

The Convention on the Rights of the Child at 35 years. The Promise Kept or “A Dream Deferred”?

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Child Rights in Education

INTRODUCTION

A main indicator of a country's development must be society's ability to protect vulnerable citizens, those being the nation's children. Not just children generally but those who require specialized care due to physical disability or mental disability. The **United Nations Convention on the Rights of the Child** (UNCRC) is the first international instrument to incorporate the full range of human rights for the child. It sparked a new generation of social awareness of the rights of the child.

In Trinidad and Tobago, child rights in education are governed by a combination of international treaties, national laws, and policies aimed at ensuring that all children have access to quality education and are protected from any form of discrimination or harm.

Having accepted the UNCRC, as a country signing the treaty, we are now subject to its legal requirements under international law.

Article 2 of the **UNCRC** provides that the rights set out in therein shall apply to **EVERY CHILD** “without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”.

Evidentially, the Convention did not specify to exclude a child who falls within particular, special categories. Before exploring some of those categories, I want to explore how Trinidad and Tobago has attempted to incorporate the rights of the child, specifically in respect of education.

KEY PIECES OF LEGISLATION

1. International Commitments

United Nations Convention on the Rights of the Child (CRC): Trinidad and Tobago ratified the CRC in 1991, over 33 years ago. This international treaty outlines the rights of children, including their right to education.

The CRC establishes that education should be directed to the full development of the child's personality, talents, and mental and physical abilities, and that education should promote understanding, tolerance, and friendship among all people.

Article 28 of the CRC specifically deals with the right to education, stating that children should have access to free primary education, with secondary education made available and accessible to every child.

ARTICLE 28 UNCRC:

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29 outlines the goals of education, emphasizing development, respect for human rights, and preparing children for responsible life in a free society.

2. National Legislation

There are several key pieces of local legislation which have sought to conform with the UNCRC. The principles enshrined under UNCRC were given legislative force, domestically, on 18th May 2015 through a suite of children's legislation. We can establish that Trinidad and Tobago has made strides in keeping its promise to the purpose of the UNCRC. There is legislative commitment to the recognition of the rights of the child in the enactment of the Children's legislation.

(a) The Children's Authority Act, Chap. 46:10

This act focuses on the welfare and protection of children, providing a framework for the safeguarding of children's rights in all areas of their lives, including education.

Section 6 (2) (b) of the Children's Authority Act places a duty on the Authority to consider the ability of parties involved to continue the education of a child

(b) The Education Act, Chap. 39:01

The Education Act is the primary law governing education in Trinidad and Tobago.

It outlines the compulsory education system in the country, which mandates that children between the ages of 5 and 16 must attend school.

The Act also covers various aspects of education, such as the structure of schools, the curriculum, the responsibilities of the Ministry of Education, and the rights of students.

Section 6 (2) states: In addition to the three stages of public education mentioned in subsection (1), there may be provided special schools suitable to the requirements of pupils who are deaf, mute, blind, retarded or otherwise handicapped.

Section 7 states that No person shall be refused admission to any public school on account of the religious persuasion, race, social status or language of such person or of his parent.

(c) The Equal Opportunity Act

This act protects against discrimination based on gender, race, religion, and other characteristics, ensuring that all children have equal access to education without discrimination.

There exists an osmosis of international law, not only the UNCRC but later instruments such as the Beijing Rules, the Havana Rules and the Riyadh Rules into our jurisdiction in Trinidad and Tobago which had a radical impact upon how we understand, scrutinize and protect the rights of the child.

Notably, Kokaram J, in the judgement of **CV2015-02799 and CV2015-03725 – BS and SS v AGTT and Ors** highlights that there is no specific right of the child expressly provided for in the Constitution. However whereas our Constitution does not expressly recognize a fundamental right of the child as in other commonwealth constitutions our fundamental freedom and rights are broad enough to interrogate the concepts of “due process” rights, protection of the law and cruel and unusual punishment when it comes to a special and vulnerable constituent in the family: the child.

3. Inclusion and Accessibility

Trinidad and Tobago has made strides in implementing inclusive education policies, but challenges remain in ensuring full inclusion, especially in rural areas or for children with more severe disabilities, such as autism (as we know this a spectrum disorder so “a one size fits all” approach will not be deemed best), down syndrome.

Article 23 of the UNCRC recognizes the rights of children with disabilities to special care, education, and training to help them achieve the fullest possible social integration and individual development. Whilst there exist a Special Education Policy in Trinidad and Tobago, our challenge rest with basic implementation.

Specialized Schools

For children with severe disabilities, Trinidad and Tobago provides specialized educational institutions that cater specifically to their needs. These schools are equipped with trained staff and resources to provide more intensive support. Examples include:

- **The Princess Elizabeth Centre:** This is a well-known institution that provides education for children with intellectual and developmental disabilities.
- **The School for the Deaf:** Catering to children with hearing impairments, this school offers specialized instruction in sign language and other communication methods.
- **The School for the Visually Impaired:** This school supports children with visual impairments, providing education with specialized tools such as braille and tactile learning resources.

While there are some specialized teachers for children with special needs, the training for mainstream teachers in inclusive education remains insufficient. Teachers often lack the skills or knowledge to effectively teach children with different types of disabilities. This is an area where significant improvement is needed to ensure that all teachers are equipped to handle diverse learning needs.

Child Refugees/Children of parents who have no status

If the constitution applies to every person within the jurisdiction, then it must flow that each child within our jurisdiction has a right to education. However this is not the case, where these children must apply for a student permit to be afforded access to school in Trinidad and Tobago.

The student permit is granted by the Immigration Division after an online application, however challenges have arisen regarding the granting of such a permit where the child's parent may not be in proper legal standing in the jurisdiction. It goes against the very purpose of the UNCRC permitting education for every child regardless of their status or that of their parents.

Children in Care

Children who have been received into care by the Children's Authority due to child protection concerns in their own family home are also affected. Whilst the Authority tries its best to effect transfers of these children (in circumstances whereby a child can no longer attend their school for logistic reasons), these children are subjected to long wait times thereby stalling their education.

The Authority is also challenged by enrolling children into schools where some may not have been exposed to formal schooling. Whilst their age may be 15 years, they do not have the skillset required to be enrolled into a school suitable for a 15 year old.

Children in care fall within a special category of their own as Authority being a state entity is open to legal liability as the responsibility of ensuring these children are in school rest solely on their shoulders. It is not a burden they can carry alone.

4. Further Challenges

Despite these protections and efforts, there are still significant challenges related to child rights in education in Trinidad and Tobago:

- **Access to Quality Education**

While education is technically free and compulsory, there are disparities in access and quality, particularly between urban and rural schools, and among different socio-economic groups.

There is no free public school for children with autism – many parents are forced to seek private education for these children. The parents who cannot afford to send their child to such a school are subjected to

- **Underfunding and Infrastructure Issues**

Many schools face issues related to inadequate facilities, overcrowded classrooms, and outdated resources.

Special needs students require specialized education.

- **Addressing Discrimination**

Although legal protections against discrimination exist, there are still instances where children from disadvantaged backgrounds, children with disabilities, and children from minority ethnic groups may face barriers to accessing quality education.

Can the Ministry of Education in Trinidad and Tobago help?

Section 39(1) of the Education Act states:-

The Minister may—

- (a) cause to be established any special school;
- (b) cause to be established or authorise the establishment of, any special school, class, clinic or service, either as a separate unit or in connection with any public institution approved for the purpose by him;

(c) make provision for special educational facilities to be provided by instruction by correspondence.

The short answer is simply yes. Does it exist to every one? The poor? We boast of a country that provides “free education” but we must consider “free” to whom? Free to the child who falls on the Autism Spectrum? Is a parent breaching the law by not having their 7 year old child who has autism enrolled in school?

The legislation is in place, effecting the promise made to advance child rights in Trinidad and Tobago. However the infrastructure and means to implement what the legislation provides for truly lacks thereby bringing us on the cusp of deferring this dream.

The failure to establish sufficient infrastructure effectively fails to allow children access to schooling, exposes them to neglect and constitutes a flagrant breach of their basic human rights. It is a fundamental constitutional breach as they are entitled to “protection of the law”.

Far too often, we find ourselves before the Courts of this country, utilizing state resources to defend what is the most obvious. It takes a judgment to effectively force the hands of those responsible to do what is within their power.

I say this confidently as the only method to establish a psychiatric ward for the long term care of minors in Trinidad and Tobago arose out of litigation before the Courts of Trinidad and Tobago where the Hon. Madame Justice Bansee-Sookhai stated in her judgement of **Re HS (CATT v MOH)**

*“The lack of provision of separate and specialized accommodation available for children in need of inpatient psychiatric care may be properly construed as an irrational, unreasonable, unfair or arbitrary deprivation of same to **HS** who is in need of such a facility and a contravention of his rights under **section 4(b) of the Constitution.**” (protection of the law)*

Are we now to approach the Courts, again, to establish separate and specialized schools for children diagnosed with autism and down syndrome, ensuring same is free and accessible to every child who falls within this category?

The Court have noted time and time again that ratification of such international treaties, though not incorporated into domestic law, still has legal ramifications in the courts and may give rise to actionable human rights on the ground of legitimate expectation.

Conclusion

While Trinidad and Tobago has made significant strides in ensuring the rights of children in education, challenges remain in ensuring that all children, regardless of background or ability, have equal access to high-quality education. Continued investment in infrastructure, teacher training, and inclusive education is necessary to fulfill the promise of education as a fundamental right for every child in the country.