



World Bank Global  
HIV/AIDS Program

## Protecting Children Affected by AIDS in the Caribbean Recommendations for Legal Reform in Saint Lucia

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Saint Lucia has achieved some notable successes in its HIV response. But more could be done to protect the welfare, safety and security of children whose lives are affected by HIV and AIDS. This note suggests key legal reforms – including some “Quick Wins” – that could contribute to improving the legal protection of children in Saint Lucia who are orphaned or made vulnerable by AIDS.

### 1. OVERVIEW

This report provides recommendations for legal reform to enhance the protection of children orphaned or made vulnerable by AIDS in Saint Lucia. It is an outcome of a broader research study financed by the World Bank - Netherlands Partnership Program on the legal protection of AIDS orphans and vulnerable children in the Caribbean. The research methodology consisted of extensive desk reviews of existing legislation in Grenada, Saint Lucia, Saint Vincent and the Grenadines, and Guyana, as well as in-depth interviews with key stakeholders in each of the countries. This approach facilitated the identification and critical assessment of relevant statutes as well as of the institutions charged with making them work. The detailed research findings were reported in background papers for each of the countries, on file at the World Bank.<sup>1</sup>

In order to focus attention on the aspects of the legal and institutional frameworks that require the most urgent attention of Governments and policy-makers, Recommendations for Legal Reform were prepared for each of the four countries. An overview for Grenada, Saint Vincent and the Grenadines and Saint Lucia was also prepared to underscore opportunities for harmonization of the laws across the member States of the Organization of Eastern Caribbean States (OECS).

Saint Lucia has achieved some notable successes in its efforts against HIV and AIDS, however, the legislative framework should be improved and the institutional responses strengthened. As detailed in this report, legal and institutional reform is particularly recommended in the areas of: (a) financial provision and support; (b) sexual exploitation and abuse; (c) juvenile justice and (d) inheritance rights. On-going initiatives such as the OECS Family Law

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<sup>1</sup> The background papers on Grenada and Saint Lucia were prepared by Jacqueline Sealy-Burke, and those on Guyana and Saint Vincent & the Grenadines by Leighton Jackson, consultants to the World Bank. The research study was managed by Rudolf V. Van Puymbroeck, Lead Counsel, Public Health and HIV/AIDS, World Bank, under the overall guidance of Joana Godinho, Senior Health Specialist, World Bank. Mary Mulusa (LAC Regional HIV/AIDS Focal Point) contributed to the final review of the note; Joy de Beyer (World Bank Global HIV/AIDS Program) prepared it for publication. The constructive comments of colleagues at UNICEF and the World Bank on the background papers, and the participation by many of them in a review meeting on May 1, 2006 are gratefully acknowledged.

Reform and Domestic Violence Project, the UNIFEM Child Support Project, CARICOM's Pan Caribbean Partnership against HIV/AIDS, the World Bank-financed HIV/AIDS Prevention and Control Project of the Government of Saint Lucia, and other donor funded projects may assist in making the reforms recommended in this report a reality.

## **2. AIDS AND CHILDREN'S VULNERABILITY**

### ***National data indicate a steady rise in diagnosed cases of HIV infection.***

The most recent data provided in the Chief Medical Officer's Report indicate that in 2005, the total number of HIV infected persons was 508. The figures have climbed since the first case of HIV was reported in 1985. Children younger than 15 years account for 10% of known cases, 20% occur in the young group under 25 years, and 3% due to Mother to Child Transmission (MTCT). Young women are becoming increasingly represented amongst the overall population of infected persons. The feminization of HIV/AIDS is consistent with regional and international trends, suggesting the need for enhanced strategies to redress the peculiar vulnerabilities of Saint Lucia's young women.

### ***AIDS is recognized worldwide as a threat to children and their families.***

One of the most tragic and difficult challenges of the AIDS epidemic is the growing number of children who have lost parents to AIDS or whose lives will never be the same because of this disease.

At present, the picture of HIV in Saint Lucia is incomplete. A situation analysis done in 2002 revealed that some of the epidemiological details that are necessary for targeted planning were not available.

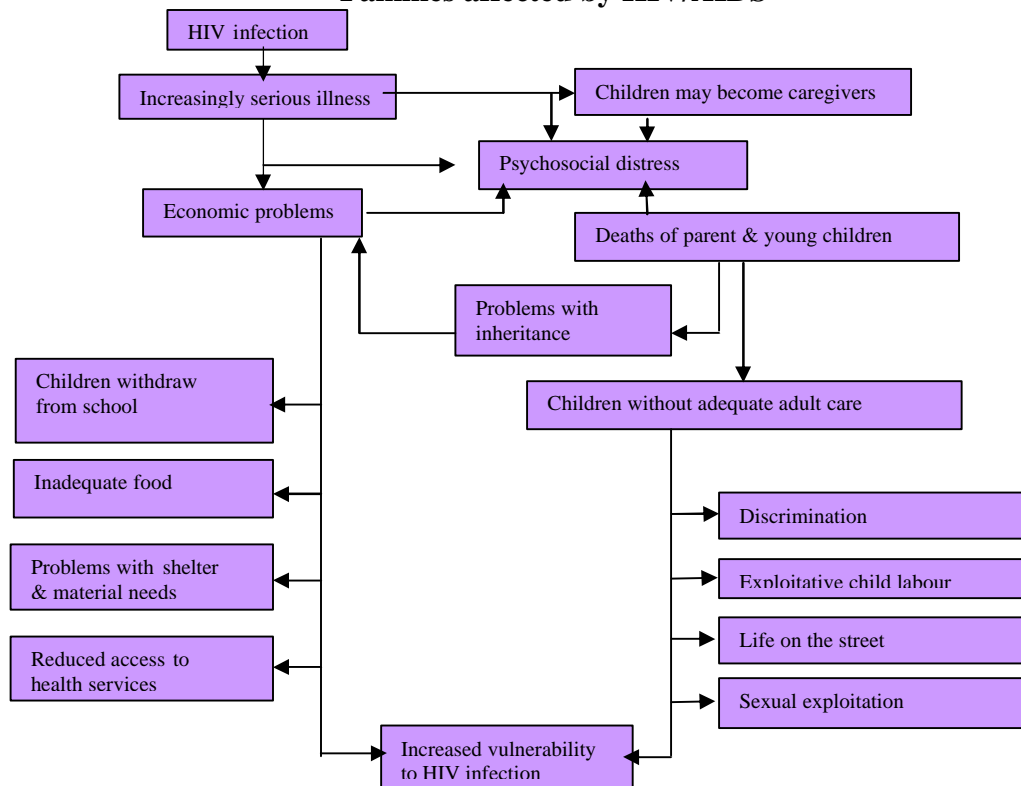
The problems experienced by children and their families affected by HIV are acute and varied, ranging from extreme psychological distress to economic hardship and increased risk of abuse (Figure 1). Children from HIV affected families are themselves at greater risk of HIV infection because of factors like sexual exploitation, withdrawal from school and lack of adequate adult supervision.

### ***Natural disasters can compound the vulnerability of children.***

Saint Lucia's location in the hurricane belt makes it very prone to natural and environmental risks. Hurricanes, storms, heavy rains, landslides and flooding have resulted in extensive damage in Saint Lucia. Hurricane Allen in 1980 and Tropical storm Lili in 2002 caused widespread destruction of Saint Lucia's banana crops. Hurricane Ivan, which struck Grenada in September 2004, impacted every sector of Grenada's economy and society with devastating force, but also affected Saint Lucia and other nearby islands.

In the aftermath of a natural disaster the social and economic existence of a country is threatened and those who are already vulnerable face increased risk of poverty and other factors that affect their general safety and well-being.

**Figure 1: The Complex and Interrelated Problems among Children and Families affected by HIV/AIDS**



Source: UNICEF/UNAIDS, The Framework for the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV and AIDS, July 2004.

### 3. THE LEGAL FRAMEWORK

#### *The critical role of the Law*

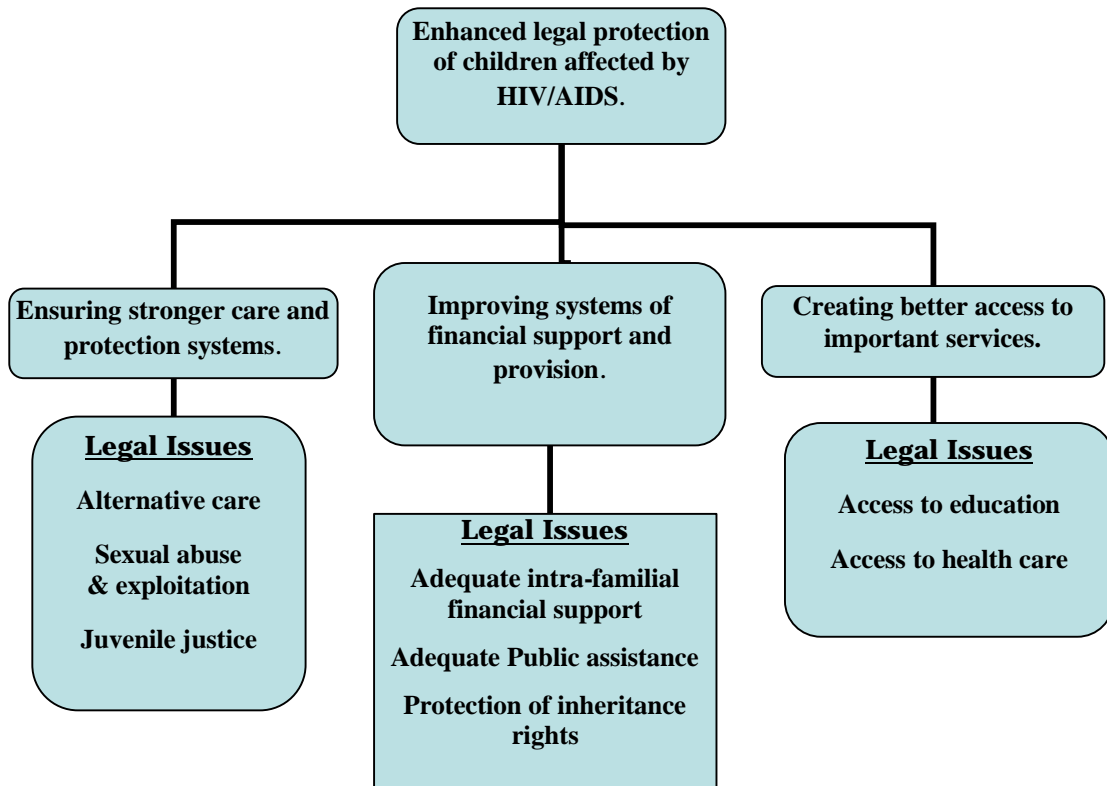
The law on its own cannot remedy the many difficulties experienced by the children and families who are affected by HIV. In fact, as indicated in Section 5 below, adequate social service and other programmatic interventions are indispensable to the effectiveness of the proposed legal reforms.

Effective legislative and institutional responses are critical components of the overall package of actions necessary to reduce children's vulnerability to the growing HIV epidemic. Improved policy and legislation are among the five key strategies recommended in the seminal framework document on the protection of vulnerable children from HIV and AIDS by UNICEF and UNAIDS.<sup>2</sup>

The essential components of a sound framework for the legal protection of children affected by HIV/AIDS can be depicted as in Figure 2:

<sup>2</sup> UNICEF/UNAIDS, The Framework for the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV and AIDS, July 2004.

**Figure 2: Essential Components for Enhancing the Legal Protection of Children Affected by HIV/AIDS**



Although all of these areas present opportunities for important legal reform, there are some areas that deserve urgent attention and should therefore be addressed with priority. This report focuses on these high-priority areas. There are also some areas of proposed law reform that are relatively simple and easy to achieve. These have been identified as "Quick Wins".

#### **4. PRIORITY AREAS FOR LEGAL REFORM**

##### **Financial Provision and Support**

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###### Issues

Poverty has been assessed as a major risk in Saint Lucia, with children under the age of fifteen being most vulnerable. Almost 28% of this group experience poverty. Many of these children are living in non-nuclear households where either one or both parents are absent. As many as 62% of children live without one or both of their parents, with many living in female-headed households that are receiving inadequate financial support from an absent, non-custodial father.

In circumstances where intra-familial child support is inadequate, there is the possibility of applying for welfare assistance, but this publicly funded support is extremely limited and unable to meet the growing demands of persons who need help.

### **Legal Context**

As a party to the Convention on the Rights of the Child (CRC), the Government of Saint Lucia has undertaken to take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child (Article 27 (4)). Article 26 recognizes the critical role to be played by the State in providing social security measures from which children can benefit.

Under Saint Lucia's domestic law, parents have a legal obligation to contribute financially to their children's needs.

However in the absence of Status of Children Legislation, there is blatant discrimination against children born outside of wedlock. The Affiliation Ordinance is extremely restrictive and imposes statutory maximums regardless of parental income or the specific needs of the child. Enforcement legislation exists in the form of Attachment of Earnings Legislation, but its effectiveness is limited to those who are formally employed and whose wages are easily accessible. With respect to state sponsored support, there is an outdated Public Assistance Act which is reportedly under review given its current social irrelevance.

The following areas are in need of reform:

- (i) There is no Status of Children Legislation which would require all children to be treated equally. This kind of legislation has been passed in almost all of the other OECS states and removes any distinction between children born within and outside of marriage. In terms of state sponsored support, the existing Public Assistance Act is reportedly under review given its current social irrelevance.
- (ii) The Affiliation Ordinance defines a child as one less than sixteen (16) years old. A Maintenance Order therefore ceases to have effect once the child attains the age of sixteen. This falls short of the international legal standard subscribed to by the Government of Saint Lucia which requires maintenance of a child until the age of eighteen (18).
- (iii) The Affiliation Ordinance which provides for the maintenance of children born outside of wedlock is very restrictive and imposes a number of burdensome requirements. The most noteworthy of these requirements are:
  - The Act only permits single mothers to apply to the Court, imposing an automatic barrier on fathers with de facto custody of their children.

- The Act requires the female applicant to apply for child maintenance within twelve months of the birth of the child. An application can only be made outside of that timeframe if there is proof that the putative father paid money for the child's maintenance within twelve months of the child's birth.
  - There is a statutory maximum of \$200 E.C. per month regardless of the parent's ability to pay or the special needs of the child.
- (iv) The Attachment of Earnings Act permits deductions from the salaries of delinquent fathers by an employer on the basis of a Court Order. This legislation, although beneficial, is not sufficiently broad to capture the majority of fathers who are delinquent in supporting their children. The Act is applied where there is a formal employment arrangement and wages can be readily garnished.
- (v) There is no Reciprocal Enforcement Legislation, which could facilitate the payment of child support by payors who are residing in other countries.
- (vi) The Public Assistance Act which was passed in 1967 does not have enough social relevance in current times.

## **Sexual Exploitation and Abuse**

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### **Issues**

Sexual abuse and exploitation of children in Saint Lucia is a complex, multi-dimensional problem with origins in the individual families, and socio-economic and cultural demands. The available data from the relevant authorities clearly indicate that sexual abuse is often present in cases of child abuse and neglect. Young women are particularly at risk, often being victims of incest, sexual exploitation and other forms of sexual abuse.

Transactional sex with older men was noted as a troubling trend amongst young women who hope to gain some financial or other material benefit. Incest, which places children at risk in their own home environment, is also a significant issue. The age difference and youthfulness of the young persons exploited by older male adults makes the negotiation of condom use and sexual boundaries very difficult. This is an extremely important factor that inevitably increases the risk of HIV infection for children.

### **Legal Context**

As a party to the Convention on the Rights of the Child (CRC), the Government of Saint Lucia has undertaken to protect children from all forms of sexual exploitation and sexual abuse (Article 34). The Convention also creates a legal obligation on the part of the State to provide alternative care with a supportive

infrastructure for children who are abused, neglected or at risk of harm (Article 20).

Saint Lucia's domestic law does afford protection to sexually abused and exploited children and fairly recent amendments to the Criminal Code have gone a long way in improving the legal responses in this area. This recent reform has facilitated the following achievements:

- The offence of unlawful sexual connection was created, which recognizes other traumatic and offensive sexual acts like anal and oral intercourse. It is important to note however, that the offence of rape was not expanded to include these acts as has been done in some other jurisdictions.
- It criminalized the conduct of parents or guardians who encourage or condone the sexual exploitation of their children, whether male or female.
- It curtailed the honest defense for sexual intercourse with a person under the age of sixteen (16), extending it only to persons under the age of twenty-one (21) who have not previously been charged with the same or similar offence.
- It created gender neutrality in most of its sex offences so that boys are equally protected under the law.

These changes are very positive but given the plight of sexually abused children and the prevalence of the problem, there is the need for further reform. The following areas are still in need of attention:



- (i) There are no laws addressing the issue of child pornography. Given the recent reform of sexual offences under the Criminal Code, the inclusion of provisions addressing pornography would be consistent with the more progressive nature of the amended code and is easily achievable.
- (ii) The age of consent is sixteen (16) and so there is no protection for children between the ages of sixteen (16) and eighteen (18).
- (iii) Rules of evidence and procedure in the Criminal Courts are still not sufficiently sensitized to the special needs of child witnesses and victims. Lengthy delays, intimidating cross-examinations and strict rules of evidence are features of Saint Lucia's legal system that compromise a child's right to participate comfortably and effectively in criminal justice proceedings.
- (iv) The Civil Code of Saint Lucia permits a person under the age of sixteen (16) to marry with parental consent. Accordingly, the sex offences are qualified to exclude minors who are married.

(v) There is no legislation which specifically and exclusively addresses the care and protection of children who are abused. Saint Lucia's child protection mandate is found in the Children and Young Persons Act, which deals very extensively with juvenile matters involving children who come into conflict with the law. The child protection provisions of this legislation have been referred to as an "afterthought" and fail to provide adequately for all of the essential components of a case involving child abuse, such as reporting, investigation, removal, placement, recovery and follow-up. Some O.E.C.S. States have recently passed Child Protection Legislation which exclusively addresses care and protection objectives.



(vi) In terms of policy, a Protocol for the Management of Child Abuse and Neglect in Saint Lucia has been drafted, but not yet operationalized. The expeditious finalization and implementation of the protocol would be another "quick win" initiative in the area of policy reform.

## **Juvenile Justice**

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### **Issues**

Saint Lucia is well poised to intervene effectively in the area of juvenile justice because of the existence of a Family Court with a relatively strong social service infrastructure. Nevertheless, several factors have challenged the effectiveness of Saint Lucia's juvenile justice system. One of the major drawbacks confronting Saint Lucia in this area is the inadequacy or lack of residential rehabilitative institutions for juvenile offenders. This has resulted in juvenile offenders being remanded to female adult prison or simply released back into the community even where these options are clearly inappropriate. The sentencing of juveniles to the adult prison is a practice that threatens the emotional and physical well being of children, including significant potential for their increased exposure to HIV. Sentencing options are also limited and there are no established alternatives to judicial proceedings. These factors are all of critical importance given the growing number of juvenile cases being heard in the Family Court, where numbers have steadily increased from 67 cases in 1997 to 181 cases in 2004.

### **Legal Context**

The Convention on the Rights of the Child sets out a number of requirements in Article 40. These include, but are not limited to, separating children from adults during confinement; promoting the use of alternatives to formal trials; and encouraging rehabilitative measures so that children can be reintegrated into constructive participation in society.

Saint Lucia does have a legislative scheme for managing children who come into conflict with the law, namely the Children and Young Persons Act. Despite this legislation, the following areas have been identified for reform:



- (i) The age of criminal responsibility is not clearly defined in Saint Lucia. The Children and Young Persons Act makes provision for twelve (12) as the definite age of criminal accountability. However, the Criminal Code expressly states that a crime cannot be committed by a person under eight (8) years of age. This would seem to suggest that there are two different ages of criminal responsibility. The resolution of this conflict is easily and quickly achievable.
- (ii) The sentencing options under the Children and Young Persons Act are restricted with limited allowance for community service orders or other non-custodial measures.
- (iii) There is no established alternative to judicial proceedings. Diversion programs which would permit the juvenile to take responsibility for his or her actions, without the need for court proceedings, do not exist.
- (iv) The Children and Young Persons Act needs to be sufficiently informed by guidelines that address all proceedings involving young people in conflict with the law, including sentencing. These guidelines would underscore the importance of treating young people in conflict with the law differently from adults. The imposition of custodial sentences as a measure of last resort would be an integral feature of any such legislative guidelines.
- (v) The juvenile court in Saint Lucia has no jurisdiction over homicide cases. All such matters must be dealt with through the Criminal Courts.
- (vi) Life imprisonment is not expressly excluded under the Children and Young Persons Act.

## **Inheritance Rights**

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### **Issues**

A child who has lost a parent or parents to AIDS must not only deal with the grief of losing their nurturer or caregiver, but must also face the harsh consequences of coping without those persons who provided food, clothing, shelter and all their other basic needs.

Better access to inheritance will inevitably ensure greater financial independence and less reliance on state support in the form of public assistance or welfare benefits.

In Saint Lucia, the primary barrier to access as it relates to inheritance is the limitation placed on the class of children who have inheritance rights. Saint Lucia is one of the few islands in the Caribbean that still does not have Status of Children Legislation. In the absence of such legislation, there is blatant discrimination against children born outside of wedlock. This shortcoming in the law has significant implications given the fact that only one quarter of all households consists of parents who are legally married.

### **Legal Context**

The Convention on the Rights of the Child does not expressly speak to the right to inheritance. However, it can be persuasively argued that reference in Article 2 to discrimination against children on grounds of property should be understood to include property obtained by inheritance.

In Saint Lucia there is no restriction on the ability of a person to bequeath all his or her property. This permits parents to disinherit children, leaving nothing for them in their will, regardless of any special needs or disabilities that the child may have. In those Caribbean States where there is succession legislation, children are protected and will be provided for in cases where a testator might have made little or inadequate provision for a child.

In the absence of Status of Children Legislation, the Civil Code Ordinance provides that a child born out of wedlock may inherit on the intestacy of his mother or father only where the mother is a single woman and the father is a single man. This restriction was intended to ensure that only children born within marriage would have an entitlement upon the death of a parent. This law was softened by the Civil Code Amendment Act which provides that a person shall be regarded as a child of a deceased in certain other limited circumstances. These circumstances are extremely limited and do not create the parity that is contemplated in Status of Children legislation. Two areas of reform are therefore of urgent importance:

- (i) Children born outside of wedlock are significantly disadvantaged upon the death of a parent who dies intestate. The enactment of Status of Children Legislation geared at guaranteeing substantive equality amongst all children is a necessary remedy for the correction of this injustice.
- (ii) As a result of a totally unfettered system of testamentary freedom, parents can disinherit their children regardless of a child's special needs or circumstances. Protection of children, particularly those who are vulnerable, should be the paramount consideration in testamentary disposition.

## **5. OPERATIONAL AND PROGRAMATIC IMPLICATIONS**

Comprehensive remedial action for the benefit of children made vulnerable by AIDS will require a broad based systemic response that goes beyond legal reform. The legislative responses recommended in this report will need to be supported by adequate social service mechanisms and other programmatic interventions, including the following:

- > Protocols to facilitate a coordinated and systematic approach to child protection.
- > Enhanced data collection and disaggregation in all related areas, with priority given to data relating to children orphaned as a result of AIDS, sexual abuse and exploitation and children in conflict with the law.
- > Public awareness and sensitization initiatives which would draw attention to the plight of children who are orphaned or otherwise vulnerable because of HIV/AIDS.
- > More placement opportunities for children at risk, including adoption and foster placements.
- > Training and other educational opportunities, especially for people who work with vulnerable children and their families.
- > Legal Aid services for children and/or their impoverished custodial parents. Particular attention should be given to young people who come into conflict with the law and parents who need to pursue child support.

## **6. THE WAY FORWARD**

### **Recommendations for legal reform**

As indicated in this Report, there is significant scope for strengthening the country's legal framework to provide better protection against the impact of HIV and AIDS for orphans and vulnerable children. Specific recommendations in each of the priority areas are captured in the chart in Table 1.

**Table 1: Recommendations for Priority Legal Reform**

Financial Provision & Support	Sexual Abuse & Exploitation	Juvenile Justice	Inheritance Rights
<ul style="list-style-type: none"> <li>• Introduction of Status of Children Legislation which would require that all children be treated equally.</li> <li>• Removal of statutory maximum for child support awards under the Affiliation Ordinance.</li> <li>• Redefining child under the Affiliation Order so as to require maintenance until the age of eighteen (18).</li> <li>• Removal of burdensome requirements in the Affiliation Ordinance which restrict entitlement.</li> <li>• Creation of Reciprocal Enforcement Legislation so as to facilitate the payment of child support by payors who are residing in other countries.</li> </ul>	<ul style="list-style-type: none"> <li>• Enactment of a child pornography statute.</li> <li>• Relaxing the rules of evidence and procedures so as to make the Court a more child-friendly environment.</li> <li>• Reconsideration of the age at which persons can marry with parental consent.</li> <li>• Creation of legislation which specifically and exclusively addresses the care and protection of children.</li> <li>• Implementation of the draft protocol for the management of child abuse and neglect</li> </ul>	<ul style="list-style-type: none"> <li>• The age of criminal responsibility must be clearly and consistently defined across all legislative schemes.</li> <li>• The sentencing options under the Children and Young Persons Act should be broadened.</li> <li>• Alternatives should be established to judicial proceedings e.g. Diversion Programs.</li> <li>• Guiding principles should be included in the Children and young Persons Act which would emphasize the best interest of children.</li> </ul>	<ul style="list-style-type: none"> <li>• Implementation of Status of Children legislation which will ensure equality of all children in relation to inheritance rights.</li> <li>• Reconsideration of the system of total testimonial freedom, to the extent that such freedom compromises the well being of vulnerable children.</li> </ul>

***Current initiatives which can inform the way forward***

The recommendations for priority legal reform set forth in this Report must be placed in the context of on-going regional initiatives that are also geared at reform in relevant areas of the law.

The most comprehensive of these is the OECS Family Law Reform and Domestic Violence Project. This Project, which has been going on since 2002, seeks to achieve model legislation for all nine OECS member states. The areas of law that are targeted are all directly related to the areas identified for priority legal reform in this Report. The OECS Secretariat recently released six draft bills in the following areas:

- > Adoption
- > Child Protection
- > Juvenile Justice
- > Status of Children
- > Domestic Violence
- > Family Court

Other forthcoming draft bills will address such important areas as child maintenance, unions other than marriage, and custody. Enactment of the

OECS model legislation will not only address significant gaps and deficiencies in the current law, but will greatly contribute to the harmonization of law in the region.

Other initiatives that need to be taken into account are the UNIFEM Child Support Project, which focuses on the gender poverty implications of child support systems, CARICOM's Pan Caribbean Partnership against HIV/AIDS, which focuses on legislative deficiencies relating to HIV/AIDS, and the Government's broad HIV/AIDS Prevention and Control Project partially financed by the World Bank.

By coordinating the recommendations for priority legal reform of this Report with the inputs and other assistance received from these initiatives, the Government of Saint Lucia will be extremely well poised to achieve significantly greater protection for children orphaned or made vulnerable by HIV and AIDS.

## **Summary Overview for Grenada, Saint Lucia and Saint Vincent and the Grenadines (Organization of Eastern Caribbean States)**

This overview highlights striking similarities and marked differences in the legislative and policy frameworks of the three O.E.C.S. States. This comparison is a key component of the research project because of the need to harmonize legislation across the O.E.C.S. There are far more similarities than differences in the legal issues that affect children who are vulnerable because of HIV and AIDS across the three countries. The differences offer opportunities for a comparative assessment of the strengths and weaknesses of the legislation in each country, and discussion about best practices, looking at the notable achievements accomplished in each country.

### **AREAS OF SIMILARITY**

There is significant overlap in the issues that affect children who are orphaned or otherwise vulnerable because of AIDS in Grenada, Saint Lucia and Saint Vincent and the Grenadines. This is not surprising, given the islands' physical proximity, similar demographics and economic profiles, and the common source from which their laws originated and developed. Their shared experiences go beyond legal issues, extending to striking similarities in their national HIV profiles, and in operational or programmatic challenges to implementation of the law.

- There are three common priority areas for legal reform. In all three countries, there is urgent need for reform in the areas of:
  - (i) Financial provision and support
  - (ii) Sexual abuse and exploitation
  - (iii) Juvenile justice
- Several common legal deficiencies were identified for each of these priority areas. The deficiencies that applied across all the states are highlighted below:

#### **Financial Provision and Support**

- Children between the ages of 16 and 18 are not adequately addressed under the maintenance legislation.
- There is a duality in the family law process which discriminates against poor and unmarried mothers. This is a result of low child support awards and restrictions that exist within the Maintenance or Affiliation Acts, on which these women must rely.
- There is no Reciprocal Enforcement Legislation which could facilitate the payment of child support by non-custodial parents who are residing in the U.S.A. and other countries.
- Where Public Assistance Legislation does exist, it is dated and lacks social relevance.

### **Sexual Abuse and Exploitation**

- The age of consent for sexual intercourse falls below international legal standards.
- There are no laws addressing child pornography.
- Rules of evidence and procedure in the criminal courts are still not sufficiently sensitized to the special needs of child witnesses and victims.
- There is an absence of protocols for the management of child abuse and neglect. Where such protocols have been drafted, they have not yet been implemented.

### **Juvenile Justice**

- The age of criminal responsibility is very low and does not conform with international legal standards.
- There is no established alternative to judicial proceedings.
- Sentencing options are very restricted.
- There is no access to legal aid services for young people in conflict with the law.

- Operational and programmatic challenges were also very similar. Of particular note, there is a dire need for enhanced data collection and more alternative care arrangements for children who are in need of placement opportunities outside of the home. Juvenile justice programming is weak across all three countries, with the absence of diversion programmes and juvenile facilities presenting as serious deficiencies in the system.
- There are current reform initiatives which apply to all three O.E.C.S. countries. The O.E.C.S. Family Law Reform and Domestic Violence Project, which is overseen by the O.E.C.S. Secretariat, has already drafted six Bills. Uniform implementation of this model legislation could pave the way towards the harmonization of the laws across all O.E.C.S. Member States.

### **AREAS OF DIFFERENCE: NOTING DEFICIENCIES AND LEARNING FROM BEST PRACTICES**

Although there is significant overlap in the research findings for Grenada, Saint Lucia and Saint Vincent and the Grenadines, there are also some marked differences that deserve particular attention. Highlighting these distinctions provides a focus for improving areas of deficiency, and also presents an opportunity for noting best practices that could be adopted.

The distinctions between the islands are captured in Table 2.

**Table 2: Distinctive Features in Grenada, Saint Lucia, Saint Vincent and the Grenadines: Scope for Improvement and Best Practices**

Country	Distinctive Features: Scope for Improvement	Distinctive Features: Best Practice Opportunities
Grenada	<ul style="list-style-type: none"> <li>• Absence of legislation for juvenile offenders.</li> <li>• Absence of any Public Assistance Legislation</li> <li>• Inadequate protection under the sexual offence provisions of the criminal code. The weaknesses include: (i) Retention of the honest belief defense; (ii) making sexual intercourse a material element of unlawful carnal knowledge, rape and incest; (iii) lack of child friendly rules of evidence and procedure; (iv) inadequate protection of young boys.</li> <li>• Absence of Family Court Legislation</li> </ul>	<ul style="list-style-type: none"> <li>• Existence of <u>Child Protection</u> Legislation specifically designed to address child abuse.</li> </ul>
Saint Lucia	<ul style="list-style-type: none"> <li>• Absence of <u>Status of Children Legislation</u> which would ensure that all children are treated equally.</li> <li>• The establishment of statutory maximums for child support under the <u>Maintenance Act</u>.</li> </ul>	<ul style="list-style-type: none"> <li>• Existence of <u>Family Court</u> legislation with provision for supporting social services.</li> <li>• Recent reform to the sexual offence provisions of the <u>Criminal Code</u> which included:               <ul style="list-style-type: none"> <li>(i) The creation of the offence of sexual connection which recognizes other offensive sexual acts outside of sexual intercourse.</li> <li>(ii) The criminalization of parents or guardians who encourage or condone the sexual exploitation of their children.</li> <li>(iii) It restricts the honest belief defense to defendants under the age of twenty-one (21) who have not been previously charged with the same or similar offence.</li> <li>(iv) Boys are equally protected under the law.</li> </ul> </li> <li>• Enactment of <u>Attachment of Earnings</u> Legislation.</li> </ul>
Saint Vincent and the Grenadines	<ul style="list-style-type: none"> <li>• Inadequate protection under the <u>Education Act</u>. Compulsory education is set only at the primary level, that is for ages five (5) to eleven (11).</li> <li>• Despite the presence of a <u>Family Court Act</u>, the family court is compromised by a weak social service support.</li> <li>• The age of consent under the sexual offence provisions of the <u>Criminal Code</u> is only fifteen (15).</li> </ul>	<ul style="list-style-type: none"> <li>• There is a legislated age of consent for medical treatment. This entitles young people to consent to medical treatment at the age of sixteen (16).</li> </ul>

As outlined in the above table, each island has at least one distinctive feature that sets it apart from the other islands, highlighting a weakness that is peculiar to that particular State. These weaknesses must be taken together with several collective deficiencies that were present across all of the islands.

More important, however, are the best practices that exist in each of the countries, which can serve as a useful starting point for subsequent and ongoing reform initiatives. Although all of the achievements should be duly noted, the establishment of Family Courts is perhaps one of the region's most positive developments in the law relating to children.

### **The Critical Role of a Family Court**

A Family Court structure permits all matters involving children to be more effectively handled in a specialized court. In a Family Court setting, specially trained professionals provide legal and social services to children and their families. This paves the way for a more child friendly court environment that assists in all the relevant areas of law, including child maintenance; domestic violence; child custody and access; care and protection and juvenile justice.

Saint Lucia established a Family Court system pursuant to the Family Court Act No. 4 of 1994.

Although the Court has by no means remedied all of the difficulties, it has proven to be a very positive development in the legal protection of children who are vulnerable. The social support section of the Family Court is an essential feature of the court and offers counseling interventions; social inquiry reports; victim support programs and mediation services.

### **THE O.E.C.S. FAMILY LAW REFORM PROJECT: AN OPPORTUNITY FOR HARMONIZATION**

In acknowledgment of the limitations of the existing family law, as well as the administration of justice in dealing with family matters, the O.E.C.S Secretariat embarked upon the Family Law and Domestic Violence Legislative Reform Project.

The project has several objectives, but one of the major goals is the facilitation of a harmonized family law regime across the O.E.C.S. This was viewed as important, given the shared socio-economic and cultural conditions, and shared judicial structure.

In determining the direction of the legislative reform, the project was guided by the obligations elaborated in the international human rights instrument of the

Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

The project undertook a detailed review of the status of family law across all nine member states, addressing a wide range of issues. These issues included:

Adoption/Wardship/Foster Care/Guardianship	Marriage
Child Support	Spousal Support
Custody and Access	Divorce
Cohabitation Rights	Division of Property
Domestic Violence	Juvenile Justice
Family Court	Status of Children

A public consultative process was conducted so as to ensure the full participation of all key stakeholders, as well as the general public.

In March 2006, six draft Bills were completed and circulated for comment. The expectation is that those Bills, which are considered model legislation for the O.E.C.S. region, will be adopted at the national level by each of the member states.

The six Bills that are currently being reviewed all relate to children and cover topics relevant to the legal protection of children orphaned or otherwise vulnerable because of HIV/AIDS. In March 2006, the six Bills were reviewed in Saint Lucia by a contingent of legal and social service representatives from each island. The Bills that are presently being reviewed are:

- > Family Court Bill
- > Status of Children Bill
- > Adoption Bill
- > Care and Protection of Children Bill
- > Juvenile Justice Bill
- > Domestic Violence Bill

There are many outstanding areas, especially pertaining to the financial support of children and their families. It is hoped other Bills, dealing with these outstanding areas, will soon be drafted and made available.

The O.E.C.S. Family Law and Domestic Violence Reform Project presents all nine members States with an excellent opportunity to enhance their current laws and to achieve harmonization of the region's legislative frameworks.

The expeditious implementation of the model legislation will go a long way in meeting the goals of this project by strengthening the legal protection of children orphaned or otherwise vulnerable because of HIV/AIDS.

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