

Jamaica's Education Act - A (Potential) Tool for Realisation of Children's Rights to Adequate Food and Health

Shereika Mills¹

Abstract

This paper examines the Jamaican school food environment in light of children's rights to adequate food and health drawing on both international human rights treaties as well as domestic law. It highlights the State's obligations to safeguard children's rights relating to health and food within the school setting and in so doing, underlines some of the challenges posed by private sector involvement in Jamaican schools, particularly in relation to the marketing of unhealthy food and beverages within the school environment. The author ultimately argues for legislative reform through the Education Act as one way of allowing for fuller realisation of children's rights to adequate food and health within Jamaican schools.

Key words

Education; Children rights; School food environments; Noncommunicable diseases; Jamaica

Introduction

The Education Act² was the first piece of legislation that Jamaica passed following its independence in 1962. The Education Act governs the statutory and operational aspects of education, and the time of its passage speaks volumes about the perceived importance of education for the Jamaican society. It also demonstrates the central role that education is thought to play in national development, and in constructing a solid post-colonial identity. Presently, the importance of education is reflected not only in the theoretical sense of what it means for Jamaicans culturally, but also in the practical sense of having the physical school grounds often be at the centre of community activities and programmes.³

1 Attorney-at-Law. Email: sheikamills@gmail.com

2 Education Act 1965.

3 The Jamaica Education Transformation Commission, The Reform of Education in Jamaica 2021

The Jamaica Education Transformation Commission (JETC)'s 2021 report contained several recommendations which centred and transformed school-community partnerships, and recognised the role of the community in improving student wellbeing. Notably, this report further recognised the central role of the school environment in Jamaica as a safe haven for students from hunger.⁴ The school feeding programme was created in part to encourage attendance at school and better health outcomes for children in lower socioeconomic areas,⁵ demonstrating the linkage between education, adequate food and health, which have historically gone hand in hand, especially in efforts to reduce child malnutrition after independence.⁶

Similarly, health has increasingly been recognised as an important development aspect. One of the anticipated outcomes of the country's national development agenda, titled Vision 2030,⁷ is that Jamaica has a stable and healthy population. It states that by 2030, the life expectancy of Jamaicans should be higher than 76 years old and that this goal will be achieved by building the awareness and commitment of Jamaica's population to the maintenance of healthy lifestyles and environments. In doing so, Vision 2030 seemingly reflects a concern with noncommunicable diseases (NCDs) e.g., cancer, diabetes, cardiovascular diseases), which tend to be of long duration and are a result of several factors, including risk factors such as physical inactivity, alcohol consumption, tobacco use, and unhealthy diets.⁸

However, in stark contrast with Vision 2030, the reality is that one in three Jamaicans has hypertension⁹, and one in eight has diabetes.¹⁰ As it relates to youth, in 2017, more than 30,000 children and adolescents between ten and nineteen

(The Jamaica Education Transformation Commission, 2021) <<https://opm.gov.jm/wp-content/uploads/flipbook/jetc-reform-of-education-in-jamaica-2021-abridged/PDF.pdf>> Accessed 8 November 2022.

4 *ibid* 30.

5 Jennings, Z, 'Impact of the provision of school lunch on attendance in remote rural Jamaican schools' (2016) 46 *Int Jour Edu Dev* <<https://www.sciencedirect.com/science/article/abs/pii/S0738059315001121>> Accessed 10 December 2022.

6 Atlink, H, 'Tackling Child Malnutrition in Jamaica, 1962-2020' (2020) 7 *Humanities Soc Sci Communications* <<https://doi.org/10.1057/s41599-020-00536-5>> Accessed 10 December 2022.

7 Planning Institute of Jamaica, 'Vision 2030' (2009) <<http://Islandr.com/vision2030/national-goals-and-outcomes/>> Accessed 10 December 2022.

8 World Health Organization, 'Noncommunicable diseases' <https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases>> Accessed 15 April 2024.

9 Ministry of Health, 'Jamaica Health and Lifestyle Survey III (2016-2017) Preliminary Key Findings', .gov.jm (2018) <<https://www.moh.gov.jm/wp-content/uploads/2018/09/Jamaica-Health-and-Lifestyle-Survey-III-2016-2017.pdf>> Accessed 10 December 2022.

10 *ibid*.

years old were found to be hypertensive,¹¹ which is an unusual trend in this age and an unfortunate health outcome.¹² The situation is likely to worsen, considering that twenty percent (20%) of boys and twenty-six point four percent (26.4%) of girls between the ages of thirteen to seventeen (13-17) are overweight, and nine percent (9%) of boys and nine point five percent (9.5%) of girls in that same age group are obese,¹³ with overweight and obesity being metabolic risk factors for NCDs.¹⁴ This is the result of a steep rise in childhood obesity; according to the Ministry of Health, rates doubled between 2013 and 2018.¹⁵

Unhealthy diets play a role in this scenario. Jamaica is currently experiencing the double burden of malnutrition among its children, in that there is the coexistence of a high level of child malnutrition while the levels of childhood obesity also continue to rise.¹⁶ The Jamaica Health and Lifestyle Survey (JHLS) illustrated this situation, reporting that more than seventy percent (70%) of the population – including, of course, children – had insufficient resources or access to safe, healthy, and nutritious foods.¹⁷ Instead, children increasingly have access to fast-food and sweetened beverages as part of an obesogenic environment.¹⁸ An obesogenic environment is an environment that encourages high energy intake and sedentary behaviour.¹⁹

Specifically, school food environments are crucial to address this situation; they can either harm or help the health of Jamaican children, depending on whether these environments are effectively regulated. For this reason, the World Health

-
- 11 Gilpin, J, 'Hypertension in children on the rise - More than 30,000 kids diagnosed with high blood pressure because of severe overweight' *The Jamaica Gleaner* (16 January 2018).
 - 12 McCrindle, B, 'Assessment and Management of hypertension in children and adolescents' (2010) 7 *Nature Reviews Cardiology* <<https://www.nature.com/articles/nrcardio.2009.231>> Accessed 10 December 2022.
 - 13 World Health Organisation, 'Global school-based student health survey', .int (2017) <<https://www.who.int/teams/noncommunicable-diseases/surveillance/systems-tools/global-school-based-student-health-survey>> Accessed 10 December 2022.
 - 14 World Health Organization, 'Noncommunicable diseases' <<https://www.who.int/news-room/fact-sheets/detail/noncommunicable-diseases>> Accessed 15 April 2024.
 - 15 Hibbert, K, 'Childhood Obesity rates double in five years', *Radio Jamaica News* (Online) 30 January 2018.
 - 16 Atlink, H, 'Tackling Child Malnutrition in Jamaica, 1962-2020' (2020) 7 *Humanities Soc Sci Communications* <<https://doi.org/10.1057/s41599-020-00536-5>> Accessed 10 December 2022.
 - 17 Ministry of Health, 'Jamaica Health and Lifestyle Survey III (2016-2017) Preliminary Key Findings', .gov.jm (2018) <<https://www.moh.gov.jm/wp-content/uploads/2018/09/Jamaica-Health-and-Lifestyle-Survey-III-2016-2017.pdf>> Accessed 10 December 2022.
 - 18 Soares-Wynter, S, 'JAMBAR Kids: A school environment study,' (2022) (unpublished paper).
 - 19 World Health Organization, 'Report of the Commission on ending Childhood Obesity,' (24 March 2016) A69/8.

Organization (WHO) recommends regulating school food environments as a key step in ensuring that children develop positive behaviours around food and nutrition.²⁰

In this context, this paper will use international human rights law, coupled with constitutional and relevant subsidiary legislation to argue that there is an obligation on the Jamaican State to use its legislative arsenal, including the Education Act, to address the obesogenic environment in schools, and thus uphold Jamaican children's rights to adequate food and health.

The Right to Adequate Food and the Right to Health in International Human Rights Law

As parties to international covenants, States are obligated to respect, protect, and fulfil human rights. This section will focus on the International Covenant on Economic, Social and Cultural Rights (ICESCR)²¹ to illustrate State obligations as they relate to the rights to adequate food and health, and the Convention on the Rights of the Child²² (CRC) to illustrate the obligations that related specifically to children. The ICESCR was ratified by Jamaica in 1975, and the CRC was ratified by Jamaica in 1991.²³

Jamaica operates under a dualist system, which means that international human rights treaties do not form part of domestic law until they have been incorporated into domestic legislation.²⁴ However, it is still mandated by international law to align domestic law with its international obligations. Specifically, Article 2(1) of the ICESCR provides that “each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”²⁵ It is also worth noting that Jamaica's highest Court, the

20 World Health Organization ‘Implementing school food and nutrition policies: A review of contextual factors’ (2021) (Online) <<https://www.who.int/publications/i/item/9789240035072>> Accessed 1 October 2021.

21 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

22 Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

23 University of Minnesota Human Rights Library, ‘Ratification of International Human Rights Treaties,’ accessed at <<http://hrlibrary.umn.edu/research/ratification-jamaica.html>>

24 Alleyne, M. and Robinson, T., ‘The Impact of the United Nations Human Rights Treaties on the Domestic Level in Jamaica’ (2024).

25 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966,

Judicial Committee of the Privy Council, has ruled that where there is ambiguity in the law, they should be interpreted in a manner that does not breach the State's international obligations.²⁶ At the same time, if domestic laws are clear, they still stand, even if they are in conflict with international law.²⁷

The right to adequate food is enshrined in the ICESCR.²⁸ According to Article 11,²⁹ "the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions." The Committee on Economic, Social and Cultural Rights (CESCR), in General Comment No. 12,³⁰ clarifies the normative content of the right to adequate food, and states that "the right to adequate food is realised when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement,"³¹ adding that this right should not be interpreted in a narrow or restrictive sense in terms of calories. Rather, there should be "availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture,"³² and that this food should be accessed in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

The Committee also indicates that the right to adequate food will have to be realised progressively, even though States do have an immediate core obligation to take the "necessary actions to mitigate and alleviate hunger."³³ Every State is obliged to ensure that everyone in their jurisdiction has access to the "minimum essential food which is sufficient, nutritionally adequate, and safe, to ensure their freedom from hunger."³⁴ Specifically, the obligation to respect this right dictates that States should not interfere with its enjoyment by preventing access to adequate food; and

entered into force 3 January 1976) 993 UNTS 3.

26 *Watson v R* [2004] UKPC 34.

27 *ibid.*

28 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

29 *ibid.*

30 Committee on Economic, Cultural and Social Rights, 'General Comment 12: The Right to Adequate Food,' (12 May 1999) E/C.12/1999/5, para 6.

31 *ibid.*

32 Committee on Economic, Cultural and Social Rights, 'General Comment 12: The Right to Adequate Food,' (12 May 1999) E/C.12/1999/5, para 8.

33 *ibid.* para 6.

34 Committee on Economic, Cultural and Social Rights, 'General Comment 12: The Right to Adequate Food,' (12 May 1999) E/C.12/1999/5, para 14.

the obligation to protect requires States to take action to ensure that businesses and individuals do not deprive others of their access to adequate food.³⁵ Finally, the State's obligation to fulfil this right includes the duties to facilitate and provide.³⁶ To satisfy it in terms of facilitation, States must take positive actions by strengthening people's access to adequate food; and in terms of providing, States must provide it directly to groups or individuals who are unable to access adequate food by the means at their disposal.³⁷

The CESCR underscores that any discrimination in access to food with the purpose of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights is a violation of the Covenant.³⁸ These violations can occur either through direct state action, or of other entities insufficiently regulated by States, and includes the failure to regulate the activities of individuals or groups to prevent them from violating the right to food of others.³⁹

This calls for a human rights approach to the design, adoption and implementation of public policies and legislation that concern the right to adequate food. The Jamaican government must consider all this when adopting and implementing normative instruments relating to food, including the interconnectedness with other human rights, such as the right to health.

The right to health is found in ICESCR Article 12, which says that the States parties to the covenant recognise the right of everyone to the highest attainable standard of physical and mental health.⁴⁰ The CESCR interprets the right to health as an inclusive right that also extends to the underlying determinants of health, one of which is adequate supply of safe food and nutrition.⁴¹ Specifically, children's right to health is also enshrined in the Convention on the Rights of the Child (CRC).⁴² Article 24(1) provides that "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for

35 *ibid.*

36 Committee on Economic, Cultural and Social Rights, 'General Comment 12: The Right to Adequate Food,' (12 May 1999) E/C.12/1999/5, para 15.

37 *ibid.*

38 Committee on Economic, Cultural and Social Rights, 'General Comment 12: The Right to Adequate Food,' (12 May 1999) E/C.12/1999/5, para 18.

39 *ibid* para 19.

40 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, Article 12.

41 Committee on Economic, Cultural and Social Rights, 'General Comment 14: The Right to the Highest Attainable Standard of Health,' (11 August 2000) E/C.12/2000/4.

42 Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

the treatment of illness and rehabilitation of health”.⁴³ In turn, Article 24(2)(c) sets out States’ obligation to pursue full implementation of the right to health and take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious foods.⁴⁴ Children’s right to the highest attainable standard of health includes an obligation on the State to tackle all aspects of child health, and certainly to also prioritise the areas where children are most affected and vulnerable in terms of their health.⁴⁵

The school environment stands out as a critical, but largely unregulated arena in this regard. As illustrated earlier, this environment has unfortunately evolved into an obesogenic setting, characterized by a prevalence of unhealthy food and rampant unhealthy food marketing. This reality places children in a vulnerable position as they navigate their food choices independently of parental guidance. This autonomy, while a crucial aspect of their development, can also expose them to health risks if not accompanied by adequate legislation that promotes an environment supportive of their rights to adequate food and health.

Important Considerations on Children’s Rights: The Best Interest of the Child and Evolving Capacity

Regarding children’s rights, one consideration is the best interest of the child as a primary consideration. As stated in CRC Article 3(1): “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 a primary consideration.”⁴⁶ This is a guiding principle as it relates to State obligations to protect, respect, and fulfil (including facilitate and provide) the right to adequate food. Notably, and as stated earlier, the right to protect includes ensuring that businesses also do not interfere with human rights. In General Comment 16,⁴⁷ the Committee on the Rights of the Child (CtRC) made the point that “the obligation to make the best interests of the child a primary consideration becomes crucial when

43 *ibid.*

44 Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

45 Committee on the Rights of the Child, General Comment No. 15, ‘The Right of the child to the enjoyment of the highest attainable standard of Health’ (2013) UN Doc. CRC/C/GC/15.

46 Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

47 Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), art. 17; General Comment No. 16 (2013): State obligations regarding the impact of the business sector on children’s rights, para. 17.

States are engaged in weighing competing priorities, such as short-term economic considerations and longer-term development decisions.”⁴⁸

This is particularly important as it relates to children and the school environment considering interactions with the business sector. These interactions, which can range from a public-private partnership to provide students with food,⁴⁹ to the tailored advertising and marketing of unhealthy food on the school compound,⁵⁰ can have adverse impacts on the rights to adequate food and health. The inherent vulnerability of children is therefore intensified in school food environments because of the unregulated participation of the business sector in these environments, which ultimately leads to pervasive and in some instances predatory, emotion-based tactics used to advertise and market unhealthy food to children.⁵¹ These marketing tactics often overshadow efforts to promote healthier eating habits, influencing children's dietary choices in detrimental ways. While these partnerships or informal relationships with the business sector can have positive short-term impacts — for example, when a school is provided with a new cafeteria — as the Committee makes clear, the long-term impact on development [and health as part of development⁵²] must also be weighed.

Furthermore, businesses engaging with children as consumers in schools — and calls for governments to intervene — also raise questions regarding children's autonomy, which can be addressed from the normative perspective with the concept of evolving capacity. The child's evolving capacity is a fundamental concept within the Convention on the Rights of the Child,⁵³ referring to “the process of maturation and learning through which children progressively acquire competencies, understanding and increasing levels of agency to take responsibility and exercise their rights.”⁵⁴

48 Committee on the Rights of the Child, ‘General Comment No. 16 (2013): State obligations regarding the impact of the business sector on children's rights,’ para 17 (17 April 2013) CRC/C/GC/16.

49 Patterson, C., ‘KFC supports national school feeding programme,’ (17 March 2020), Jamaica Information Service, accessed at <https://jis.gov.jm/features/kfc-supports-national-school-feeding-programme/> .

50 UNICEF ‘A Child Rights-based approach to food marketing’ (2018) (Online) <https://sites.unicef.org/csr/files/A_Child_Rights-Based_Approach_to_Food_Marketing_Report.pdf>

51 UNICEF ‘A Child Rights-based approach to food marketing’ (2018) (Online) <https://sites.unicef.org/csr/files/A_Child_Rights-Based_Approach_to_Food_Marketing_Report.pdf> accessed 10 January 2023.

52 Planning Institute of Jamaica, ‘Vision 2030’ (2009) <<http://islandr.com/vision2030/national-goals-and-outcomes/>> accessed 10 December 2022.

53 Committee on the Rights of the Child, ‘General Comment No. 20 on the implementation of the rights of the child during adolescence,’ (6 December 2016), CRC/C/GC/20.

54 *ibid* 18.

The CtRC then emphasises that this concept does not obviate States' obligations to guarantee protection.⁵⁵

This concept can be applied to the assessment of the extent of vulnerability of children around making food choices. Children under 12 are often unable to differentiate between what seems good, and what is good for them.⁵⁶ These children should be particularly protected from obesogenic food environments because of their inherent vulnerability, and the demonstrated effects of these environments on their health and quality of life.⁵⁷ As it relates to adolescents, even though they have been proven to have better perception skills than children under 12, they have also been proven to respond to emotion-based food marketing tactics that promise rewards and tokens.⁵⁸ In addition, the area of the brain that prompts inhibitory control is less developed in both children and adolescents than in adults.⁵⁹ Therefore, their ability to resist these tactics is also reduced.

Schools are also a lucrative space for unhealthy food companies because of canteen concessionaire roles that also allow them to use the school environment as a marketing space for their products. These companies offer severely under-resourced schools the opportunity to have their canteens refurbished, for example, so they can house the company's products.⁶⁰ This situation warrants government intervention, especially considering that the CRC says that "States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."⁶¹ This is an acknowledgement of the status of children as persons who are in a situation of inherent vulnerability, in that they are reliant on other persons and institutions for their care and protection.

55 Committee on the Rights of the Child, 'General Comment No. 20 on the implementation of the rights of the child during adolescence,' (6 December 2016), CRC/C/GC/20.

56 UNICEF 'A Child Rights-based approach to food marketing' (2018) (Online) <https://sites.unicef.org/csr/files/A_Child_Rights-Based_Approach_to_Food_Marketing_Report.pdf>

57 *ibid.*

58 UNICEF 'A Child Rights-based approach to food marketing' (2018) (Online) <https://sites.unicef.org/csr/files/A_Child_Rights-Based_Approach_to_Food_Marketing_Report.pdf>

59 *ibid.*

60 Rose, D, 'Mother's goes to school- patty company takes on cafeterias' The Jamaica Gleaner (Online) (9 January 2011) <<https://jamaica-gleaner.com/gleaner/20110109/business/business2.html>> accessed 8 October 2022.

61 Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, Article 3(3).

These institutions are oftentimes agents or institutions of the State, and meaningful standards for their governance are important to ensure children a standard of care and protection commensurate with the State's obligations under international human rights law.⁶² In the education sector in Jamaica, Boards of Management of public schools, called Public Educational Institutions (PEIs) in the Education Act, function loosely as agents of the Ministry of Education and Youth, and the schools they manage are institutions of the State, as will be explored later. Their status as institutions of the State and public authorities carries weight under international human rights law, and the way in which they discharge their duties is relevant for assessing the State's compliance with international obligations. Article 3(3) of the CRC is of particular importance when considering the duty of care that public educational institutions, and their Boards of Management, as agents of the State, have when caring for children, and the standard for ensuring their protection, particularly in the area of health. In order to satisfy their obligations and ensure conformity with the normative framework of the rights to adequate food and health, the State should identify the legislative and other means that are most conducive to the realisation of these rights.

The National Legislative Framework

In the national context, Chapter 3 of the Jamaican Constitution, the Charter of Fundamental Rights and Freedoms,⁶³ and the Child Care and Protection Act⁶⁴ (CCPA) will be explored. Section 13(3)(k)(i) of Chapter III of Jamaica's Constitution, the Charter of Fundamental Rights and Freedoms, provides that it is the right of every child to such measures of protection as required by virtue of their status of being a minor or as part of the family, society and the State, in patent conformity to the CtRC. In turn, the Child Care and Protection Act (CCPA) was passed in 2004 after Jamaica ratified the CRC in 1991. Its creation was heavily encouraged by the Office of the Children's Registry, as it was then, and the Office of the Children's Advocate, both agents of the Ministry of Education and Youth, to "activate the principles of international agreements,"⁶⁵ strengthen protection for children, and

62 Committee on the Rights of the Child, 'General Comment No. 14(2013) on the rights of the child to have their best interests taken as a primary consideration,' (29 May 2013) CRC/C/GC/14 para 26.

63 The Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011

64 Child Care and Protection Act, 2004.

65 Child Protection and Family Services Agency, 'History' .gov.jm <<https://childprotection.gov.jm/mission-vision-core-values/history/>> accessed 8 October 2022.

promote their rights.⁶⁶ The Office of the Children's Registry was merged in 2017 with the Child Development Agency to form the Child Protection and Family Services Agency (CPFSA).⁶⁷ The principle of the best interest of the child is mentioned throughout the CCPA, and one of the objects of the Act is to promote the best interests of children.⁶⁸

Section 27(1) of the CCPA provides that it is "the duty of every person responsible for the maintenance of a child to provide the child with adequate food... and health care appropriate to the age and needs of the child."⁶⁹ The very inclusion of a section in the CCPA that speaks to adequate food and health care for children is an acknowledgment that these are aspects of child care and protection. The provision also recognises that children are not only the responsibility of their parents or guardians but—in a practical sense—of any other person that is responsible for them. This extends logically to those within the school environment, and it has been established in Commonwealth case law that schools have a duty of care to children, and that this duty extends to their right to be provided with nutritious food. The South African case of *Equal Education and Others v Minister of Basic Education and Others* [2013]⁷⁰ demonstrates that, as an extension of the child's right to education, and their right to adequate food, schools have a duty of care to students to ensure that they have access to healthy, nutritious food within their school environment.

Section 27 of the CCPA also seems to be provided in acknowledgement of several Articles of the CRC, including Article 3(3). Since Boards of Management of schools are the bodies within schools who are ultimately responsible for the maintenance of children while they are at school, the Jamaican common law has also accepted, and Jamaican courts have proceeded, with cases on the basis that Boards of Management of public educational institutions are public authorities capable of breaching the rights of students, and that they are an extension of the Ministry of Education and Youth, who is a named defendant in suits against school boards because of this

66 *ibid.*

67 *ibid.*

68 Child Care and Protection Act, 2004.

69 *ibid.*

70 *Equal Education and Others v Minister of Basic Education and Others* [2013] ZACC.

connection.⁷¹ The section 27 "duty of every person" should therefore be seen as extending to institutions, including schools in Jamaica.⁷²

Arguably, the combined effect of these pieces of legislation is that there is an obligation on the part of the government to ensure a healthy school food environment that provides the child with adequate food, as well as to achieve this through a proper legislative and regulatory framework. However, the current framework, even with the CCPA section 27 protection, has not worked to provide students in Jamaica with adequate food at school. Recent preliminary data from the JAMBAR (Jamaica and Barbados) Kids School Study, led by the Caribbean Institute for Health Research, showed a proliferation of unhealthy foods and pervasive marketing of these foods in Jamaican schools.⁷³

The Education Act⁷⁴

The Education Act generally provides for: a coordinated system of public education; the registration of teachers and independent schools; the inspection of independent schools; purposes incidental to, or connected with these matters.⁷⁵

It outlines Jamaica's decentralised education model, in addition to contemplating some student entitlements like the right of every Jamaican child to access education, regardless of socioeconomic status,⁷⁶ and the requirement that all children between the ages of 6 and 17 attend school.⁷⁷ The Act does not speak to the provision of food in the school environment or to the health of students. Nevertheless, it is appropriate to focus on the school food environment when reflecting on the realisation of the rights to adequate food and health because more than three quarters of Jamaican children get at least one meal a day at school.⁷⁸ For some, it is their only source of a

71 *Virgo v Board of Management of Kensington Primary School* [2020] JMFC Full 6; *Lawrence, Aretha v Board of Knox College, the Ministry of Education and Youth* [2012] JMSC CIV. 75; *Harvey v Board of Management of Moneague College, the Ministry of Education Youth and Information* [2018] JMSC Full 3.

72 *ibid.*

73 Soares-Wynter S, Gray Brown A, Kerr K, Ng SW, 'Beverage, fruit and vegetable consumption of Jamaican school children', Caribbean Institute for Health Research, The University of the West Indies, Kingston, Jamaica, Carolina Population Center, The University of North Carolina at Chapel Hill, Chapel Hill, USA: International Society of Behavioral Nutrition and Physical Activity, 2022, ISBN: 978-1-7324011-4-3.

74 Education Act 1965.

75 Education Act 1965.

76 Education Act 1965.

77 *ibid.*

78 Ministry of Health and Wellness 'Health Promoting School Survey' (2013) (Online) <<https://moh.gov.jm/wp-content/uploads/2015/05/Health-Promoting-School-Survey-2011-Report.pdf>>

meal for the day, as it is provided by the Programme of Advancement through Health and Education (PATH), which is a State-funded initiative that provides students from lower socio-economic backgrounds with free or subsidised food at school. Its purpose is to increase educational attainment and improve health outcomes of persons experiencing poverty.⁷⁹ Children become eligible through their enrolment in school and demonstrated need.⁸⁰

Outside of PATH, there are other *ad hoc* school food programmes put on by Parent-Teachers Associations, which exist in many schools. There are school events like harvests, concerts and sports days that regularly have food provided for students. Schools are also managing and taking complete responsibility for the diet of student athletes, who have very specific needs when it comes to their dietary requirements.⁸¹ In addition to this, as highlighted above, private food and beverage companies often function as canteen concessionaires and in this venture and otherwise, use schools as a marketing space for their products. These relationships are often created and managed independent of Ministerial control.⁸²

School is also an influential environment as it relates to forming patterns and habits in childhood.⁸³ At school, students can be taught about and demonstrated good nutrition through the food that is provided for students, having a safe space to correct misinformation, and teaching skills such as those related to kitchen gardens, agricultural practices, among other initiatives.⁸⁴ In Jamaica, schools are allowed to maintain a cultural and religious identity, and to make rules that are aligned with these

accessed 7 July 2021.

79 Ministry of Labour and Social Security 'PATH' .gov.jm <<https://www.mlss.gov.jm/departments/path/>> accessed 8 October 2022.

80 *ibid.*

81 Purcell, L, 'Sport Nutrition for Young Athletes' (2013) 4 *Ped Child Health* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3805623/>> accessed 10 December 2022.

82 Rose, D, 'Mother's goes to school- patty company takes on cafeterias' *The Jamaica Gleaner* (Online) (9 January 2011) <<https://jamaica-gleaner.com/gleaner/20110109/business/business2.html>> accessed 8 October 2022.

83 World Health Organization, 'Implementing School Food and Nutrition Policies: A review of contextual factors, (2021) ISBN 978-92-4-003507-2, 2.

84 *ibid* 17.

identities, as Ministry of Education and Youth policies give them this latitude.⁸⁵ In this framework, they independently manage their administrative and daily functions.⁸⁶

Jamaica's Decentralised Education Model

The decentralised nature of the education system in Jamaica makes the Education Act an important avenue to guarantee that students have a healthy food environment at schools, in addition to providing opportunities and a procedure for complaints to be lodged when students' rights are violated.⁸⁷

Jamaica's decentralised education model is laid out in the Education Act.⁸⁸ Generally, the Ministry of Education and Youth in Jamaica has the power to make regulations that govern PEIs, among many other powers and duties.⁸⁹ In terms of regulations, the Ministry of Education and Youth's power is to generally make provisions for the proper carrying out of the procedures and purposes of the Act.⁹⁰ Outside of that, the power to make regulations is limited to certain issues, and does not allow for regulations concerning the health of students, or access to adequate food in the school environment.⁹¹ Every PEI has to comply with the existing regulations. Where there are no regulations, the PEI guides itself.⁹²

The daily management and administration of PEIs is then given to a Board of Management.⁹³ The Ministry of Education and Youth can make regulations specifying the powers and duties of the Board of Management,⁹⁴ but generally they have no power to direct its daily operations. The responsibilities of the Board range from fixing fees, which are subject to the Minister's approval, to making policies that govern their individual school environment and setting school rules for students. These policies and rules are to be made according to the Education Act and its

85 Ministry of Education, Youth and Information Jamaica, 'Draft Policy: National School Nutrition Policy' (May 2022) <https://moey.gov.jm/wp-content/uploads/2022/05/DRAFT-POLICY-National-School-Nutrition-Policy-.pdf> accessed 10 May 2023 & Ministry of Education and Youth, 'Student Dress and Grooming Policy for PEIs' (April 2023) https://moey.gov.jm/wp-content/uploads/2023/08/draft_student_dress_grooming_august_24_2023.pdf accessed 17 April 2024.

86 Education Act, 1965 s 9(1).

87 Education Act, 1965.

88 Education Act, 1965, Part III.

89 Education Act, 1965 s 3 & s 4.

90 Education Act, 1965 s 43(e).

91 *ibid.*

92 Education Act, 1965 s 17(d).

93 Education Act, 1965 s 2 & s 9(1).

94 Education Act, 1965 s 43(b).

Regulations, as well as the policies set by the Ministry of Education and Youth.⁹⁵ There are occasions where the Ministry of Education and Youth sets a policy for schools, and others where it sets only policy guidelines, in which case the school is then expected to use these guidelines to create their own policy.⁹⁶

It should be noted that the Minister reserves the power under the Education Act to take action where it is considered that there is serious failure in the successful working of any PEI, and the Board or Management has failed to provide a remedy for such failure within a reasonable time after having been required to do so by the Minister.⁹⁷ Even though not specified in the Act, it is understood that this “serious failure” can extend to either a failure to create a policy, to create one that adheres to the guidelines, or to follow a policy that has been handed down.⁹⁸ On July 12, 2016, then Minister of Education and Youth, Ruel Reid, speaking to Radio Jamaica, reiterated this sentiment. He stated that he would sanction school boards which did not ensure that schools comply with the government’s funding policy, for example.⁹⁹ He also reiterated that schools were government agencies that should follow the directives of the Ministry of Education and Youth.¹⁰⁰ There has never been an instance, however, where a Minister of Education and Youth has actually taken action against a PEI, and it is unclear what this action would look like in practical terms.

This model makes the Jamaican school environment difficult for implementing policies for its guidance, as these are not mandatory or enforceable, and therefore rely heavily on functional agency relationships and the will of each school’s Board of Management to ensure implementation. These relationships have, however, soured over the years due to a consistent power struggle between staff unions like the Jamaica Teachers Association and the Ministry of Education and Youth over the management of schools. As recently as March 2023, teachers across Jamaica took strike action, which caused schools to close, due to a dispute over wages for teachers.¹⁰¹ The current

95 *ibid.*

96 Ministry of Education and Youth, ‘Student Dress and Grooming Policy for PEIs’ (April 2023) https://moey.gov.jm/wp-content/uploads/2023/08/draft_student_dress_grooming_august_24_2023.pdf accessed 17 April 2024.

97 Education Act, 1965 s 9(3).

98 Radio Jamaica News, ‘Reid stands by decision to sanction schools that disobey funding policy’, Radio Jamaica News (Online) (12 July 2016) & Jamaica Gleaner, ‘MOE mulling sanctions for school administrators who act outside grooming policy,’ (30 August 2023).

99 Radio Jamaica News, ‘Reid stands by decision to sanction schools that disobey funding policy’, Radio Jamaica News (Online) (12 July 2016) <<http://radiojamaicanewsonline.com/local/reid-stands-by-decision-to-sanction-schools-that-disobey-funding-policy>> Accessed 8 October 2022

100 Education Act, 1965.

101 Loop Jamaica News, ‘Teachers Vote to take casual leave over wage dispute with the government’,

state of these relationships both demotivates and disincentivises school staff from taking independent action to ensure healthy school environments outside of what is explicitly required and mandated by the different policies or legislation. Currently, there is no effectively implemented policy issued by the Ministry of Education and Youth that guides schools on what to feed children while they are at school, or on what is allowed in terms of unhealthy food advertising and marketing in schools.

The Interim Guidelines on Sugar-Sweetened Beverages¹⁰² (SSBs) in Jamaica were developed by the Ministry of Health and Wellness in collaboration with other stakeholders in response to the growing concern about the negative health impacts associated with the consumption of SSBs. They were passed in 2018 for phased implementation over a period of five years to begin in January 2019. The guidelines recommend that SSBs are not sold, marketed or advertised in schools or educational institutions. The guidelines were poorly implemented with no monitoring process. A Jamaica Gleaner report¹⁰³ in 2022 found that, after visiting four schools and one public health facility, they were all in breach of the guidelines. Notably, one school principal stated that school food decisions were made solely based on what was allowed in the Adventist religion. The phased implementation of the guidelines was also disrupted by school closures due to the COVID-19 pandemic. The guidelines are expected to be relaunched as part of Jamaica's School Nutrition Policy,¹⁰⁴ which is now at the green paper stage. The School Nutrition Policy, in its draft, is rights-based, but it must be noted that it would not be mandatory. It acknowledges that strong buy-in is needed from schools for successful implementation, and it also includes the clause that "implementation of this policy should reflect the social and resource context within which the schools operate."¹⁰⁵

Schools are allowed to, and generally will, function based on their own assumption of what is right and appropriate if there is no clear, strong guidance or direction from the Ministry of Education and Youth, and especially if there is no legislative weight behind the decision. These policies, though valuable and important, are not

Loop Jamaica News (Online) (9 March 2023) <<https://jamaica.loopnews.com/content/teachers-vote-take-casual-leave-over-wage-dispute-govt>> Accessed 13 March 2023.

102 Ministry of Health Jamaica, 'Interim Guidelines on Sugar-Sweetened Beverages' (2018) <<https://www.moh.gov.jm/wp-content/uploads/2018/08/FINAL-Interim-Guidelines-on-Sugar-Sweetened-Beverages-15.08.18.pdf>> Accessed 25 April 2023.

103 The Jamaica Gleaner, 'Policy not clear' (1 May 2022) <<https://jamaica-gleaner.com/article/lead-stories/20220501/policy-not-clear>> Accessed 25 April 2023.

104 Ministry of Education, Youth and Information Jamaica, 'Draft Policy: National School Nutrition Policy' (May 2022) <<https://moey.gov.jm/wp-content/uploads/2022/05/DRAFT-POLICY-National-School-Nutrition-Policy.pdf>> Accessed 10 May 2023.

105 *ibid.*

mandatory or judicially enforceable. They also allow for significant variations in the implementation of policies across PEIs, since schools interpret their obligations differently according to their social and resource context.

The Education Act's amendment in accordance with the recommendations laid out in this paper would allow for the implementation of necessary and beneficial regulations as it relates to school food and the health of students. There is also an opportunity to expound on the entitlements in section 27(1) of the CCPA and give meaning to the legislative requirements of adequate food and health as it relates specifically to the school environment. Ultimately, the measures that ensure the right to adequate food and health must take place through legislation that is mandatory and can be enforced. This strengthens the case for the government to include provisions for healthy food environments in the Education Act.

Recommendations

To make the current legal framework concerning school food environments more effective, the legislation that governs schools in Jamaica, which is the Education Act, should explicitly mandate access to adequate, nutritious food in schools, and regulate the prevalence of unhealthy food advertising and marketing in these settings, consistent with the rights to adequate food and to health. Based on the above normative analysis, to ensure the child's rights to adequate food and health, the Education Act needs to be amended using a two-pronged approach.

In the first instance, the Act needs to be amended to regulate the prevalence of unhealthy food and beverages and the advertising and marketing of these products in schools. Foods and beverages should be classified as "unhealthy" based on the PAHO Nutrient Profile Model,¹⁰⁶ which is evidence-based and constructed free from conflicts of interest interference. This is relevant because currently the Ministry of Education and Youth is only empowered to make regulations for limited issues, as laid out in section 43(1) of the Education Act,¹⁰⁷ which do not extend to student health or public health in the school environment.

Secondly, the Education Act should be amended so that the scope of the Ministry of Education and Youth's regulatory powers is extended to matters that concern

106 Pan American Health Organization 'Pan American Health Organization Nutrient Profile Model' (2016) ISBN 978-92-75-11873-3 <https://iris.paho.org/bitstream/handle/10665.2/18621/9789275118733_eng.pdf?sequence=9&isAllowed=y> Accessed 10 December 2022.

107 Education Act, 1965, s 43(1).

student health, public health and public-private partnerships between schools and corporate entities to allow for faster action around this issue in the future. This amendment to the Education Act would coexist with the Public Health Act,¹⁰⁸ which empowers the Ministry of Health to make regulations for issues that affect public health.

In the Westminster model under which Jamaica operates,¹⁰⁹ legislative amendments generally happen very slowly. Legislation is passed through approval by a bicameral legislature, and this usually entails a lengthy process that involves numerous debates, revisions, and readings of the bill before parliamentarians ultimately vote in favour of it or not. It is important to note that these amendments may still not be passed after these debates and revisions, based on Jamaica's marked history of slow legislative reform processes, with extremely few exceptions. As an illustration of this point, Jamaica's Disabilities Act was passed in 2014, but was not enacted until 2022.¹¹⁰ If there are to be amendments to this Act, which are to be expected because of the time between passage and enactment, they will have to go through the same process that caused an eight-year delay in the first instance.

Moreover, Parliament is composed of both government and opposition members, and, therefore, there is more scope for political conflicts. Legislative amendments that pass through the lower house of parliament, must also pass through the upper house, which is the Senate.¹¹¹ This is another stage where they can be blocked, and there is further possibility for industry interference at this stage as at least one member of Jamaica's Senate is also a senior executive of a food and beverage company that may provide unhealthy food options.¹¹²

Regulations, on the other hand, are passed through a faster process. Regulations are laws created by a Ministry responsible for a subject area, for example, the Minister of Education and Youth, utilising law-making powers granted to them by an Act of Parliament such as the Education Act.¹¹³ Regulations go through a less complicated

108 Public Health Act 1985.

109 The Westminster model entails a bicameral legislature, and requires that legislation passes through both houses before becoming law.

110 Jamaica Information Service, 'Disabilities Act' Jamaica Information Service (Online) (24 March 2022) <<https://jis.gov.jm/information/get-the-facts/disabilities-act/>> accessed 13 March 2023. An Act is passed when it is approved by the Parliament, and enacted when it is signed into law by the Governor General.

111 Healthy Caribbean Coalition, 'Regulating the availability and marketing of unhealthy beverages and food products in and around schools in the Caribbean,' (September 2022) 44 & 45.

112 Grace Kennedy Group, 'Directors,' <<https://www.gracekennedy.com/corporate/about/directors/>> Accessed 13 March 2023

113 Education Act 1965 s 43.

process and are less time-consuming to pass because they only require the signature of the relevant Minister, after receiving the approval of Cabinet (made up of the Head of Government and Ministers of government) in order to be passed. Moreover, acts done under regulations or by virtue of the regulatory powers conferred by an Act are deemed to be done under the Act.¹¹⁴

6. Limitations of this Approach

Although the value of using legislation to create and maintain healthy food environments is clear, and cannot be overstated, there are some peculiarities in the Jamaican context that may make this approach more difficult than in other contexts.

Firstly, schools are underfunded and are required to find their own sources of funding to supplement government allocations. To resolve this issue, school administrators rely on a combination of partnerships to make school feeding and general resourcing possible. These partnerships include, for example, community vendors, food and beverage companies, and alumni associations. These partners are responsible for procuring their own food, which they then sell to students. Therefore, there are many independent layers of decision making that go into school feeding, and enforcement of legislation or regulation will have to tackle many complex issues.

Secondly, the food industry is small, and it may not be practical to have conflict of interest provisions that completely ban a manufacturer from advertising on the school grounds on the basis that they sell unhealthy food or beverage options, but rather to have provisions that ban certain products from schools. In addition, unhealthy food companies do not only come with products, but they also have financial resources, and are major sponsors of school sports, for example.¹¹⁵ The difficulty with this is that schools independently manage their relationships with manufacturers, and agreements do not necessarily have to be written. There is latitude for conflicts of interest to arise because of the lack of transparency in this process, in addition to the amount of these agreements that exist across schools, but also within schools, as there is no limit to the amount of manufacturers that can provide to a canteen, and no one manufacturer provides all the products schools require to run a canteen. The practicality of these provisions will have to be carefully considered to encourage successful implementation.

114 Interpretation Act 1968 s 32.

115 Jamaica Observer, 'KFC pumps \$15-m investment in ISSA schoolboy football season 2023,' (23 August 2023).

Conclusion

Education, and the school environment in particular, has long been used to drive positive health outcomes in children in Jamaica. Now that the country is experiencing such serious effects of the NCD burden, every sector of government must implement legislation and regulations that, in some way, contributes to reducing their prevalence. This is even more important for those sectors that interact with groups in a situation of vulnerability such as children. One of these is the education sector, and regulation around food environments in schools, as was established earlier, is recommended by the WHO as an effective way to promote dietary patterns that reduce the risk of NCDs in children and the general population.

Based on the combined obligations of the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child, as well as Jamaica's Constitution and Child Care and Protection Act, the State has a duty to realise children's rights to adequate food and health, including in their school environment. This paper establishes that States must therefore regulate the school food environment to avoid a prevalence of unhealthy food and beverages, as well as to protect these rights by regulating private sector involvement in schools, and in particular the advertising and marketing of unhealthy food products and beverages.

The Education Act is proposed as a possible legislative response with a higher chance of effective implementation because of its ability to be tailored to the school environment, and the possibility of allowing for further law-making through expanded powers as it relates to creating regulations.