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Public Health and
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Advisory Services

Protecting Children Affected by AIDS in the Caribbean Recommendations for Legal Reform in Saint Vincent and the Grenadines

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Saint Vincent and the Grenadines 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 Vincent and the Grenadines 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 Vincent and the Grenadines. 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.¹

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, St Vincent and the Grenadines and St 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 Vincent and the Grenadines has achieved some notable successes in its efforts against HIV and AIDS, however, the legislative framework should be

¹ The background papers on Grenada and Saint Lucia were prepared by Jacqueline Sealy-Burke, and those on Guyana and Saint Vincent and 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.

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) access to education. On-going initiatives such as the OECS Family Law 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 St Vincent and the Grenadines, 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 indicate that as of the end of 2004, there were 796 cases of HIV. The figures have climbed steadily over the years since the first case of HIV was reported in 1984. Although the overall male: female ratio of infected persons is 1.7 to 1, infected females outnumber males in the age groups 0-5 and 15-19.² Women aged 25-34 years are also at high risk of infection. This feminization of HIV/AIDS is consistent with regional and international trends, suggesting the need for enhanced strategies to redress the peculiar vulnerabilities of Saint Vincent and the Grenadines's young women.

Commendably, there is a vigorous effort to combat mother-to-child transmission (MTCT), which has contributed to a decline in sero-positive babies from 0.5% in 1993 to 0.1 percent in 2000. All HIV positive babies are closely monitored at the Milton Cato Memorial Hospital which leads the way in HIV/AIDS treatment and offers a specialized clinic for children.

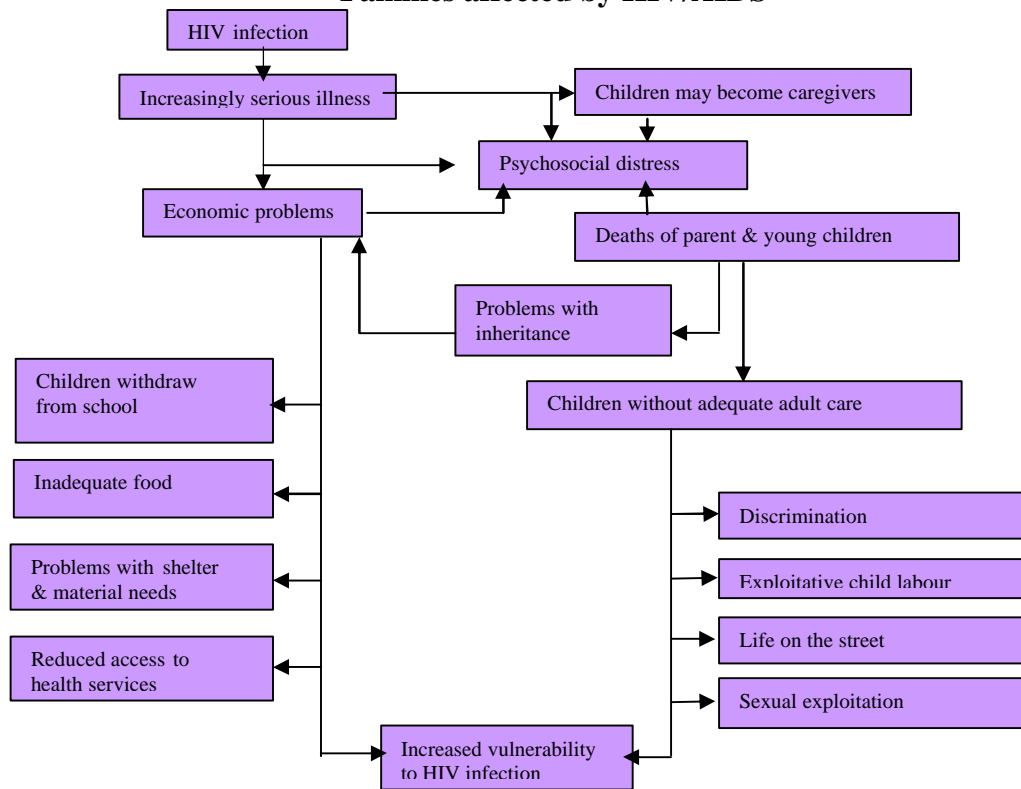
AIDS is recognized worldwide as a threat to children and their families.

Saint Vincent and the Grenadines has no available data on the prevalence of orphans. However, the combined effect of the young population (58% under 29 years); the high risk of infection of young women aged 15-19 and 25-34 years; the high rate of teenage pregnancy (20%) and the prevalence of HIV amongst persons 15-45 years old creates conditions that increase vulnerability to HIV. This vulnerability is heightened by the fact that orphaned status is not the only challenge to be confronted by children whose families are affected by HIV/AIDS.

The problems experienced by children and their families affected by HIV/AIDS 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.

² HIV/AIDS Epidemiology Profile for Saint Vincent and the Grenadines, prepared by Marjorie M. Browne, July 2005.

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.

Natural disasters can compound the vulnerability of children.

Saint Vincent and the Grenadines’ 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 over the years. Hurricane Ivan, which struck Grenada in September 2004, impacted every sector of Grenada’s economy and society with devastating force, but also affected Saint Vincent and the Grenadines 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.

3. THE LEGAL FRAMEWORK

The critical role of the Law

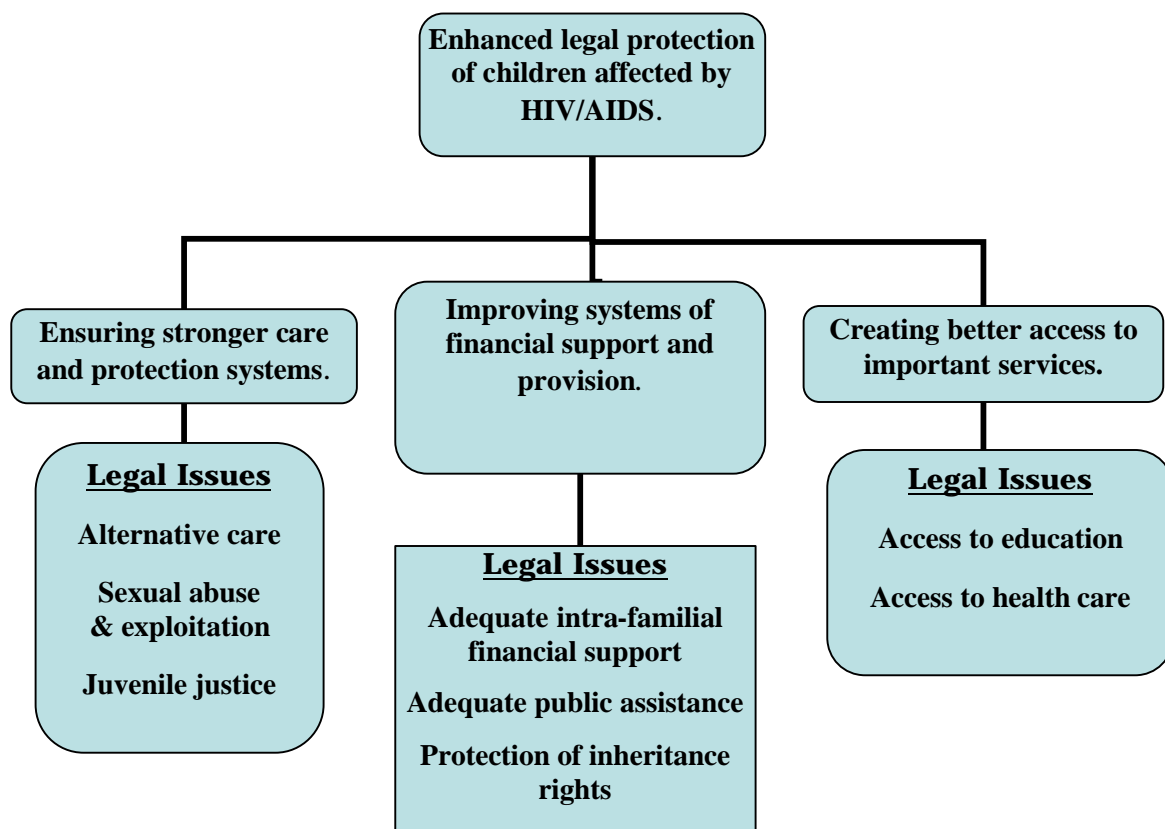
The law on its own cannot remedy the many difficulties experienced by the children and families who are affected by HIV. In fact, as indicated in Section 5

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.³

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

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".

³ 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.

4. PRIORITY AREAS FOR LEGAL REFORM

Financial Provision and Support

Issues

Saint Vincent and the Grenadines' poverty levels are high, with the poor representing over 37% of the population. There is a high percentage of female-headed households where the absence of a father in the family unit compounds the poverty and reinforces the importance of being able to ensure adequate financial support from non-custodial fathers and where required, public assistance from the state. State-provided assistance in Saint Vincent and the Grenadines is negligible with a set sum of \$60.00 EC per month for children who are in need. Orphans have been expressly identified by the Social Welfare Division as a category deserving of public assistance.

Court awarded child support is low. In addition, there is systemic discrimination against unmarried mothers with children, because they must apply for maintenance in the Magistrates' Court where child support awards are particularly low and child support orders are extremely difficult to enforce.

Children who have lost a parent to AIDS or who are themselves infected are at serious risk of becoming destitute. An effective legal system, which can facilitate adequate financial intra-familial support for children combined with a public assistance safety net are of critical importance.

Legal Context

As a signatory to the Convention on the Rights of the Child (CRC), Saint Vincent and the Grenadines has undertaken to take all appropriate measures to ensure that parents meet their financial responsibility to their children (Article 27). The CRC also recognizes that every child has the right to benefit from social security.

Under Saint Vincent and the Grenadines domestic law, parents do have a legal obligation to contribute financially to their children's needs. Entitlement to child support is no longer considered an issue since the passage of the Status of Children Act (1971) which removed any distinction between children born in and out of wedlock.

Despite this achievement of formal equality under the law, children born to unmarried mothers in Saint Vincent and the Grenadines still experience discrimination because their mothers are required to apply for child support in the Magistrates' Court under the Maintenance Act. Married women, however, are entitled to pursue child support in the High Court under the Matrimonial Causes Act.

This distinction generally results in lower child support awards for children born out of wedlock, as well as a number of restrictions being imposed. The net result is an unnecessary dual child support system that is not premised on true equality.

There is a Public Assistance Act which establishes a Public Assistance Board. However, as previously stated, the grants under this legislation are extremely low.

The following areas are in need of reform:

- (i) The Maintenance Act (1991) makes provisions for the child under the age of sixteen (16) to be reasonably provided for by his/her parents or legal guardian. This falls short of the international legal standard that would require maintenance of a child until the age of eighteen (18).
- (ii) There are restrictions under the Maintenance Act which can cause undue hardship.
 - Only a “single woman” can apply and so if a single mother subsequently marries she cannot apply for her child under this legislation. This requirement also prohibits single men who have the exclusive care and control of their children from applying for child support.
 - There are difficult criteria to be met in establishing paternity, including a statute of limitation which bars an application more than five (5) years after the birth of the child or within five (5) years of the last time the alleged father paid money for the child’s maintenance. In addition, the court cannot make a finding of paternity unless the mother is alive and can offer some corroborating evidence.
- (iii) There is no Maintenance Enforcement Legislation, such as Attachment of Earnings Legislation that exists in other Caribbean States. This would permit automatic deduction of wages in instances where non-custodial parents are gainfully employed. It could also provide for more creative enforcement strategies such as suspension of driving licenses (as is done in Ontario, Canada) or garnishment of tax return monies. The introduction of this type of legislation would be a quick win initiative.
- (iv) The Maintenance Act limits the recovery of arrears to a sixteen (16) week period if an application for recovery of the said arrears is not made within sixteen (16) weeks of the default in payments. An absolute bar of this kind on recovery of arrears could cause undue hardship.
- (v) An amendment was made to the Maintenance Act to enable payments to be collected by the Family Court. Whereas this was intended to enhance the enforcement procedures, processing difficulties at the Family Court have caused delay of payments to the intended recipients.



- (vi) There is no reciprocal enforcement legislation which would require Vincentians living in the United States or other countries to honor a court order for child support issued in Saint Vincent and the Grenadines. This is a major difficulty given the number of Vincentians who are resident and gainfully employed in the United States.

Sexual Exploitation and Abuse

Issues

The care and protection of children who are victims of sexual and other forms of abuse was found to be woefully inadequate. This fact was acknowledged in Saint Vincent and the Grenadines' report to the CRC Committee. Women and girls are at significant risk of sexual abuse and exploitation, with incest being a particularly disturbing issue, with a growing number of reported cases. The sexual exploitation of street children, especially young boys involved with older men, was also flagged as a growing development deserving of particular attention.

The plight of sexually abused children is exacerbated by poverty which, amongst other things, encourages parents to turn a blind eye to their child's involvement in transactional sex, because of the economic benefit it can bring to the entire family.

Children who cannot remain in the household or for whom there is no family environment cannot have their needs adequately met by the State. In fact, there is currently no government facility for abandoned or abused children. There is a confessed inadequacy in the legal, policy, operations and programmatic response to children who require an alternative living arrangement to the family home.

Legal Context

As a party to the Convention on the Rights of the Child, the Government of Saint Vincent and the Grenadines 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).

Chapter VIII of Saint Vincent and the Grenadines's Criminal Court (Criminal Code) addresses sexual offences and does afford some measure of protection to sexually abused and exploited children. Prostitution is addressed, but the legislation is silent on the issue of pornography.

The scope for reform in the area of child abuse, particularly child sexual abuse is significant. The following areas deserve particular attention:

- (i) There are no laws addressing the issue of child pornography.
- (ii) The age of consent is only fifteen (15) and there is no protection of children between the ages of 15 and 18. This benchmark is even lower than most of the other OECS States and definitely does not conform with international requirements.
- (iii) The sentencing imposed on sex offenders often does not serve as a sufficient deterrent. Sexual intercourse with a girl between the ages of thirteen (13) and fifteen (15) can receive a maximum sentence of 5 years. Gross indecency with a child under age 14 is punishable by only one (1) year. Reconsideration of appropriate sentencing ranges for sex offences involving children could be achieved relatively easily and without delay.
- (iv) Sexual intercourse is a material element of many sexual offences, including incest and rape. Sexual intercourse is limited to vaginal penetration by a penis and would therefore exclude other equally traumatic and invasive acts like penetration by an object or oral sex. Some Caribbean States have broadened their definition of sexual intercourse so as to incorporate other types of sexual acts.
- (v) The offence of sexual intercourse is defined as being with a girl under the age of fifteen (15), and excludes young male victims.
- (vi) The conduct of parents or guardians who encourage or condone sexual exploitation of their children whether female or male, is not criminalized. The insertion of such a provision could be accommodated easily. (It is already reflected in the laws of some other Caribbean States.)
- (vii) Rules of evidence and procedure are not sufficiently sensitized to the special needs of child witnesses and victims. Lengthy delays, intimidating cross examinations and strict rules of evidence are all features of Saint Vincent and the Grenadines's legal system. These compromise a child's right to participate comfortably and effectively in criminal justice proceedings.
- (viii) There is no legislation which specifically and exclusively addresses the care and protection of children who are abused. St Vincent and the Grenadines' child protection mandate is found in its Juvenile Act which deals very extensively with children in conflict with the law. The child protection provisions of this legislation fail to provide for the essential components of a case involving abuse, such as reporting, investigation, removal, placement, recovery and follow-up. Other OECS States have recently passed Child Protection Legislation which exclusively addresses care and protection objectives.



Juvenile Justice

Issues

Children in conflict with the law should not be seen in isolation from issues of care and protection since this deficiency often leads to delinquency. Although Saint Vincent and the Grenadines has a Family Court and should be better positioned to handle cases involving juveniles adequately, the research clearly revealed that the vision for the Family Court has been compromised by the lack of a strong social service component, sufficiently equipped with a trained staff.

Another major challenge for Saint Vincent and the Grenadines is the fact that there are no correctional facilities for young people or other places of safety to which a young person can be sent. The legislation nevertheless refers to these “places of safety” as though they are readily available. Despite legislative requirements to the contrary, Saint Vincent and the Grenadines’ Country Report to the CRC committee acknowledges that children are housed with adult prisoners in the state’s only correctional facility. The transmission of diseases, including HIV, is a harsh reality of adult prison facilities and placing young people in such an environment creates the conditions for increased exposure.

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 Vincent and the Grenadines does have a legislative scheme for managing children who come into conflict with the law in the form of a Juvenile Act. Despite this legislation, the priority areas for reform are:

- (i) The age of criminal responsibility is eight (8) under the Juvenile Act and the Criminal Code. This falls very short of international legal standards.
- (ii) The sentencing options under the Juvenile Act are restricted with no allowance for community service orders or other creative non-custodial measures.
- (iii) Corporal punishment of Juveniles is specifically provided for in the Corporal Punishment of Juveniles Act. The number of strokes for any one offence is not to exceed twelve (12). The reconsideration of this kind of sanction and replacement by other more appropriate and rehabilitative measures would be more in keeping with international standards.

- (iv) 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 intervention, are non-existent.
- (v) There is no State-sponsored legal aid for a child in conflict with the law.

Out of School Children and Street Children – Access to Education

Issues

Access to education for every child is of obvious importance. The socio-economic realities of chronic poverty and underdevelopment in Saint Vincent and the Grenadines make it difficult to achieve. Children who are vulnerable, including those who are orphaned or otherwise affected by HIV, must have their access to education prioritized with a view to ensuring them a brighter future.

Poor school attendance is largely a result of high levels of poverty, especially in the agricultural rural areas. In these circumstances, children are often absent from school in order to work on the family farm or with others. The school drop-out rate between the ages of five (5) and fifteen (15) is 32%, with 39% for boys and 26% for girls. There are insufficient primary schools, low rates of student assignment to secondary schools and a lack of guidance and counseling services within the school environment.

The potential for discrimination against children who have family members that are HIV infected or who are themselves infected is another source of great concern and deserving of urgent attention.

Legal Context

The Convention on the Rights of the Child, to which Saint Vincent and the Grenadines is a signatory, provides that primary education shall be free and compulsory and that States should take all measures to make secondary education available and accessible to every child.

The Education Act of Saint Vincent and the Grenadines does provide for compulsory primary education but the State has not succeeded in instituting this requirement. Education in government schools is free, but parents must pay for textbooks, meals and transportation, which may be a barrier to school attendance for poor families.

The following areas are in need of reform:

- (i) The compulsory school attendance age is restricted to the primary level, from five (5) to eleven (11) years of age. The cut off point of eleven (11)

is well below international standards and falls short of the benchmark of sixteen (16) years used in several other O.E.C.S. States. Increasing the compulsory school attendance age is a vital step in facilitating access to education (although expansion in the number of school places is also needed).



(ii) Section 14 of the Education Act expressly addresses the issue of discrimination, listing a number of discriminatory grounds on which admission to school should not be refused. Medical condition is not expressly mentioned. The inclusion of this ground would be a “quick win” initiative that could redress the difficulties experienced by children infected or affected by HIV.



(iii) There is no specific legislative provision addressing the school’s obligation to accommodate school aged girls who become pregnant. Although discrimination on the basis of pregnancy is in fact sex discrimination, the prevalence of teenage pregnancy (approximately 20% of all births) and the peculiar vulnerabilities of this group, warrant specific legislative provision to address this issue.

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:

- > Significantly enhanced social support for the Family Court.
- > 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, as well as institutionalized care.
- > Training and other educational opportunities, especially for people who work with vulnerable children and their families.
- > Increased number of adequately equipped schools.

- > 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 Table 1.

Table 1: Recommendations for Priority Legal Reform

Financial Provision and Support	Sexual Abuse and lack of a Family Environment	Juvenile Justice	Access to Education
<ul style="list-style-type: none"> • Revision of the Maintenance Act so as to require payment of child maintenance until a child reaches the age of eighteen (18). • Reconsideration of the onerous requirements under the Maintenance Act, especially in relation to single woman status and establishment of paternity. • Reconsideration of an absolute bar on the recovery of arrears beyond sixteen (16) weeks of default in payments. • Introduction of maintenance enforcement legislation such as Attachment of Earnings Legislation and other more creative enforcement mechanisms. • The enactment of Reciprocal Enforcement Legislation so as to facilitate the payment of child support by payers who are residing in other countries. 	<ul style="list-style-type: none"> • Amendment of the age of consent to sexual intercourse so as to increase it from age fifteen (15). • Enactment of laws to address child pornography. • A reconsideration of appropriate sentencing ranges for sex offences involving children. • Broadening of definitions under the Criminal Code so as to extend the material element of incest, rape and other sexual offences to sexual activities beyond actual sexual intercourse. • Amending the Criminal Code so as to afford equal protection of young girls and boys from all forms of sexual abuse and exploitation. • The introduction of legislation which deals exclusively with the care and protection of abused children. • Relaxing the rules of evidence and process so as to make the court a more child friendly environment and to facilitate the prosecution of sexual abuse cases involving young victims. 	<ul style="list-style-type: none"> • Reconsideration of the age of criminal responsibility so as to increase it from age eight (8). • Sentencing options under the Juvenile Act should be broadened. • Inclusion of strong guiding principles in the Juvenile Act that are more consistent with child protection objectives. • Establish alternatives to judicial proceedings e.g. Diversion Programs. 	<ul style="list-style-type: none"> • The compulsory school attendance age should be raised from age eleven (11). • The inclusion of medical condition as a discriminatory ground in the Education Act. • The inclusion of a provision in the Education Act that expressly prohibits the exclusion of school aged girls who become pregnant.

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 St Vincent and the Grenadines 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"> • Absence of legislation for juvenile offenders. • Absence of any Public Assistance Legislation • 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. • Absence of Family Court Legislation 	<ul style="list-style-type: none"> • Existence of <u>Child Protection</u> Legislation specifically designed to address child abuse.
Saint Lucia	<ul style="list-style-type: none"> • Absence of <u>Status of Children Legislation</u> which would ensure that all children are treated equally. • The establishment of statutory maximums for child support under the <u>Maintenance Act</u>. 	<ul style="list-style-type: none"> • Existence of <u>Family Court</u> legislation with provision for supporting social services. • Recent reform to the sexual offence provisions of the <u>Criminal Code</u> which included: <ol style="list-style-type: none"> (i) The creation of the offence of sexual connection which recognizes other offensive sexual acts outside of sexual intercourse. (ii) The criminalization of parents or guardians who encourage or condone the sexual exploitation of their children. (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. (iv) Boys are equally protected under the law. • Enactment of <u>Attachment of Earnings</u> Legislation.
Saint Vincent and the Grenadines	<ul style="list-style-type: none"> • 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). • Despite the presence of a <u>Family Court Act</u>, the family court is compromised by a weak social service support. • The age of consent under the sexual offence provisions of the <u>Criminal Code</u> is only fifteen (15). 	<ul style="list-style-type: none"> • 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).

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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