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Advisory Services

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

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Grenada 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 Grenada 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 Grenada. 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, 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).

Grenada has achieved some notable successes in its efforts against HIV/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) sexual exploitation and abuse; (b) financial provision and support; (c) the juvenile justice system; and (d) access to health care for minors. 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 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.

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 Grenada, 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 through the HIV surveillance unit of the Grenada National AIDS Programme indicate that in 2005, the total number of HIV infected persons was 272. The figures have climbed over the years from 1984, when the first case of HIV was reported. As much as 15% of all cases are among young people aged 15-24 years.

There have not been any AIDS-related deaths of babies or young children reported in the last five years.

Of important note, is the disproportionate impact of HIV on young women aged 15-24 years.<sup>2</sup> This feminization of HIV is consistent with regional and international trends, suggesting the need for enhanced strategies to redress the particular vulnerabilities of Grenada'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 whose lives will never be the same because of this disease. Orphan status, which is defined as a child under the age of eighteen who has had at least one parent die, is one of the sad consequences of AIDS.

Although Grenada has no available data on the prevalence of orphans, the HIV infection rate is growing rapidly which means that the number of AIDS orphans is likely to increase in the coming years. Thus AIDS is becoming an increasingly important contributor to children's vulnerability in Grenada.

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.***

Hurricane Ivan brought major disruption to the island of Grenada in September 2004. The hurricane impacted every sector of the economy and society with

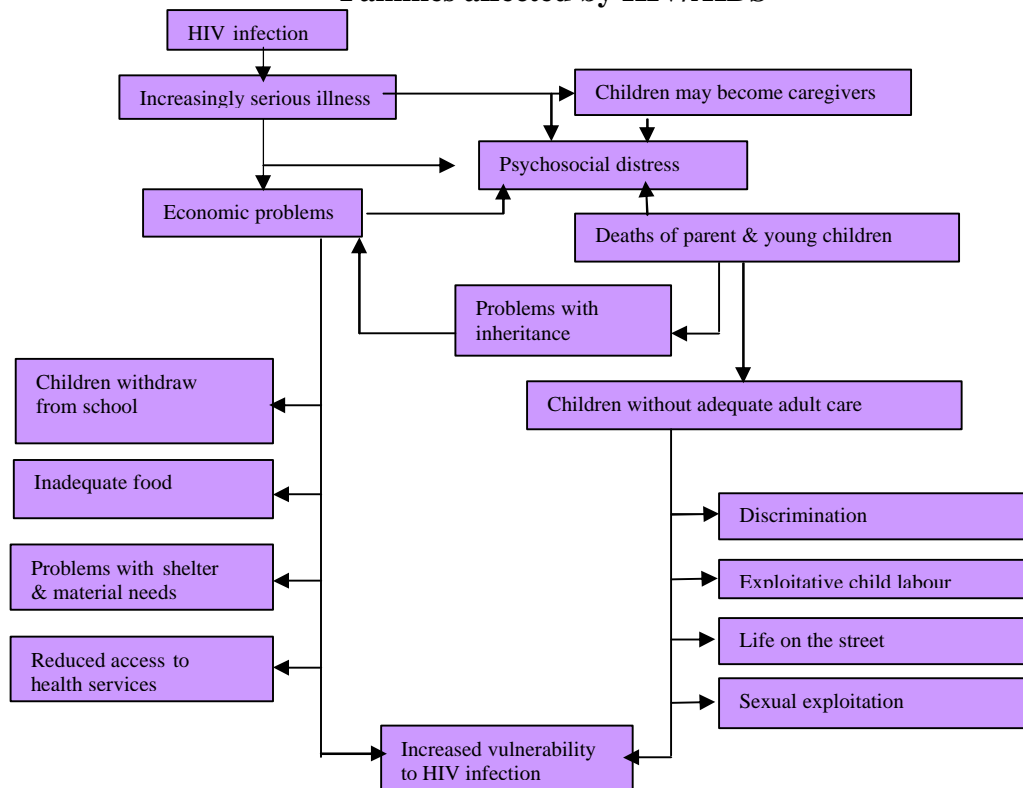
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<sup>2</sup> The Ministry of Health Epidemiology Unit reports 2/3 more women than men infected in this age group, whereas men outnumber women in all other age groups.

devastating force. In the wake of the hurricane, many people found themselves without shelter, food, personal belongings or a social network to provide immediate support. The education sector was severely affected with school closures and long periods of school interruption affecting thousands of school aged children.

The precarious social and economic existence of Grenadians in the aftermath of Hurricane Ivan will inevitably affect the safety and security of children in general. The implications are even more dire for children who have experienced the traumatic impact of HIV in their household; have themselves been exposed to the risk of sexually transmitted diseases because of incest or sexual exploitation or in some way have been made more vulnerable as a result of HIV.

**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*

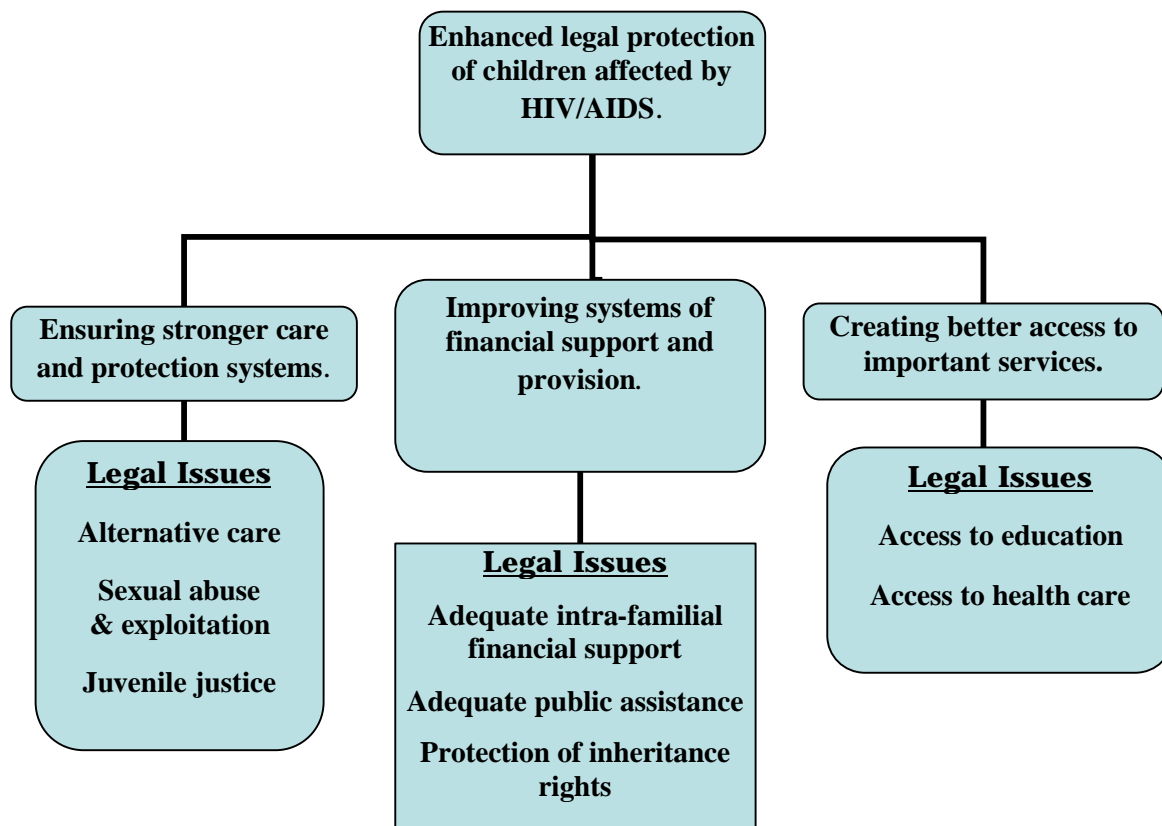
The law on its own cannot remedy the many difficulties experienced by the children and families who are affected by HIV. In fact, as indicated in Section 5

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/AIDS 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>3</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:

**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".

<sup>3</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.

## 4. PRIORITY AREAS FOR LEGAL REFORM

### Sexual Exploitation and Abuse

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#### Issues

Sexual abuse and exploitation present some of the most challenging issues confronting the safety and security of Grenada's children. Young women are particularly at risk, often being victims of incest, sexual exploitation and other forms of sexual abuse.

Transactional sex with older men, now commonly referred to as the "Sugar Daddy Syndrome", is reported as becoming alarmingly widespread. 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, the Government of Grenada 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).

Grenada's domestic law does afford some protection to sexually abused and exploited children and amendments to the Criminal Code include new sections addressing the issue of incest. Prostitution and other forms of sexual exploitation are addressed, although the issue of pornography is noticeably absent.

There is significant scope for reform in the laws applicable to the protection of Grenada's sexually abused or exploited children. The following areas particularly deserve attention:

- (i) Although the age of consent is sixteen (16), the defense of "honest belief" does exist and can be utilized by an adult who has had "unlawful carnal knowledge" with a child under the lawful age of consent. This defense is applicable if the defendant can establish that he honestly believed that the child was sixteen (16) or older.

Other jurisdictions in the Caribbean have narrowed the defense to make it available only if the accused has no record of similar offenses and is under a prescribed age. Consistent with the Convention on the Rights of the

Child, which defines a child as under the age of eighteen (18), it is recommended that the Government raise the age of consent to eighteen (18). The authorities could also make carnal knowledge of a child a strict liability offense against which honest belief is no defense.

- (ii) The incest provision at S.187 of the Criminal Code refers to “carnal knowledge” (sexual intercourse) of specified family members.

Since sexual intercourse is a material element of the offence, the provision does not provide special protection to children who suffer abuse that does not include actual intercourse or abuse by a relative of the same sex.

- (iii) Sexual intercourse is a material element of other sexual offences, including 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.

- (iv) There are no laws addressing the issue of child pornography.

- (v) The offence of unlawful carnal knowledge which prohibits sexual intercourse with a child under the age of sixteen, applies only to offences committed by men against girls, excluding intercourse by a woman or man with a boy under sixteen.

- (vi) 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 features of Grenada’s legal system that compromise a child’s right to participate comfortably and effectively in criminal justice proceedings.

- (vii) The Child Protection Act (1998) geared at offering protection to children who are physically, sexually and emotionally abused, could be strengthened in several respects. The Act does not provide for time frames by which protection applications to the court must be made; the child’s views and preferences are not statutorily required; there is no provision made for long term or permanency planning and the courts’ jurisdiction over these matters is limited to the High Court. It is also notable that this legislation makes no specific reference to the vulnerability of children as a result of HIV and AIDS. Grenada is one of the few OECS States that has specially created Child Protection Legislation. Improvement on that legislation should therefore be a relatively quick and easily achievable initiative.

- (viii) There is no Family Court legislation or family court structure that would be created by it. Family Court legislation does exist in other Caribbean



States and provides a more user friendly court environment with a supporting social service component.

## **Financial Provision and Support**

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### **Issues**

The high number of households headed by women in Grenada (48% of all heads of households) and the impoverishment experienced by these families reinforces the importance of adequate financial support from non-custodial fathers and where required, public assistance from the State. Nevertheless, court awarded child support has been described as extremely low, discriminatory of unmarried women with children, and difficult to enforce.

State provided public assistance in Grenada is negligible and there is no legislative scheme in place to govern it. The importance of an effective legal system which can facilitate adequate financial support for children cannot be overstated as it relates to vulnerable children, including those whose parents are infected with HIV or are otherwise vulnerable because of HIV. In a social context where poverty rates are high (32% of all Grenadians are poor), and children are disproportionately represented amongst those who are impoverished (56% of the poor are younger than 25 years old), the need for meaningful responses to child poverty assumes greater significance.

### **Legal Context**

As a signatory to the Convention on the Rights of the Child (CRC), Grenada 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 Grenada's domestic law, parents do have the 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.

Nevertheless, children born outside of marriage continue to be disadvantaged because of separate legislative schemes for married and unmarried women. This gives rise to very low child support awards in the Magistrates' Court, as well as poor child support enforcement mechanisms.

The Maintenance Act (1991) stipulates no statutory maximums for child support but actual awards are reported to be very low and tend to stay within close range of the statutory minimum of \$15.00 EC per week. The Ministry of Social Development does offer a "necessitous programme", which provides a very small number of needy children with limited financial assistance (\$100.00 EC per

month). This State sponsored assistance, apart from being limited is not provided for under any statutory framework or established policy document.

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 subscribed to by the Government of Grenada which requires maintenance of a child until the age of eighteen (18).
- (ii) Child support guidelines do not exist and there is little uniformity or predictability in the amount of court ordered child support. Guidelines may be especially necessary given the reportedly low awards that are presently ordered at the Magistrates' Court level.
- (iii) There is no Maintenance Enforcement Legislation, such as Attachment of Earnings Legislation that exists in other Caribbean States. Enactment of such a statute would permit automatic deduction of wages in instances where non-custodial parents are gainfully employed. The introduction of this legislation would be another "quick win" initiative.
- (iv) There is no Public Assistance Legislation, which, if enacted, could add clarity and definition, including creating categories of entitlement for vulnerable persons, including those who are orphaned or otherwise vulnerable because of HIV/AIDS.
- (v) The absence of a Family Court Act, which if implemented as a unified family court with jurisdiction over the full range of matters presently dealt with by the Magistrate and the High Court, could remove the dual nature of the present family law process, which discriminates against poor and unmarried mothers.



## **Juvenile Justice**

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### **Issues**

There is a dearth of sentencing options and appropriate facilities for young people who come into conflict with the law. Grenada offers very few solutions for the rehabilitation of juvenile offenders, and judicial officers have resorted to the imprisonment of young offenders in the one adult prison on the island. Placing young people in adult prison facilities is a blatant violation of international standards and creates significant potential for increased exposure of young persons to HIV.

## 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, the separation of 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.

Grenada's most recent report to the CRC Committee (1997) acknowledged that the existing domestic law governing juveniles was deficient in several respects. This is still the case today. Juveniles in conflict with the law are still a vulnerable category of children who do not have adequate protection under the existing laws.

The priority areas for reform are:

- (i) The age of criminal responsibility is seven (7) which falls very short of international legal standards. The implication that children between the ages of 7-14 are assumed capable of knowing right from wrong is a rebuttable presumption. A reconsideration of the age of criminal responsibility is accordingly a vital reform initiative.
- (ii) There is no existing legislation on juvenile justice in Grenada. There are some provisions within the Criminal Code which relate to juveniles, but this is clearly an inadequate legal response to addressing the needs of young people in conflict with the law. Enactment of a Juvenile Justice Act is a priority.
- (iii) The Prisons Act (1980) does refer to the issue of separating detained young persons from adult prisoners. However, the provision is not absolute given the qualification that this should be achieved only "so far as it is possible". The dire implications of mixing young and adult populations in correctional facilities have been established and this practice ought to be completely abolished.
- (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 and should be introduced.
- (v) Sentencing options are also very restricted with no allowance for suspended sentences, community service orders or other non-custodial measures. The enactment of legislation which provides for creative alternatives to custodial sentences is necessary.
- (vi) The lack of a Family Court Act is again a compromising factor for children. Family Courts generally have jurisdiction over matters involving young offenders and are designed to handle these matters more appropriately.

## **Access to health care**

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### **Issues**

One of the most important issues affecting young people's access to medical advice and treatment is the right to seek these services confidentially, without parental consent or notification. Confidentiality of health services is a paramount concern for most persons, but takes on increased significance for young people who fear disclosure of private information to parents or guardians. In Grenada, there is no legislative or clear policy position with respect to the age at which a child can consent to medical treatment. Interviews revealed that there was a lot of uncertainty amongst service providers about the legal age at which young people could receive medical services and treatment without parental consent. This uncertainty was particularly troubling in the areas of contraceptive distribution, HIV testing and counseling, and counseling around pregnancy and abortion.



The abortion discussion poses even more challenges given the current law of Grenada which still criminalizes abortion. Some clarification and certainty around the legal age at which young people can consent to confidential medical services would be one of the "quick –win" reform initiatives that could go a long way in protecting the health and well being of Grenada's children.

### **Legal Context**

There is no legislation or policy guidelines which specifically address the age at which children become entitled to receive confidential health care services. In the absence of the legislation, the common law position is that a child can consent to medical treatment provided that she/he has the requisite emotional maturity and understanding (*Gilliac v. West Norford and Wisbech Area Health Authority (1985 3 All. ER. 791)*).



Legislative codification on the age at which children can seek medical attention and treatment is a necessary and easily achievable step in responding to the special needs of children orphaned or otherwise vulnerable because of AIDS.

## **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:

- > A Family Court with trained staff and strong social support.

- > 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 Table 1.

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

Sexual Abuse & Exploitation	Financial Provision & Support	Juvenile Justice	Access to Health
<ul style="list-style-type: none"> <li>• Reconsider the honest belief defense for sexual intercourse with a child aged fourteen or fifteen.</li> <li>• Broaden definitions under the <u>Criminal Code</u> so as to extend the material element of incest, rape and other sexual offences beyond actual sexual intercourse.</li> <li>• Enact a child pornography statute.</li> <li>• Amend the <u>Criminal Code</u> so as to afford equal protection of young girls and boys from all forms of sexual abuse and exploitation.</li> <li>• Relax the rules of evidence and process so as to make the court a more child-friendly environment and to facilitate the process of sexual abuse cases involving young victims.</li> </ul>	<ul style="list-style-type: none"> <li>• Enhance the Maintenance Act so as to require payment of child maintenance until a child reaches the age of eighteen.</li> <li>• Introduce maintenance enforcement legislation, such as Attachment of Earnings legislation and other more creative enforcement mechanisms.</li> <li>• Create Reciprocal Enforcement Legislation so as to facilitate the payment of child support by payers who are residing in other countries.</li> <li>• Create Public Assistance Legislation, which amongst other things, creates a special category of entitlement by virtue of orphan status or vulnerability caused by HIV/AIDS.</li> <li>• Create Family Court Legislation and establish a Family Court. The Family Court structure should be geared at removing the dual nature of the present family law process, which discriminates against poor and unmarried mothers.</li> </ul>	<ul style="list-style-type: none"> <li>• Enact a Juvenile Justice Act which will deal exclusively with young people in conflict with the law.</li> <li>• Ensure that the Act has strong guiding principles that will require juveniles to be treated as children in need of protection.</li> <li>• Revise the Prisons Act so as to absolutely require young prisoners to be separated from adult prisoners.</li> <li>• Establish alternatives to judicial proceedings e.g. Diversion Programs.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide for the legal age at which children can seek medical advice and treatment without parental consent.</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 and other donors.

By coordinating the recommendations for priority legal reform of this Report with the inputs and other assistance received from these initiatives, the Government of Grenada 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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