomes, one being the commitment of the participating non-governmental organizations to continue the networking and collaboration initiatives under the umbrella organization, the Children's Coalition of Jamaica. In another positive outcome, there was the agreement of the private sector organizations on the desirability of having other spaces and opportunities for sharing, both among themselves and with child serving organizations.

The OCA also hosted two Roundtable discussions, one in 2007 and the other in 2008. The first was on the issue of corporal punishment, which included the views of children and formed the basis for the OCA's campaign for the prohibition of the use of corporal punishment for children. The second was an Expert Consultation of Ombudspersons. At this Roundtable, the Children's Advocate became familiar with some successful advocacy strategies utilized by other established Ombudspersons.