

**Review of Laws Relating to Children, Women and their
Families in Barbados:
Executive Summary and Summary of
Recommendations**

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October 19, 2018

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Introduction and Executive Summary

Barbados has signed and ratified international conventions such as the Convention of the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention of Belém do Para) and has progressively sought over time to advance the process of ensuring conformity of domestic legislation relating to Family, Women and Children with those international conventions. Yet a common criticism both at the local and international levels is that Family and Child Law in Barbados needs to be harmonized, modernized and reformed as a matter of urgency in order to meet new realities by which our children and families are challenged.

Furthermore, although many of the principles and concepts articulated in the CRC are already implicitly observed by legislation and practice, they are not specifically codified as recommended by the United Nations Committee for Monitoring the Rights of the Child and therefore there is no certainty or clarity of the provisions.¹

It is therefore recommended that Barbados enact new Laws to encompass all the matters pertaining to children. These new laws will be an omnibus Children and Young Persons Bill which will cover civil matters and a new Youth Justice Bill which will deal with criminal matters. By extension, it is therefore recommended that there should be legislation for the establishment of a Family Court and a Youth Court. In addition, there are a few other family provisions which are also recommended as amendments to existing laws.

¹ See Barbados's Second Report on the Implementation of the Rights of the Child, 2013

The proposed Children and Young Persons Bill will deal with the following main sections:

1. Family Arrangements (i.e. custody, access, maintenance, guardianship, adoption, foster care),
2. Child Protection (which would include the establishment of a Children's Authority and the Mandatory Reporting Protocol)
3. Children's Civil Rights (to codify the guiding principles of the Convention on the Rights of the Child and to provide for the creation of a Children's Ombudsman).

Children and Young Persons Bill

The Children and Young Persons Bill will consolidate and reform law relating to persons under the age of 18. The Bill will have the following sections:

Definition:

1. Minor (will be defined as a child from birth to 14 and young person from 14 to 18).
2. The term "Best Interest".
3. The concept of "family".
4. Parental rights and responsibility.
5. Social parenting.

Family Arrangements

6. There can be no adjudication of a family arrangement until paternity is established. In that regard, the following is recommended:
 - ! DNA testing in settling of paternity disputes to be made mandatory
 - ! Abolition of paternity testing "by trial"
 - ! Regulations regarding the cost of testing

! State assistance to be made available where necessary.

7. Custody to be awarded according to the best interest of the child.
8. Introduction of Magistrates' Court process for appointing a temporary guardian in case of family emergency.
9. Recognition that other persons within the family as well as a 'social parent' may be awarded custody. Adequate provisions to be made for appointing guardians.
10. Specific guidelines for access: The child has the right to spend time and communicate on a regular basis with both parents and other people significant to their care, welfare and development. (Article 9).
11. Recognition that child support, vital to the wellbeing of children and for the alleviation of poverty, includes basic food and shelter, services (for example, child minding), education, training, school books and uniforms, medical attention, medication and insurance. Introduction of Child Support guidelines.
12. Ratification of the Hague Convention on the Civil Aspects of Child Abduction (this provides for an expeditious method to return a child internationally abducted by a parent from one member country to another).
13. Amendment of the Succession Act so that children can receive maintenance from their parents' estates beyond the age of 18 if they are continuing their education.
14. Adoption proceedings to be simplified where consents have already been granted by the parents or by the Court.
15. Adoption Act to be reformed and redrafted with more comprehensive provisions.

Child Welfare and Protection

16. The establishment of a Children's Authority to replace the Child Care Board.
17. Empowerment of Children's Authority to transfer some of its counselling functions to non-governmental organizations which it has specially licensed for that purpose.
18. Divestment of functions such as registration of day nurseries and possibly the administration of the government day nurseries.
19. Divestment of function of providing support in general family law cases: This function should be assigned to a new cadre of social workers proposed for the Family Court.
20. Establishment of a Children's Attorney within the Children's Authority.
21. Clear identification of places of safety.
22. Provision for young persons who are over 18 and in need of housing assistance.
23. The Mandatory Reporting Protocol which was previously recommended to the Child Care Board to be statutorily codified.
24. An Oversight Committee ancillary to the Mandatory Reporting Protocol to be appointed to monitor all child abuse cases.
25. The penalties for harming children to be increased.
26. Provisions to be made for a children's help-line.
27. Specific provisions to be included that
 - a. Where children have to leave the family, foster/community care should be used whenever possible in preference to institutional care.
 - b. The emergency removal of children from the family should always be attended by a child psychologist.
 - c. Children must be permitted to express their views in relation to placement, and these views must be given weight in accordance with the child's evolving capacity.

28. Protection of children in child labour should go to 18 years, particularly in relation to working with hazardous materials. Labour inspectors must be trained to be alert for child labour.
29. There should be urgent adoption of the three Optional Protocols to the Convention on the Rights of the Child which deal with the Sale of Children, Child Prostitution and Child Pornography, the Involvement of Children in Armed Conflict, and a Communications Procedure.
30. Amendment of the Sexual Offences Act so that all sexual activity with a person under 16 is unlawful. In particular, sections 4(1) and 4(2), 5, 6 and 7(3) are to be amended or repealed.
31. Amendment of the Sexual Offences Act so that recent sexual activity cannot be used as a defence in the case where the victim is a minor.
32. Amendment of the Sexual Offences Act to prevent “cheque book settlements” of cases.

Children’s Civil Rights

33. All of the rights articulated in the CRC not already constitutionally provided should be expressly codified in the Children’s Civil Rights section of the new Bill.
34. Establishment of a Children and Young Persons’ Commissioner whose primary function will be promoting and protecting the rights of children in Barbados.
35. Provision for young persons to access medical treatment, including sexual and reproductive health treatment.
36. Removal of corporal punishment from schools, reform schools, the education system and the justice system as well as a proposed system for gradual abolition of corporal punishment in the home.
37. Increased fines for parents for not sending child to school.
38. Student Councils to be statutorily provided for in the Education Act and Children’s Act.

39. Establishment of a National Youth Service.
40. The Employment of Women (Maternity Leave) Act to be renamed and fathers to be granted paternity leave of six weeks after the birth of the child on proof of cohabitation. (CRC Article 7).
41. Expressly state that Barbadian Citizenship is conferred on all children who have a Barbadian mother or father.
42. Increase the age of marriage from 16 to 18 by amending the Marriage Act Cap 218A accordingly.
43. There must be express statement that consultation with children must feature prominently in this legislation.
44. The legislation should mandate the development of a National Children's Plan to cover the periods 2017 to 2027.
45. The establishment of the National Committee for Monitoring the Rights of the Child to be statutorily provided for in the Children and Young Persons Act

The Family Court

46. It is proposed that there should be a unified Family Court including both Magistrates Court and High Court jurisdictions.
47. The Court to have island-wide jurisdiction at the Magistrate's level.
48. Since the survival of the family is at stake, there must be greater emphasis on strict deadlines, speedy decision-making and efficient processes. The Court to have new Family Law Rules in consonance with the Civil Procedure Rules and accompanying forms in both summary and high court jurisdictions.
49. Family Court to have a separate Registry.
50. A special group of staff and judiciary chosen on the basis of temperament and aptitude to be trained for this exercise.
51. The Family Court to have a special cadre of social workers, counsellors, child protection officers and mediators dedicated to it to

be drawn from the several agencies which now service the individual Courts.

52. Facilitation and encouragement of parenting agreements, parenting plans, parenting conferences, mediation and alternative dispute resolution (ADR) by the Court and the social workers.
53. The Act to make provision for parenting plans to be registered.
54. A child support collection agency is recommended to supervise collection and payment of arrears and pursue defaulters who would then be brought back to Court for sanction.
55. A Child Support Fund to be established.
56. Family Court to produce a range of media (website, brochures), etc, to publicize its functions and to help guide parents. In order to be client-friendly, a well-trained customer relations staff to be employed to assist persons to move through the court processes.

Youth Justice

It is recommended that the Youth Justice Bill contain the following provisions:

57. The Youth Justice Bill to apply to young persons up to 18 years instead of 16 as presently obtains. In the Magistrates Court Act the age of criminal responsibility is 7 years, whereas in the Juvenile Offenders Act it is 11. This must be now harmonized at 12 years.
58. Amendment of Bail Act so that a minor who is refused bail 'for his own welfare' may be referred to 'a place of safety', rather than being detained in the Reform School, which is the present practice.
59. Attendance centres as already provided for in the Penal System Reform Act to be established as a matter of urgency.
60. The Government Industrial Schools to be renamed and restructured.
61. There must be specialized training relative to sociology, psychology and behavioural science as it applies to young persons for

Magistrates, Royal Barbados Police Force Officers and everyone assigned to the Youth Court.

Youth Court

62. There must be specialized training relative to sociology, psychology and behavioural science as it applies to young persons for Magistrates, Royal Barbados Police Force Officers and everyone assigned to the Youth Court.
63. There must be focus on rehabilitation, drug testing, treatment, counselling and Court supervision. These practices presently exist in the Juvenile Courts but should now be codified.
64. The implementation of restorative justice is highly recommended for the Youth Court. Consequently, there should be mediation between offenders and victims.
65. The mandatory minimum sentence at the Reform School to be reduced from three years to one year or less.
66. Abolition of status offences and replacement with child protection provisions as necessary.
67. Youth panels are recommended.
68. It is recommended that there is community involvement in the rehabilitation of young offenders to make sure that they have respect for the community which nurtures them; respect for the fact that they are a part of society and respect for societal values.
69. The Act must expressly state that parents cannot refuse legal representation for their children.

It is recognized that the main legislation proposed may take some time to be drafted and enacted. In the meantime, the individual Acts listed below may be amended to bring into effect the concepts which will ultimately be

contained in the all-embracing Children and Young Persons Act and other laws proposed.

Laws to Be Amended, Repealed and Referenced

Amendment	Repeal and Replace (Incorporated)	Repeal	References
ADOPTION ACT (CAP. 212)	CHILD CARE BOARD ACT (CAP. 381)	CORPORAL PUNISHMENT ACT (CAP. 125)	BARBADOS INDEPENDENCE ACT 1966 (U.K.)
BAIL ACT (CAP. 122A)	DOMESTIC VIOLENCE PROTECTION ORDERS ACT (CAP.130A)	MARRIED WOMEN ACT (CAP. 219)	CHANGE OF NAME ACT (CAP.212A)
BARBADOS CITIZENSHIP ACT (CAP.186)	JUVENILE OFFENDERS ACT (CAP. 138)		DRUG ABUSE PREVENTION AND CONTROL ACT
COMMUNITY LEGAL SERVICES ACT (CAP. 112A)	MAINTENANCE ACT (CAP. 216)		EMPLOYMENT OF WOMEN (MATERNITY LEAVE) ACT (CAP. 345A)
CONSTITUTION OF BARBADOS 1966	MINORS ACT (CAP. 215)		EVIDENCE ACT (CAP. 121)
CRIMINAL PROCEDURE ACT (CA-P.127)	REFORMATORY AND INDUSTRIAL SCHOOLS ACT (CAP. 169)		MAINTENANCE ORDERS (RECIPROCAL ENFORCEMENT) ACT (CAP. 217)
CROWN PROCEEDINGS ACT (CAP. 197)	YOUNG PERSONS PROTECTION ACT (CAP 193)		
EDUCATION ACT (CAP. 41)			MARRIAGE ACT (CAP. 218A)
EMPLOYMENT (MISCELLANEOUS PROVISIONS) ACT (CAP.346)			MEDICAL TERMINATION OF PREGNANCY ACT (CAP. 44A)
FAMILY LAW ACT (CAP. 214)			PENAL SYSTEM REFORM ACT (CAP. 139)
FORENSIC PROCEDURES AND DNA IDENTIFICATION ACT 2005			PROBATION OF OFFENDERS ACT (CAP. 146)
HEALTH SERVICES ACT (CAP. 44)			
IMMIGRATION ACT (CAP. 190)			
LIQUOR LICENCES ACT (CAP.182)			
MAGISTRATES' COURTS ACT (CAP. 116A)			
OFFENCES AGAINST THE PERSON ACT			

(CAP. 141)			
PREVENTION OF CRUELTY TO CHILDREN ACT (CAP. 145)			
PROTECTION OF CHILDREN ACT (CAP. 146)			
SEXUAL OFFENCES ACT 1992 (CAP. 154)			
STATUS OF CHILDREN REFORM ACT 1979 (CAP. 220)			
SUCCESSION ACT (CAP. 249)			
VITAL STATISTICS REGISTRATION ACT (CAP. 192A)			

Children and Young Persons Act

It is recommended that there be new legislation called the Children and Young Persons Bill which would consolidate and reform law relating to persons under the age of 18. It is to be noted that domestic violence and its impact on children were dealt with in the Domestic Violence (Protection Orders) Act as amended in 2016.

The proposed Children and Young Persons Bill will have the following sections:

Chapter 1 – Definition:

1. Minor will be defined as a child from birth to 14 and young person from 14 to 18. (CRC Article 1)

At present there is no consistent definition of “child” in the legislation. The Minors Act sets the age of majority at 18 with the result that a young person up to the age of 18 years needs parental permission in order to have control over his or her life. On the other hand, under other laws, a young person of 16 can consent to sexual intercourse, have an abortion and be tried as an adult criminal. It is recommended that the definition of a child or young person should be harmonized as follows: A child is from birth to 14 years and a young person from 15 – 18 years; taking into account evolving capacities. However it is recommended that 16 – 18 year olds be kept in a protective cohort as much as possible, recognizing that they are still very young persons in need of care, protection and moral support.

2. The term “Best Interest” to be defined. (CRC Article 3)

The “best interest of the child” principle is central to any law relating to children. All authorities are required to consider the best interest of the child when making decisions regarding that child. However, although it is used as a guiding principle throughout the legislation, there is no definition and its interpretation remains largely discretionary. The term or concept of “best interest” must be expressly defined as is done in the Western Australia Family Court Act, for example. The term should include:

! Access to education and counselling, immunisation, balanced nutritious diet, clothing, shelter, medical attention and freedom from extreme punishment.

! The need to protect the child from physical and psychological harm so that they are not subjected to abuse, neglect or family violence.

! Family violence explicitly included as a consideration relevant to the child's best interest in determining whether the presumption of equal, shared, parental responsibility should apply. Consequently access should be denied if there is a history of family violence.

! The views of a young person, consistent with his or her maturity, development and ability to express his or her views, should be given due consideration and should not be overruled except in special circumstances. The views of a young person or child who is under 16, according to his or her maturity, should also be considered.

! The nature of the relationship of the child with the parents and the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the child and the other parent is of paramount importance. Children should have the benefit of both parents having a meaningful involvement in their lives to the maximum extent consistent with their best interest.

3. The concept of “family” to be defined (CRC Article 5)

The definition of the family must take cognizance of the fact that persons in a relationship with each other may not live in the same household but have children together. This is a historical and ongoing sociological circumstance in Barbados. Based on the sample surveys conducted for the CALC², 86% percent of mothers are present in the home while only about 40% of fathers are present. This means that the majority of Barbadian children are born into and live in circumstances not representative of the traditional nuclear family as envisaged in the Family Law Act. It is noted that 52.3% of persons in Barbados have never married while only 29.2% are legally married and 6.1% are parties to a union.

² The Barbados Country Assessment of Living Conditions (CALC), is a comprehensive study of the state of living conditions in Barbados for 2010 and the factors which impact on the country. It provides an image of living conditions throughout the period of 1995-2010, by utilizing sample survey data, qualitative focus groups, information, administrative records and secondary data. The study not only analyzes the issue of poverty but goes on to examine the various dimensions of living in Barbados such as education, health, housing, labour market status, crime and violence, environment, governance economy and other socio-economic features.

Based on sociological realities, it is recommended that the concept of the Barbadian family include visiting relationships as well as persons with common economic interests who live together, such as siblings plus their children or maybe grandparents, children and their children. It is recommended that the law seek to promote and protect all of the above variations and to preserve the relationship those persons have to each other in terms of shared interest of the home environment.

4. Parental rights and responsibility (CRC Article 5)

“Parental rights and responsibility” should be defined as all rights, duties, powers, responsibilities and authority which a parent has by law in relation to the child and his or her property.

5. Social parenting

“Social parenting” is a concept describing a situation where a person has informally assumed parental responsibility for a child, a common Caribbean phenomenon. A social parent is often a relative, godparent or family friend who is given the child to raise on the basis that their environment is more stable than that of the child’s biological parents.

Chapter 2 – Family Arrangements

Concern has been expressed that matters relating to the future of children, that is, support, access and custody, are dealt with in different courts – High court vs Magistrates court – and under different pieces of Legislation – Family Law Act vs Maintenance Act – depending on whether parents were married; in a union; or unmarried.

This concern will be nullified by the introduction of the Family Court (introduced below), which will hear all matters regarding family arrangements, no matter what the family structure is. In addition, all matters relating to children will now be governed by the Children and Young Person's Act, which will incorporate the relevant provisions from the Family Law and Maintenance Acts, amending the former and repealing the latter.

This should address inequities regarding a father's chances of gaining custody or access, especially since there will be removal of the requirement that the mother must be proven unfit before the child is placed with the father. Instead, custody will be based on what is in the best interest of the child. This will bring Barbados into line with our obligations under the CRC.

6. There can be no adjudication of a family arrangement until paternity is established. In that regard, the following is recommended:

- ! **DNA testing in settling paternity disputes to be made mandatory.**
- ! **Abolition of paternity testing “by trial”.**
- ! **Regulations regarding the cost of testing.**
- ! **State assistance to be made available where necessary.**

The concept that a child has the right to know and be cared for by his parents must be wholeheartedly embraced (CRC Article 7). It must be settled that paternity should

always be determined by DNA test, since it is 99.9% accurate. The use of DNA testing to determine paternity has been the practice in the Courts since its use was advocated by Peter Williams JA in the case *F v M* as the best possible evidence. DNA testing was also codified in the 2005 amendment of the Status of Children Reform Act, section 92 of the Forensic Procedures and DNA Identification Act, 2005 and section 9 of the Maintenance Act following its amendment in 2014. However, it is not yet mandated by the Family Law Act.

At present, the legislation does not expressly rule out paternity testing by trial and it is recommended that this should now be done since such a trial is humiliating for the parties involved; the evidence is unsafe and unsatisfactory and more likely to produce an inaccurate result than a scientific test. As stated above, the child is entitled to know his or her parents.

One current difficulty is that there are no regulations regarding costs. At present, the cost (\$1,000.00 per child) is usually borne by men who request DNA testing. Some judicial officers seek to redress the balance by requiring women to pay 50% of the cost of the test if the result comes back that the man is not the father. However they cannot legally enforce this payment as there are no provisions in law. Given that there is no other method of discovering the information, it is suggested that regulations provide for the costs to be shared, with judicial officers having the capacity to vary the percentage paid by each parent upon advancement of legal arguments.

On the basis of the child's right to know his or her parents (Article 7), it is suggested that assistance from the State could be given to meet the cost of DNA paternity testing where there is need.

7. Custody to be awarded according to the best interest of the child. (CRC Article 9)

At present, the Maintenance Act states that custody can only be granted to the father or some other person if the mother is not a fit and proper person. This is an unfair presumption as there are many situations where a mother might not be unfit but it might not be in the child's best interest to reside with her.

Unfortunately there are many situations where embattled parents lose sight of the best interest of the child in their conflicts with each other. There are some mothers who withhold access when they do not receive maintenance or when the father enters into a new relationship, and there are likewise fathers who withhold maintenance because they are unhappy with access arrangements or because the mother has entered into a new relationship. It must be emphasized that each parent maintains parental responsibility despite changes in their relationships including separation or remarriage. The child has a right to know and be cared for by both parents and to maintain personal relations and contact with both parents on a regular basis unless this is contrary to the child's best interest. One of the factors that should be considered in deciding where the child resides, must be the actions of each parent in facilitating the child's relationship with the other parent.

8. Introduction of a process for appointing a temporary guardian in case of family emergency.

There is presently no convenient method for parents to appoint a temporary guardian in case of travel or family emergency without commencing High Court proceedings. This is contrasted to St. Lucia where the parents simply sign a document before a notary public.

It is recommended that this function remain in the Court in Barbados, but that it be a simple and rapid process in the Magistrate's Court. The maximum duration of the Order will be for 3 months. Applications for longer periods must be made to the High Court.

9. Recognition that other persons within the family as well as a 'social parent' may be awarded custody. Adequate provisions to be made for appointing guardians.

It is often the case that a grandparent or other relative raises a child (see Social Parenting definition above), only to have the relationship disrupted when the child is old enough to assist the biological parents and is no longer a burden, often to the child's detriment. In other cases, parents seem to want to exercise almost proprietary rights over a child that they have never raised or supported, solely on the basis that they brought the child into the world. This Bill will make it easier for

relatives who are already de facto parents to apply for custody through the Magistrates' Court.

Those who are not relatives or who are not de facto parents will continue to apply through the High Court. It is proposed that the term 'guardian' be introduced. Instead of the proposed guardian having to use wardship proceedings, where the child is made a ward of Court which then appoints care and control, there will be a designated 'guardianship proceeding'. The Court must determine whether the guardianship is expected to be temporary or permanent. The Court must also expressly consider what support, if any, should be made available to the guardian in the best interest of the child. This support may be a requirement for one or both parents to pay maintenance, or public assistance may be provided.

10. Specific guidelines for access: The child has the right to spend time and communicate on a regular basis with both parents and other people significant to their care, welfare and development. (Article 9)

The Court should implement and adopt specific guidelines for access. These guidelines should be presumed to be applicable in all cases except where there are situations involving family violence, child abuse or neglect, substance abuse, or any other circumstances the court reasonably believes endanger the child's physical health or safety, or significantly impair the child's emotional development.

The guidelines must acknowledge the fact that it is the right of the child to know and be cared for by both parents. The court must consider whether the child spending substantial and significant time with each of the parents would be in the best interests of the child and whether it is reasonably practicable for this to occur. Substantial and significant time with a parent means that the time the child spends with the parent includes both weekends and holidays as well as ordinary days. It means that the parent will be able to be involved in the child's daily routine; occasions and events that are of particular significance to the child and those that are of special significance to the parent.

11. Recognition that child support, vital to the wellbeing of children and for the alleviation of poverty, includes basic food and shelter,

services (for example, child minding), education, training, school books and uniforms, medical attention, medication and insurance. Introduction of Child Support guidelines. (CRC Article 27)

One current problem is that the Family Law Act and Maintenance Act make no provision for standardized maintenance orders. To ensure transparency and consistency in judicial decision making, the new Act will introduce child support guidelines to ensure that children have an adequate standard of living. These support guidelines will be researched and developed by economists engaged for the purpose. They should be based on the means of the parties, their obligations, the living standard of both, the number of dependants, the needs of the child or young person and the cost of living. The fact that some persons work seasonally should be taken into account and a minimum established below which a parent is not liable for child support.

The guidelines should provide for both parents' incomes to be assessed and the same self-support amount deducted from each before child support is worked out. The remaining income should be multiplied by a percentage which depends on the number of children (for example, 18% for one child, 24% for 2, 27% for 3 and 30% for 4 or more). The guidelines should appear in the form of a series of tables which are similar to income tax tables.

The guidelines must factor in the indirect costs of child rearing and the burden of care which generally fall on women and must consider the effect of child support on low income, non-resident parents. There need not be mandatory application of guidelines but the amount calculated should be a relevant consideration in the determination of the final award. These standardized child support guidelines should also be widely published so that the public can understand them to ensure apparent fairness and certainty. Publication will also mean that the guidelines can be used in informal maintenance agreements made between parents.

The Act should rationalize state financial support to be made in respect of children.

12. Ratification of the Hague Convention on the Civil Aspects of Child Abduction (this provides for an expeditious method to return

a child internationally abducted by a parent from one member country to another).

This Convention deals with the protection of children internationally from the harmful effects of their wrongful removal or retention and the establishment of procedures to ensure their prompt return to the State of their habitual residence as well as securing protection for rights of access. This ratification has been long outstanding and needs to be dealt with urgently. Of note is the fact that the issue of Barbados' handling of cross-border disputes was raised by the UN Committee on the Rights of the Child³.

13. Amendment of the Succession Act so that children can receive maintenance from their parents' estates beyond the age of 18 if they are continuing their education.

The Succession Act Cap 249 section 100 provides that where a testator dies leaving a minor child (or one who, as a result of disability, is incapable of maintaining himself or herself), and the Court is satisfied that the testator failed in his moral duty to make proper provision for the child in accordance with his means, that the Court may order such provision to be made out of the estate as it thinks fit. The provision should be for maintenance by way of periodic payments ending at 18 or these may be converted into a lump sum.

It is recommended that this provision be amended and brought into line with the existing provisions in the Family Law Act, and with the new provisions being introduced in the Children and Young Persons Bill. These will provide that children who are continuing their education can receive maintenance beyond age 18, and will also give guidelines as to how the maintenance should be calculated.

14. Adoption proceedings to be simplified where consents have already been granted by the parents or by the Court.

In the case *Child Care Board v IS*,⁴, the Court made the 18-month-old child AS a ward of Court, and, over the mother's objection, gave liberty to the Child Care Board to place him for adoption. However, the Court declined to waive the mother's

3 74th Session January 2017

4 FL 529 of 2007, decision September 29, 2008 (unreported), accessed via <http://www.barbadoslawcourts.gov.bb/wp-content/uploads/2015/01/2008.Decision.-The-Child-Care-Board-v.-Irene-Sargeant-Family.pdf>

consent to adoption under section 15 of the Adoption Act, indicating that such waiver could only occur when the adoption order was being made. The Board proceeded to find a family for the child who wished to adopt him. However, the adoption proceedings were then delayed by the need for the mother's consent. Further proceedings became necessary which were essentially a duplication of the original, in which the mother again objected to the adoption and her objection was again found by the Court to be unreasonable. The uncertainty and delay caused by these further proceedings was a strain on the adoptive family and was surely not in the best interest of AS. It is recommended that the wording of section 15 of the Adoption Act be amended so that the Court can dispense with the consents if the Court has already ordered the child to be adopted and parental consent may therefore be deemed implicit.

15. Adoption Act to be reformed and redrafted with more comprehensive provisions.

The Act defines 'minor' as a person under the age of 18, yet it fails to make provisions for the care of the 16-18 year old where the adoption order has failed. This should be rectified.

The Act refers to the term 'inmate' of a reform school. This should be substituted with 'ward' or 'student'.

The Act stipulates that two persons wishing to adopt a child must be married to each other. This does not allow for adoption by parents in a union other than marriage which is already recognised under the Family Law Act. It should therefore be amended.

It is recommended that the new Act explicitly mandate that adoption hearings be held *in camera*.

Chapter 3 – Child Welfare and Protection

In addition to making provision for family arrangements, the new Act will also encompass child protection as follows:

16. The establishment of a Children’s Authority to replace the Child

Care Board. When one analyses different enactments it is discovered that the Child Care Board is a focal and pivotal point in relation to child protection in Barbados. In all the relevant legislation the Child Care Board is required to investigate allegations, treat, house or provide places of safety for children. The Child Care Board is also mandated to deal with adoption and foster care and to register day nurseries and other child care providers such as babysitters who supervise more than five children as well as maintaining children’s homes and day nurseries. The difficulty in all of this is that the existing Child Care Board Act does not establish that body as an authority with all the power it must necessarily exercise. It is recommended that the Child Care Board’s functions be transferred to a new Children’s Authority with overarching powers, while at the same time permitting a degree of rationalization.

The present Child Care Board has too many responsibilities covering a broad spectrum, with too few officers for the tasks. It is under resourced and undercapitalized.

17. Empowerment of Children's Authority to transfer some of its counselling functions to non-governmental organizations which it has specially licensed for that purpose.

The principles governing the legislation in relation to child protection will be for better regulation of official intervention in the interest of children. Research of international models has shown that there are generally two competing philosophies of child protection – 1) parent-centred which is focused on supporting families so as to mitigate the conditions that often lead to child abuse, and 2) child-centred which moves quickly to remove children from abusive environments. Child-centred approaches are sometimes criticized for being too harsh on parents who might improve with counselling and support. On the other hand, the parent-centred approach presents the problem that social workers may be too focused on

supporting parents, and in an effort to keep families together may not move speedily enough to remove children before they suffer harm; sometimes lasting or fatal harm.⁵

It is suggested that Barbados follow a model used in other countries such as the United Kingdom where government child protection case officers focus exclusively on child protection while family support is outsourced to private organizations. These NGOs must satisfy certain criteria such as the proper training of personnel before the Children's Authority refers cases to them. There must be clear reporting structures in place as the Children's Authority will retain ultimate responsibility for the welfare of children. Both parties must be alert for cases where preventative measures are failing.

18. Divestment of functions such as registration of day nurseries, and administration of the government day nurseries.

In order to streamline the functions of the Children's Authority, it is suggested that these functions be transferred to the Ministry of Education which already has an Early Childhood Education department.

19. Divestment of function of providing support in general family law cases: This function should be assigned to a new cadre of social workers proposed for the Family Court.

Child Care Officers are often required to write reports on families in custody cases and to provide counseling for them. They frequently shuttle from court to court, sometimes in several different jurisdictions and spend the whole day there, leaving little time for management of child protection cases.

20. Establishment of a Children's Attorney within the Children's Authority.

As the chief protection agency the Authority should have a right to be present at any Court proceeding involving a child. The Children's Attorney will have the following functions:

⁵ <https://aifs.gov.au/cfca/publications/international-approaches-child-protection/international-examples-child-protection>

1. To provide separate legal representation to children where their interests may conflict with those of their parents. (This goes beyond the provision in the Family Law Act where it is at the Court's discretion whether to order separate representation of a child.)
2. To provide legal advice, training and support to child care officers of the Children's Authority
3. To conduct litigation on behalf of children or young persons
4. To sit on the youth panel to advise on sentencing, rehabilitation, reinstatement, counselling, treatment, place of safety or bail issues (see Youth Court).

21. Clear identification of places of safety.

A number of young persons are placed in reform schools when in fact they are victims of lack of proper care and supervision. It is recommended that special provision be made for these young persons to be housed in a safe environment where they will receive proper care and counselling and not in places primarily designed for punishment for deviant youth. At the moment, a place of safety is as determined by the child protection agency (Child Care Board). The legislation should define the term so as to eliminate places such as reform schools and put greater emphasis on community placement with relatives and persons of proven standing in the community as temporary shelter.

22. Provision for young persons who are over 16 and in need of housing assistance.

Some provision should be made for young persons who have attained the age of 18 and who are still in need of care and assistance. Unlike the US and UK where young persons move away from home at 18, Barbadian family structures (and the high cost of housing) make it highly unusual for persons to leave the home until they are much older if at all. Some sort of welfare provision (group homes, assisted living) should be made for those young people who have reached adulthood so that they do not have to return to the same abusive environment or have to look for a cohabitational relationship in order to maintain themselves.

Mandatory Reporting Protocol

23. The Mandatory Reporting Protocol which was previously recommended to the Child Care Board is to be statutorily codified.

The Protocol includes:

- ! Provisions for persons with significant contact with children on a regular basis to be provided with a system which ensures that they report abuse and that these reports are fully investigated and have desired outcomes.
- ! Guidelines and procedures regarding what abuse to report and why; who is mandated to report, to whom they should report and how they should report.
- ! A 24-hour hotline and a child abuse register which it is recommended should come under the aegis of the CCB or Children's Authority when it is established.

The protocol is appended.

24. An Oversight Committee ancillary to the Mandatory Reporting Protocol to be appointed to monitor all child abuse cases.

This committee will meet regularly to review all cases reported above and make recommendations based on those evaluations for best practice; revision and enhancement where necessary and to foster smooth working relationships between stakeholder agencies. The committee will also monitor and evaluate effectiveness and viability of the treatment regimes set up for victims, families and perpetrators. It will also make recommendations for revision if indicated; monitor and follow-up all relevant procedures and seek to enhance efficiency of reporting and investigative processes to reduce incidence of abuse

The Committee should have representation from the following:

- a. Children's Authority
- b. Welfare Department
- c. Police
- d. Bureau of Gender Affairs
- e. Ministry of Health/Queen Elizabeth Hospital
- f. Ministry of Education
- g. Ministry of Social Care
- h. Ministry of Home Affairs

- i. Office of the Attorney General

25. Provisions must be made for a children's help-line.

Although such a recommendation has also been made in relation to the Mandatory Reporting Protocol, it is being mentioned separately to emphasize that children must be empowered and encouraged to make reports on behalf of themselves and their peers. There must be extensive publicity of this help-line. This point was specifically raised by the UN Committee on the Rights of the Child⁶.

26. Increase of penalties for endangering and harming children.

1. It is strongly recommended that the offence 'reckless endangerment' of a child be reviewed. Presently the penalty is \$50.00, which is absurd, or three months' imprisonment. It is suggested, for example, that where a firearm is involved there should be a greater penalty and a custodial sentence may be mandatory.
2. It is also strongly recommended that the Prevention of Cruelty to Children Act, be repealed, and that its provisions should be included in the Children and Young Persons Bill. The protective provisions which currently end at age 16 must apply to minors up to the age of 18, and the derisory penalties in this Act must also be increased.
3. Reasonable punishment must be defined so as to ensure that corporal punishment does not escalate into child abuse.
4. The Bill will also focus on prevention of child prostitution, transactional sex, child abuse by visiting partners and the cheque book settlement of cases (CRC Article 34). This is especially important as it has been noted that where there is financial dependency on the perpetrator of abuse, abuse is often not reported.

Recommendations as to how cheque book settlement of cases may be abated include compellability of the witnesses where the Director of Public Prosecution insists that matters proceed. In addition, once the facts can be established, a parent can be charged with aiding and abetting or with perverting the course of justice.

27. Specific provisions to be included that

⁶ 74th Session January 2017

- a. **Foster/community care should be used whenever possible in preference to institutional care where children have to leave the family.**
- b. **The emergency removal of children from the family should always be attended by a child psychologist.**
- c. **Children must be permitted to express their views in relation to placement, and these views must be given weight in accordance with the child’s evolving capacity.**

These recommendations were specifically made by the UN Committee on the Rights of the Child.

28. Protection of children in child labour should go to 18 years, particularly in relation to working with hazardous materials. Labour inspectors must be trained to be alert for child labour.

A Rapid Assessment on Child Labour conducted in Barbados in 2002⁷ implied that there were children engaged in the worst forms of child labour, especially in relation to the drug trade, and commercial sexual activity connected to the tourism industry. A similar criticism exists in a 2014 report from the US Department of Labour notwithstanding the admission that the “problem does not appear to be widespread.”⁸ That report notes that important legislative gaps remain as Barbados lacks a legally enforceable list of hazardous occupations prohibited for children, and does not have a comprehensive policy framework to address all relevant forms of child labor. It is recommended that these policies be put in place (see below) and statistics collected to rebut these allegations.

29. Adoption of the three Optional Protocols to the Convention on the Rights of the Child which deal with the Sale of Children, Child Prostitution and Child Pornography, the Involvement of Children in Armed Conflict, and a Communications Procedure.

These treaties should be urgently ratified.

⁷ “Barbados: The Situation of Children in the Worst Forms of Child Labour in a Tourism Economy: A Rapid Assessment”, by Leith Dunn, PhD, International Labour Organization, 2003, accessed via https://www.unicef.org/lac/spbarbados/Implementation/CP/National/RABarbados_ILO_2002.pdf

⁸ <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/barbados>

30. Amendment of the Sexual Offences Act so that all sexual activity with a person under 16 is unlawful.

- ! In particular, there must be amendment of sections 4(1) and 4(2) and 7(3) which currently contain an exception for persons who are purportedly married to underage persons.
- ! Section 5 of the Act must be removed completely. This section provides the 'honest young man's defence' or 'Romeo clause', which applies to an accused who is no more than 24 years who honestly believes that his victim was 16 years or more. This defence should be removed.
- ! Sections 6 and 7 of the Act, which deal with incest, contain different sentences based on the whether the minor victim is over or under 14. These differences should be removed so that the maximum penalty is life imprisonment in all cases.

31. Amendment of the Sexual Offences Act so that recent sexual activity cannot be used as a defence in the case where the victim is a minor.

The fact that the victim has had recent sexual experience related to the alleged crime can be used as a defence. This provision should be repealed.

32. Amendment of the Sexual Offences Act to deal with prevent "cheque book settlements" of cases.

It is noted that Section 25 (2) of the Sexual Offences Act provides that the parent or guardian of a minor against whom a sexual offence has been committed may be called as a witness and would be a compellable witness. However the experience in the Court system has been that the compellability has been of no avail. There is a plethora of instances of "cheque book settlements" in sexual offences cases against minors, and another method urgently needs to be found to deal with this.

Chapter 4 – Children’s Civil Rights

33. All of the rights articulated in the CRC not already constitutionally provided should be expressly codified in the Children’s Civil Rights section of the new Bill.

These rights must be spelt out in this Bill so that where there are any other provisions which may be in conflict with them, this Bill may be cited in order to give full effect to the rights of the child. An example of this may be seen in the Bahamian case *RB (A Juvenile) v AG*⁹ which was decided in September 2016. The Court of Appeal found that the judge at first instance failed to properly consider the recently enacted Child Protection Act in refusing an application for bail for a minor. Significantly the Court of Appeal also said:

“In my view, the learned Judge clearly failed to recognize that quite apart from the Bail Act, she also had obligations under subsections 3(1) and 4 of the Child Protection Act consistent with Article 37(b) and (c) of the Child Rights Convention to herself become involved with promoting the Appellant’s welfare as a “Child” as the term is defined under the Convention and in the Act.”

All rights are to be enjoyed by all children and young people without discrimination of any kind, irrespective of the child’s or his or her parents’ or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. (Article 2)

Every child has the right to -

- 1) Not be deprived of his or her life (Article 6)
- 2) A name and nationality from birth (Article 7)
- 3) Know and be cared for by his or her parents, family and community in so far as is possible (Article 7)
- 4) Not to be separated from his or her parents unless it is for the child’s own good as decided by competent authorities subject to judicial review in accordance with applicable law and procedures (Article 9)
- 5) Maintain personal relations and direct contact with both parents on a regular basis, unless this is contrary to the child’s best interests (Article 9)
- 6) Appropriate alternative care when removed from the family environment, with due regard being paid to the desirability of continuity in that child’s upbringing

⁹ *R.B. (A Juvenile) v Attorney General*, Case #: 205 of 2015 Bahamas Court of Appeal, decided Sep 1, 2016 (unreported). Accessed via: <http://www.courtofappeal.org.bs/download/059952600.pdf>

- and to the child's ethnic, religious, cultural and linguistic background (Article 20);
- 7) A standard of living adequate for the child's physical, mental, spiritual, moral and social development including basic nutrition, shelter and social services (Article 27)
 - 8) Receive special care where that child is mentally or physically disabled, so as to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. This includes effective access to education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development (Article 23)
 - 9) The enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health (Article 24).
 - 10) Highest standard of education directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential (Articles 28, 29)
 - 11) Express his or her views freely in all matters affecting that child with the views given due weight in accordance with the age and maturity of that child (Article 12)
 - 12) Freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, orally, in writing, print, art or through other media, subject only to restrictions provided by law as are necessary for respect of the rights or reputations of others; or for the protection of national security or of public order (*ordre public*), or of public health or morals (Article 13)
 - 13) Freedom of thought, conscience and religion, and to manifest his or her beliefs subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others (Article 14)
 - 14) Freedom of association and of peaceful assembly, subject only to restrictions imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others (Article 15)

- 15) Freedom to practise his or her culture, religion and language even if this is of a minority group (Article 30)
- 16) Rest, play and age-appropriate leisure activities, along with freedom to participate fully in cultural life and the arts (Article 31)
- 17) Not to be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation (Article 16)
- 18) Be protected from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation (Article 19)
- 19) Be protected from economic exploitation and labour practices, and not be required or permitted to perform work or provide services that are inappropriate for a person of that child's age; or place at risk the child's well-being, education, physical or mental health or spiritual, moral or social development (Article 32)
- 20) Be protected from all forms of sexual exploitation and sexual abuse, from the illicit use of narcotic drugs and psychotropic substances, from abduction and sale or traffic, or any other form of exploitation prejudicial to any aspects of the child's welfare (Articles 34, 35, 36)
- 21) Have a legal practitioner assigned to the child by the state, and at state expense, in civil proceedings affecting the child, if substantial injustice would otherwise result;
- 22) Not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment; not be detained except as a measure of last resort, in which case the child may be detained only for the shortest appropriate period of time, and has the right to be kept separately from detained persons over the age of 18 years; and is treated in a manner, and kept in conditions, that take account of the child's age; (Article 37)
- 23) Not be used directly in armed conflict, and to be protected in times of armed conflict (Article 38).

34. Establishment of a Children and Young Persons' Commissioner whose primary function will be promoting and protecting the rights of children in Barbados.

The Children and Young Person's Commissioner, (sometimes called a Children's Ombudsman in other countries) will be responsible for advising persons exercising

functions or engaged in activities affecting children on how to act compatibly with the rights of children; collecting data by way of surveys and interviews on the views and interests of children; investigating any matter relating to the rights or interests of children; and publishing reports on any matter investigated.

The legislation must give the Commissioner sufficient power to summon witnesses, demand production of documentation and conduct investigations.

One of the responsibilities of the Children and Young Persons' Commissioner will be to monitor the implementation of the CRC in Barbados and to act as a coordinating body to gather all reports and statistics relating to children from government ministries and civil society. One of the tasks will be to collect budgetary figures from other ministries in relation to spending on children (for example, MTW should say how much is spent transporting children, National Cultural Foundation and National Library Service report monies spent on children's cultural events and children's books, etc.) The Children's Commissioner will be the main data collection agency or authority for collecting statistics relating to children.

The Commissioner will also provide independent monitoring of trends which may be inimical to the best interest of children.

It must be expressly stated that Children's Commissioner may receive complaints and reports from children.

35. Provision for young persons to access medical treatment, including sexual and reproductive health treatment.¹⁰

One of the civil rights of the child is the right to be given the highest standard of health care available. Unfortunately, despite the fact that there is no legislation prohibiting access to medical care by young persons without parental permission, in practice, young people are often turned away. In particular, young persons often find it hard to receive advice about contraception, sexual health and reproductive issues. In fact, it has been reported that in some polyclinics there are large signs advising

¹⁰ See *Barbados Family Planning Adolescent Access Systems Protocol Document and Position Paper*, Faith Marshall-Harris, 2016

young people that they cannot be seen by the doctor unless their parents are present.

Yet statistics indicate that early sexual debut is a dominant feature of our society. In a 2001 Ministry of Health survey, 70% of participants had had sex before the age of 18¹¹. A 2006 survey of Evangelical Youth produced similar figures¹². In two other surveys in 2012 and 2013, approximately 20% of respondents reported that their first sexual experience occurred before the age of 15^{13,14}

It is suggested that the law should provide categorically that 16 to 18 year olds should be treated with or without parental consent. This will cure the anomaly where at present a 16 year old can legally consent to sex and to a medical termination of pregnancy but cannot see a doctor for sexually related matters except with the consent of parents.

In relation to young persons under 16, it is suggested that the Act codify the common-law position which was set out in the case of ***Gillick vs. West Norfolk and Wisbech Health Authority*** [1986] 1 AC 112 which was finally decided in the House of Lords. This case supported the proposition that a doctor can give medical advice to a young person depending on his or her maturity and development. The doctor has the full discretion to decide if the child or young person is of sufficient maturity and has the mental capacity to understand the nature, benefits, risks, side effects, social and other implications of the treatment, alternative courses of action and likely risk of not having treatment. In this way medical practitioners would be fully protected in the event of parental opposition and a possible challenge in the law courts.

11 Barbados Ministry of Education Youth Affairs and Sports, National HIV/AIDS Commission, *Report on the National Knowledge, Attitude, Beliefs and Sexual Practices (KAPB) Survey on HIV/AIDS 2001*: http://nhacbb.org/plugins/p13_download_manager/getfile.php?categoryid=68&p13_sectionid=1&p13_fileid=33&p13_versionid=33

12 *Survey of Sexual Practices of Evangelical Youth – Barbados 2006, a Joint Project of Barbados Evangelical Association and Evangelical Association of the Caribbean*: www.caribbeanevangelical.org/pdfs/sexsurvey.pdf

13 In the 2012 Barbados Global Aids Progress Report, this figure was 19.1% of persons aged 15-24: [http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_BB_Narrative_Report\[1\].pdf](http://www.unaids.org/en/dataanalysis/knowyourresponse/countryprogressreports/2012countries/ce_BB_Narrative_Report[1].pdf)

14 The figure was 21.5 in Drakes et al, *Prevalence and risk factors for inter-generational Sex: a cross-sectional cluster survey of Barbadian females aged 15–19* (BioMedCentral Women's Health, 2013; 13: 53): <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3877959/>

36. Removal of corporal punishment from schools, reform schools, the education system and the justice system, as well as a proposed system for gradual abolition of corporal punishment in the home.

There are several legal bases for corporal punishment to be inflicted in Barbados. This could be interpreted as being in contravention of Article 37 of the CRC, which states that children should not be subjected to any cruel, inhumane or degrading punishment. It is recommended that this form of punishment be removed from the statute books in relation to schools, detention centres and other public institutions. The following will need to be amended or repealed:

- ! Section 15(1) of the Constitution of Barbados protects persons from being subjected to torture, or inhumane or degrading punishment or other treatment. There is a saving however of such punishment being authorized by law or that was lawful immediately before November 30th, 1966. This permits the administration of corporal punishment if provided by law.
- ! The Corporal Punishment Act Cap 125 must be repealed.
- ! The Juvenile Offenders Act Cap 138 still provides for whipping as a sentence, if the young offender is male. This is discriminatory and offends against Article 19 of the Convention on the Rights of the Child which prohibits violent punishment of children as well as punishment based on gender.
- ! Section 21 (1) of the Magistrate's Court Act Cap 116A provides that if a child is male he may be whipped pursuant to a criminal conviction. In practice, this punishment is never applied by judicial officers, especially since the case *Hobbs And Mitchell* (1991), in which the Barbados Court of Appeal, held that whipping by the cat-o'-nine tails amounted to inhuman and degrading punishment. The court observed: "What might not have been regarded as inhuman and degrading years or decades ago may be revolting to the new sensibilities which emerge as civilisation advances." The statutes need to be brought into conformity.

This also begs the question: How can it be lawful to whip a child, a more fragile being, when it is unlawful to whip an adult?

- ! Section 18 of the Education Regulations made under the Education Act Cap. 41 of the Laws of Barbados provides: “Every headteacher in public schools shall, subject to the act and those regulations, (i) ensure that discipline is maintained throughout the school at all times, (j) administer corporal punishment when necessary and delegate to the deputy headteacher and senior teachers, where applicable, the authority to administer corporal punishment.”
- ! The section 4 of the Prevention Of Cruelty To Children Act 1904 provides: “Nothing in this act shall be construed to take away or affect the right of any parent, teacher or other person having the lawful control or charge of a child to administer punishment to such child.” It is recommended that a definition of ‘reasonable punishment’ is also codified so as not to include corporal punishment. Limits would thereby be imposed as to what kind of punishment a child should be subjected to at home and elsewhere.

For the eventual elimination of corporal punishment in the home there should be extensive parent education. This method was used in Sweden, where corporal punishment was banned in 1979. The process was actually started in the 1920s when corporal punishment was outlawed in the secondary schools. New methods were gradually taught to parents in maternity wards. In addition social workers made home visits to supervise and assist parents until eventually it became normative.

37. Increased fines for parents for not sending child to school. (Article 28)

The new Bill should ensure that children receive the best training and education possible, along with recreation and leisure activities so that they can enjoy life. Presently it is compulsory under the Education Act for a parent to send a child under the age of 16 to school. However the fine for not doing so is only \$50.00. This should be substantially increased. In addition, given that Article 28 places the duty to provide an education of the best standard available squarely on the State, it is necessary for the State to use extreme vigilance in the case of home schooling to ensure that it conforms to the required standard.

38. Student Councils to be statutorily provided for in the Education Act and Children's Act.

Leadership training should be provided for the benefit of those Councils.

39. Establishment of a National Youth Service.

There are several international models for youth service. In some countries such as Switzerland, Finland and Israel, and formerly Germany, there is military conscription for 18 year old males. (In Israel, females are conscripted as well.) Conscientious objectors are routed into civil service for the requisite time, usually 300 days or more. Non-military service system may include work for government, municipal, inter-municipal, and church institutions or alternatively for organizations such as the Red Cross and Amnesty International.

In other countries such as Nigeria, Ghana and Mexico, a year of service is required for all college graduates. Mexico's Servicio Social legislation, passed in 1937, requires that university students that have completed 70% of their course work engage in 480 hours of community service within six months in order to graduate.¹⁵ In Nigeria, the National Youth Service Corps service was started in 1973, and is a mandatory year of service for all college graduates below the age of 30. Participants serve in various areas of the public sector, including schools, health clinics, agriculture and technical outposts.¹⁶

One interesting model for youth service comes from Brunei Darussalam where a national programme was established in 2008. The National Youth Service Program (NYSP), implemented by the Ministry of Culture, Youth and Sports, is a mandatory program for young people between the ages of 16-18. It promotes service-learning through social consciousness, life skills development, education and capacity building. The main components of NYSP are: self development and patriotism, physical training and discipline, and service to the community. Its focus is on social services, education and community development. In addition, students in primary and secondary schools are encouraged to participate in a National Community

¹⁵ <http://www.icicp.org/resource-library/icp-publications/global-youth-service-database/americas/north-america/mexico/>

¹⁶ <http://www.icicp.org/resource-library/icp-publications/global-youth-service-database/africa-2/west-sub-saha'ran-africa/nigeria/>

Service Programme and it is mandatory that each student participates in at least one of the following school activities: army/police cadet, Guides, Scouts, Red Crescent, fire brigade or rescue cadet. These programs look to combat chronic youth challenges in Brunei such as education deficiencies and drug usage. Additionally, each program seeks to foster a strong sense of belonging for young people within their communities, along with promoting the spirit of civic participation.¹⁷

For Barbados, it is recommended that a model similar to that in Brunei Darussalam be used. The process should start in schools with community building projects, dispute resolution training, self-enhancement programmes and community service. Those who have completed compulsory secondary education should be required to participate in the youth service. Exemptions may be given for those who are continuing full time instruction or are fully employed, but even those young persons should be required to perform a few weeks of community service every year for three years.

40. The Employment of Women (Maternity Leave) Act to be renamed and fathers to be granted paternity leave of six weeks after the birth of the child. (CRC Article 7)

For the avoidance of abuse, such leave should only be granted on the basis of proven cohabitation and on the basis of the father's name being on the child's birth certificate.

41. Express legislation that Barbadian Citizenship is conferred on all children who have a Barbadian mother or father.

Children born to Barbadian men or Barbadian women, no matter where born, whether in Barbados or overseas, have a right to Barbadian citizenship, and this includes adoptive parents.

42. Increase the age of marriage from 16 to 18 by amending the Marriage Act Cap 218A accordingly.

¹⁷ <http://www.icicp.org/resource-library/icp-publications/global-youth-service-database/asia-and-the-pacific/southeast-asia/brunei-darussalam/>

This is a recommendation from the UN Committee on the Rights of the Child¹⁸ which is meant to protect young persons from abuse. However, it would unfairly penalize those young persons who are legally old enough to consent to having sexual relations and who desire to be married. An alternative might be to have mandatory pre-marriage counseling for those under 18 and a certificate from the registered therapist that this was done.

43. There must be express statement that consultation with children must feature prominently in this legislation.

The child must be able to express a view as to where they are to live and with whom. This view will be given weight depending on the evolving capacity of the child.

44. The legislation should mandate the development of a National Children's Plan to cover the period from 2017 to 2027

The Plan should include targets regarding infant mortality, breastfeeding, measures for the reduction of respiratory diseases, in particular asthma, infant mortality, childhood nutrition and obesity, and sexual and reproductive health including prevention of HIV/AIDS among teenagers and relationship and life skills.

The Plan may provide, for example, for the Children's Commissioner to consider the issue of childhood obesity question and make recommendations in tandem with National Nutrition Center, making targets for children's health and examining whether methods used thus far, such as the tax on soft drinks are working, and whether regulations for school canteens and vendors should be put in place.

The Plan must include provisions for registration of births of Barbadian children. It has been noted that there are a few cases where certain minority groups do not

¹⁸ 74th Session January 2017

register their children and this must be addressed. There must also be a policy regarding health and education access for migrant children. The fact these children cannot access scholarships, awards and grants should be addressed.

It should also focus on, children with disabilities and their adequate access to education, transportation and inclusion. All special child health services must go up to 18. Mental health care must be included and the issue of where young persons and children go who have a mental health problem. The National Mental Health Commission has now accomplished the transfer of the Child Guidance Centre to a polyclinic and away from the Psychiatric Hospital, but must now address the issue of residential care.

The National Plan to provide for public sensitization regarding corporal punishment, including parent education and targets for reduction.

Finally, there must be widespread education and dissemination of information regarding the rights of children. This education must target both adults and children. The National Policy should promote a positive view of children in society. The media should be encouraged to expose the violation of child rights and highlight child rights.

In all of these the Commissioner should be mandated to collect the necessary data and recommend new policies. The Plan must set timelines for when all the targets should be accomplished.

45. The establishment of the National Committee for Monitoring the Rights of the Child to be statutorily provided for in the Children and Young Persons Act

The legislation should make provisions for a Chair, Deputy Chair and 10 other members, including the Permanent Secretary of the Ministry of Social Care,

representatives of the Ministries of Health and Education, the Director of the Child Care Board or his or her nominee, a representative from the National Disabilities Unit, a representative from PAREDOS, a Child Psychologist, representatives of civil society, and a young person between 16 and 18.

46.

The Family Court

There have been several calls over the years to reform the Family Court system in Barbados. One such call came from a UNICEF team which visited the Courts and also conducted interviews with staff members and end users.¹⁹ In addition, the UN Committee on the Rights of the Child has questioned why children are still being treated differently depending on whether their parents were married or not at the time of their birth²⁰.

One area which has been highlighted is the need for a standardized approach to maintenance. It has been found, overwhelmingly, that both judges and magistrates seem to view child support as a consensual matter: The following is a description of one of the cases observed, and is, unfortunately, an all-too typical scenario:

“A judicial officer asks the respondent what kind of work he does. He says he does maintenance work and receives \$435 per week. The judge asks him if he can afford \$100 per week. He says ‘No’, that he can only afford \$75. He is asked by the Court when he can start and says Monday next. The applicant is not questioned, holds her head down. Interim order made in terms agreeable to the respondent.”

Other issues included:

1. The perception by men that the courts are biased and weighted against them.
2. The need for greater sensitization and training and for the recruitment of persons who have the temperament to deal with family issues. The researchers found that gender ideologies are apparent and influence in

¹⁹ The recommendations herein are derived in part from Tracy Robinson's 'Draft Policy Paper on Law Reform Related to Maintenance and Custody of and Access to Children in Barbados' and "Share the Care - Child Support Poverty and Gender Equality - Barbados Country Report", UN Women Caribbean, 2008, accessed via: <http://caribbean.unwomen.org/en/materials/publications/2008/4/share-the-care-child-support-poverty-and-gender-equality-barbados-country-report>

²⁰ 74th Session January 2017

very real ways the interventions of the judicial officers and other players. These ideologies are not static and can also be contradictory, producing results that are not necessarily in the best interests of the child. This need extends to clerks, lawyers, probation officers and marshals.

3. Large number of adjournments and a lack of proper case management (In the High Court, a series of reasons are given for adjournments, including the absence of the respondent or their lawyer; a request by both parties that they wish to adjourn to conduct a meeting; the delay of results, such as lab results or a welfare report; the fact that some documents are defective; that the Court file is missing; or, that the Court list on that day is simply too long. In the Magistrates' Court, the reasons are usually that the means report is not ready, that the relevant lawyers are not present or that the respondent has not been served.) There is little recourse to modern technology.
4. Inefficient record keeping at the Magistrates' Courts level. While the High Court files are scanned and made available to clerks and judges electronically, at the Magistrates Courts, applications are made on paper which is collected into monthly bundles. Information is stored on cards which are also used for recording payments.
5. Need for standardized forms (in the Barbados Report, 45% of applicants failed to disclose their employment status and 60% failed to mention their occupation and income. By the same token, 66% of Respondents failed to disclose their occupation and income.)

Unfortunately, at the end of the process, most interviewees, both Applicant and Respondent, found the system to be ineffective. The major complaint was the humiliation, frustration and tedium of attending Court. To make matters worse for the Applicants, there was a great deal of non-compliance which results in further proceedings: Approximately 50% of all family applications before the Magistrate's Court relate to arrears. The number in the High Court was less, but this might have

been due to the attendant costs and frustrations of High Court matters, which deter the Applicants.

The interviewees also spoke of the need to have persons working in the system who were more sensitive to the emotional and financial circumstances of parents. Some mentioned the physical conditions, which they found disturbing, as the Court waiting rooms are uncomfortable, providing nothing in the way of refreshment or amenities. There was mention of the method of payment, and a suggestion that payments from the Court to recipients be made by cheque. As one recipient said, after spending \$6 in busfare to go to the Registry, and 10c on a stamp for the receipt, her daughter eventually only received \$43.90 of a \$50 payment.

The actors within the justice system all shared the concern that reforms are needed in relation to the efficiency and equity of the child support process. This must be an integrated response beyond the legal system. There must be education of persons in the way they understand their responsibility to themselves and their children. Research must be done to understand what informs their decision-making on intimate relationships, and to see if having a healthy self-esteem would change the way men and women relate to each other. Although many Barbadian families may seem “dysfunctional” or “deviant” a “culturally appropriate and supportive social policy” must be developed which avoids stigmatizing such parents.

45. It is proposed that there should be a unified Family Court including both Magistrates Court and High Court jurisdictions.

This is the most modern strategy employed in dealing with such matters and has been adopted by several countries. A visit to the Inner London Family Court for example, which was one of the first of its kind, made it clear that it was specially

designed to be family oriented and child friendly. The Family Court even had a day care centre and a playroom for the younger children should they have to come to Court with their parents. It also housed centralized social services. There was a gentler atmosphere which was less adversarial. This conduced to a feeling that this was not a High Court or Magistrate's Court battleground but was designed to look after the entire family's interests.

The Court will be legislatively provided for by a new Family Court Bill.

47. The Court to have island-wide jurisdiction at the Magistrate's level.

At present a parent is restricted to making the application in 'the district in which she resides'. The geographical demarcations can often work to her disadvantage, particularly in rural areas (such as Gun Hill) where the connecting to the rural court (such as Boarded Hall) can entail multiple buses and a trip into Bridgetown. At present she has to visit the Court to make the application, vary it, collect payments, and this can constitute the loss of a full day's pay, as well as the cost of taking at least two buses to the Court in most instances for each of these activities.

It is recommended that the Court be centrally located and have island-wide jurisdiction.

48. Since the survival of the family is at stake, there must be greater emphasis on strict deadlines, speedy decision-making and efficient processes. The Court to have new Family Law Rules in consonance with the Civil Procedure Rules and accompanying forms in both summary and high court jurisdictions.

While it seems to have been envisaged in the drafting of the Family Law Act that it should be applicable in both Summary and High Court jurisdictions, the Act is rarely, if ever, used in the Magistrate's Court and perhaps the establishment of a Family Court would make this a reality.

Rules should be adopted which will provide for deadlines and the need for deal with matters efficiently and expeditiously, as well as proportionately having regard to the

sums at stake. There should be no question of parties having to wait over a year for a hearing date or judgment in a custody matter. Nor should simple property settlements and maintenance cases, especially where the amounts are small, require years of hearing and court attendances. Video and electronic communication and evidence should also be incorporated into the new Family Law Court Rules.

Although the Magistrates' Court must remain accessible to ordinary persons, it is suggested that there would still be some benefit in having certain standardized rules and forms. For example, the Family Law Act provides a Financial Statement which the parents must fill out in the High Court. This assists in negotiating which means that parties in a Magistrate's Court, who do not have these guidelines, are therefore sometimes at a disadvantage when it comes to settlement. As well, the resident parent may undervalue his own economic contribution. It is recommended that the new Act provide a similar sworn form which both parties must file.

49. Family Court to have a separate Registry.

The Act must also provide for the Court to be supported by an Administration Department which will include a Registry, Court Process Office, Child Support Agency, Children's Authority (Child Care Board) Liaison Division, Social Services Division, Mediation Division, and any other such support divisions as the Chief Justice may determine. All necessary support staff must be put in place. The Registry may have its own Registrar or Deputy Registrars and Court Administrator. Mediators and Counsellors should also be appointed. All support persons must come from the Public Service but consultants may be hired.

50. A special group of staff and judiciary chosen on the basis of temperament and aptitude, to be trained for this exercise.

The Court must be family friendly and compassionate, but must also realize that the need for firm control over the process and speedy decision making. The judicial officer must have a good understanding of child development and cultural factors in family relationships and child rearing.

51. The Family Court to have a special cadre of social workers, counsellors, child protection officers and mediators dedicated to it

to be drawn from the several agencies which now service the individual Courts.

At present, the courts draw on social workers from the Child Care Board, Welfare Department and Probation Department to carry out report-writing and other assessment functions. This puts a severe strain on those agencies. For example, in 2009 the Probation Department produced 245 means reports. According to their publications, the department does not believe that this should be their function. In their annual report of 2000 they lamented the valuable time taken up in preparing these reports which could otherwise be used for the supervision of probationers²¹. Similarly, officers from the CCB and Welfare Departments are ordered to carry out home visits and evaluations, not necessarily in cases of abuse, but simply to assist with child custody matters. The officers must then spend many hours away from their work, sitting at the Court, waiting to be cross-examined. Having a cadre of specially-assigned social workers will greatly assist.

It is recommended that the cadre of social workers be initially sourced, one person each, from the existing agencies such as the Probation Department, Child Care Board and Welfare Department. In addition, two junior officers could be brought in to provide support to them and be trained by them.

52. Facilitation and encouragement of parenting agreements, parenting plans, parenting conferences, mediation and alternative dispute resolution (ADR) by the Court and the social workers to avoid costly and lengthy litigation.

There are no winners in family matters which are litigated and usually children are the biggest losers. The Act should provide that all matters relating to children should be referred to family dispute resolution if possible. This is a non-judicial process whereby an independent family dispute resolution practitioner helps persons to resolve some or all of their disputes with each other. Mediation allows for win-win solutions.

One judicial officer should deal with the family through all stages and case manage so as to be able to identify those cases that would be amenable to ADR to avoid lengthy litigation in Court. The Court need not refer matters to dispute resolution if

²¹ Tracy Robinson

satisfied that there are reasonable grounds to believe there has been family violence or abuse of the child by one of the parties, or that there would be a risk of such on a delay. Dispute resolution proceedings may also be waived where there is a consent order or where there is urgency.

53. The Act may make provision for parenting plans to be registered.

These plans are agreements between parents and guardians which are in writing, signed and dated. Plans may not be registered unless they are free from threat, duress or coercion. The plan may deal with residence, access, allocation of parental responsibility, maintenance, and the form of consultations that parents must have with each other in exercise of their responsibility. The plan may also lay down procedures for dispute resolution and for making alterations to itself.

A party to a registered award may apply for the Court to review it, to adjudicate issues of law, and to affirm, vary or reverse the award. The Court may only exercise this power if satisfied that the award or agreement was obtained by fraud, including non-disclosure of a material fact, that circumstances have arisen since the award which render it impossible or impracticable, that the arbitration was affected by bias or a lack of procedural fairness, or that the award is void, voidable or unenforceable.

A Court may set aside a plan by consent, if it is in the best interests of the child, or if satisfied that the concurrence of a party was obtained by fraud, duress or undue influence.

54. A child support collection agency is recommended to supervise collection and payment of arrears and pursue defaulters who would then be brought back to Court for sanction.

New methods of collecting child support will be introduced. For example one method, payment by cheque, has already started. There should also be provision for payment by attachment orders where parents are employed. Attachment orders are orders where the money is deducted at source by the employer and forwarded to the Court before it is received by the employee. At the moment the Crown Proceedings Act provides that the wages and salaries paid by the Crown to public servants cannot be attached. Since public servants are roughly 10% of the Barbados

workforce, it is recommended that this section is repealed so that all wages or salaries can be attached, if necessary.

Imprisonment for non-payment of child support is counterproductive and should be discontinued as a means of sanction: The children still do not get supported if the father has gone to prison and in accordance with the Magistrate's Courts Act, Section 121 it does not extinguish the debt. The delinquent father, if employed may lose his employment, and the practice tends to increase the notion of gender warfare between parties and the criminalizing of child support issues. There has even been an idea floated that mothers who deny access should also be imprisoned. Imprisonment is recommended for neither since it does not solve what happens to children while parents are in prison. Other ways must be found which may be equally draconian but which will not have these side effects.

It is being suggested that if persons refuse to pay child support and are severely in arrears, then their driver's or road traffic licence could be suspended, provided they are not taxi or ZR drivers or other persons whose livelihood depend on their ability to drive a vehicle. Deductions from NIS benefits, and income tax refunds could be made; surrender or suspension of passports or use of community service orders. Distress could be another means of recovery whereby the big screen or plasma television is seized and the money recovered that way.

55. A Child Support Fund to be established.

There should be a Child Support Fund which can be ordered by a judicial officer where there is need. This would operate like a revolving Fund to cover all children whose parents are temporarily unable to comply with maintenance orders through unemployment or illness. This should be a facility that can be utilized by judicial officers in deserving cases.

56. Family Court to produce a range of media (website, brochures), etc, to publicize its functions and to help guide parents. In order to be client-friendly, a well-trained customer relations staff to be employed to assist persons to move through the court processes.

There must be a public information component in the Act. Documents must be drafted which must provide parties with information about non-Court based family

services, and about the Court's processes and services. The latter would include information about the steps involved and the possible social and legal effects of the proposed proceedings, the services provided by family counselors, dispute resolution practitioners, and family consultants, and the availability of arbitration facilities. The information must be made publicly available through all possible media, including pamphlets available in hard copy in the Court and on the Court's website. The Executive Manager of the Court must be placed under a duty to ensure that the information is given to all persons who are considering proceedings on their first visit to the Registry. Legal Practitioners, family counselors and dispute resolution practitioners must also be placed under a duty to provide this information to their clients.

The Court must be user-friendly and there must be a place to accommodate children who must accompany their parents to court.

Youth Justice

As increased numbers of our young people come into conflict with the law, new ways must be found to promote responsibility and accountability, encourage restorative justice and prevent recidivism.

While only a minority of young persons are engaging the attention of the Courts, these tend to be high profile, leading to stigmatising of youth and which closes doors for them, making it difficult to be fully integrated into their communities. The present system is greatly strained and does not provide many opportunities for rehabilitation or social intervention. Instead, the system appears to provide opportunities for young persons to become even more criminalised. It does not help that the new prison was constructed in the same neighbourhood as the reform schools, giving young offenders the additional hardship of being in the “Penal Village” within sight of where it is deemed they will graduate.

Unfortunately, youth who come into contact with the system are often victims themselves, victims of circumstances, of turbulent family life, toxic environments, the way they are socialized and quite often those who do not set out to be violent become so because they are bullied and seek to defend themselves or retaliate. Some are also victims of poverty.

There is much anecdotal evidence that overcrowded homes give birth to the block and the block gives birth to crime. Overcrowding in homes in Barbados is an issue that affects low income men. They often feel compelled to spend leisure time outside the house, and as such, much of their time is spent on the street. Often these low income homes are all grouped together in housing areas without much access to positive activities like a clubhouse, playing fields. There is no community activity other than what young people devise for themselves, which is liming on the block.

This is not to stigmatize poverty. The “blocks” have existed since time immemorial – they simply weren’t called blocks. Young men have gathered under trees, on front steps, under street lights, around stand pipes. This was always a strong feature of community life in Barbados. Later, people converged on the block, which was officially part of the address for residents in a government housing unit (for example, Block C). Many of the housing areas have, over the years, contributed respectable and productive citizens. Many continue to do so. Unfortunately, after years of flight to the heights and terraces by those who have ‘arrived’, it is often now the case that the younger generation who reside in the housing areas are the children of those who were unable to navigate the education or social systems to achieve success. But they do not now have the leavening influence of aspirational mentors or leaders in their midst.

The block is very seductive, and lures them into its web because this is where the big men are. Recent anecdotal evidence suggests that girls are now beginning to be equally drawn to the block. One of the distinguishing factors this author has found was that the block was able to take over because boys in particular lacked a father at home, and so the men on the block became role models that they looked up to which made the block particularly compelling and appealing. One must also acknowledge the element of foreign culture which glamorizes the “ghetto life”.

Some of the block groups evolve into “gangs”. There are those who insist that because the young men do not have the level of organization of groups found in places like the US, for example, then in fact our informal groupings would not be gangs as defined in those countries. However, if the view is taken that gangs are any group of individuals who loosely or not so loosely band themselves together to carry out crimes, violent or otherwise, such a group can be determined to be a gang. Some of them do have specific

criteria such as initiation rites and special symbols to indicate their allegiance, such as wearing items of the colour red, for example.

Young persons may be drawn to the block out of a sense of wanting to belong, a consequence of absent fathers, indifferent mothers, poor parenting techniques, and other causes of dysfunction such as poverty, domestic violence, drug and alcohol abuse and psychological disorders. Some young persons end up in the subculture because they simply do not have alternatives: When they live in an area with a large number of negative influences, it becomes difficult for them to rise above their circumstances without a solid support system. In other cases, lacking a firm moral grounding, young persons turn to crime simply as a means of economic survival. Unemployment is high in these depressed communities and many of the young persons have left school without certification so that their time is not productively engaged.

As a result, the negative elements there quite often make their living from the drug trade. There are also a number of cases, where men, when granted access, took their children onto the block with them rather than miss a day from the block. Sooner or later as they smoke marijuana those children begin to see this as normative.

In addition, there is a rite of passage where young persons get their first spliff passed to them. They do not have to pay for it but eventually get roped into the commercial aspects of the drug trade. They are used as look outs and carriers, particularly into schools. They often quickly graduate to enforcers or “soldiers”. There have been many highly publicized murders recently which have been linked to the drug trade and which feature young perpetrators. Ways must urgently be found to reverse this trend.

The schools seem unable to turn the tide. Many try, but with varying degrees of success. A significant portion of offenders are functionally illiterate. This author's study on juvenile offenders²² also found that many suffer from Attention Deficit Hyperactivity Disorder which was only diagnosed after they came into conflict with the law when psychological testing was made available to them. These young persons might have been diagnosed earlier if such testing was in place through the school system. Unfortunately, for many years there was only one psychologist attached to the Ministry of Education.

These issues have ramifications in terms of employment opportunities. Society is also falling short in providing the necessary skills needed to navigate social and employment waters. Incompetence and inability to reason, combined with a lack of opportunities, a desire for material goods and in some cases a poor moral compass, lead almost inevitably to a life of crime. Once the first steps have been taken on that path, there is little or no chance for rehabilitation.

There must be collaboration between the police and other social agencies to identify and intervene in the lives of those young persons who show early warning signs of delinquency. It is also recommended that educational testing and remedial education programmes be expanded so that timely intervention can be made in the cases of children who demonstrate learning disabilities, cognitive challenges and behavioural problems. There is a need for increased numbers of prevention programmes to help young persons develop competencies in academics, social skills, citizenship and healthy behaviour – one such a programme, the Juvenile Liaison Scheme, is presently oversubscribed and is finding it

²² *Report on the Factors and Trends in Juvenile Justice in Barbados, 2011*

hard to cope with demand. Young persons should also be grounded in good values and self-awareness and taught conflict resolution skills.

The following provisions are recommended for Youth Justice:

57. The Youth Justice Bill to apply to young persons up to 18 years instead of 16 as presently obtains. In the Magistrates Court Act the age of criminal responsibility is 7 years, whereas in the Juvenile Offenders Act it is 11. This must be harmonized at 12 years.

It is recommended that the 16 to 18 year old remains within that protected cohort where they are given more chances within the Juvenile Court or Youth Court which has an emphasis on rehabilitation and restorative justice.

Although the age of criminal responsibility should be increased, protective provision must still be made for children under 12 who come into conflict with the law. These children are not to be criminalized, but placed in a category of a child at risk and dealt with by other resources such probation officers, Children's Authority, etc.

58. Amendment of Bail Act so that a minor who is refused bail 'for his own welfare' may be referred to 'a place of safety', rather than being detained in the Reform School, which is the present practice.

The Bail Act defines a child as a person under 14 years and a young person as between 14 to 16 years. Under Section 5 (1) and (3) Right to Bail – 'a defendant may be refused bail if he is a child or young person, for his own welfare'. In practice this has included the necessity of obtaining sufficient information for the purpose of making a decision in accordance with the spirit of Section 5 (1)(d) and (f).

In a recent case in Trinidad: *In the Matter of An Application by BS*²³, significant damages were awarded to two minor children, ages 12 and 15, who were inappropriately remanded to a reform school and women's prison respectively. It was held that the State had failed to provide Community Residences for them as mandated by the child protection legislation. This shows that the legislation introduced must function effectively in practice and not simply in theory.

59. Attendance Centres to be established as provided for by the Penal System Reform Act.

Section 9 of the Penal System Reform Act provides for Attendance Centres which are defined as places where offenders under the age of 21 years may be required to attend to be given appropriate training, occupation or instruction under supervision. Courts of both jurisdictions may make attendance centre orders, once notified by the Minister that an attendance centre is available for reception of persons. The Court must specify in the order which attendance centre and for how many hours.

Attendance centres orders could be used instead of sending an offender to prison or reform school. For example, an young offenders might be required to go to a centre for three afternoons per week, perhaps between the hours of four and seven o'clock. At the attendance centres they should benefit from various forms of redirection, whether it is drug counselling, remedial education or anger management counselling. Or alternatively, they may be taught a new skill or craft.

It is suggested that these attendance centres can be established with little call on financial resources. It is recommended that school buildings which are largely unused after 4 pm can become attendance centres after that time. In addition, many retired civil servants such as former police officers, school teachers etc, who have expressed a desire to give back to their communities, for a very small stipend, can be engaged as attendance centres supervisors. It is recommended that this can be implemented without any greater delay. Emphasis must always be on counselling and treatment programmes.

23 CV 20145-02799 High Court, decided May 24, 2016 (unreported)
webopac.ttlawcourts.org/LibraryJud/Judgments/.../cv_15_02799DD24may2016.pdf

60. The Government Industrial Schools to be renamed and restructured.

New legislative provisions are recommended for the industrial school, repealing the current Juvenile Offenders Act which dates back to 1932 and Reformatory and Industrial Schools Act (1926) as well as sections of the Magistrate's Courts Act. Among other things, these Acts provide that young male offenders may be whipped.

It is recommended that the schools be renamed reform schools possibly bearing the name of a former youth reformer. Minimum living standards existing in the reform school should be regulated along with procedures for complaints from a young person placed in the reform school.

The schools must be given the resources needed to focus on rehabilitation and support of young persons. The schools must also be given proper educational resources.

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The Youth Court

There must be a Youth Court Bill to establish the new Youth Court. The Bill will provide the following:

61. There must be specialized training relative to sociology, psychology and behavioural science as it applies to young persons for Magistrates, Royal Barbados Police Force Officers and everyone assigned to the Youth Court.

As with the Family Court, it is recommended that there be recruitment and training of the staff of the Youth Court and youth justice programmes. The Magistrate in particular should have a social perspective and understanding of the causes of behavior.

62. There must be focus on rehabilitation, drug testing, treatment, counselling and Court supervision.

These practices presently exist in the Juvenile Courts but should now be codified.

63. The implementation of restorative justice is highly recommended for the Youth Court.

It is recommended that there be greater emphasis on restorative justice. Restorative justice brings those harmed by crime or conflict and those responsible for the harm into communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward. Not all cases or culprits are amenable to restorative justice, and one key component is for the culprit to admit that he or she has committed the offence.

Restorative justice is part of a wider field called restorative practice which is used to prevent conflict, build relationships and repair harm by enabling people to communicate effectively and positively. Restorative practice is increasingly being used in schools, children's services, workplaces, hospitals, communities and the criminal justice system. Restorative practice can involve both a proactive approach

to preventing harm and conflict and activities that repair harm where conflicts have already arisen.²⁴

A 2001 study by the Ministry of Justice in the UK found that restorative justice improves victim satisfaction, provided significant savings in the criminal justice system, and also reduced the likelihood of reoffending by 14%.²⁵

64. The mandatory minimum sentence at the Reform School to be reduced from three years to one year or less.

At present, judicial officers are deterred from referring young persons to the Reform School, where they may be able to take advantage of the positive programmes and counselling offered, because the minimum sentence is set to 3 years. It is recommended that this minimum sentence be reduced to one year or less.

65. Abolition of status offences and replacement with child protection provisions as necessary.

There will be no offence of wandering in a public place while not under the supervision of adults. Such a child should be deemed a child at risk and dealt with by other agencies other than the court such as the Children's Authority or welfare agency as a care inquiry.

There are other status offences which should be abolished such as 'being a girl' whose father has been convicted of a sexual offence against one of his daughters and is therefore liable to be sent to the Government Industrial School. This would appear to be an injustice to the 'girl' and she should be taken to a place of safety.

66. Youth panels are recommended.

These comprise a number of persons of various persuasions and capabilities invited to sit and advise on sentencing and rehabilitation. Persons such as principals, pastors, counsellors and social workers form the panel to give advice on how best the young offender could be dealt with.

²⁴ Definition from <https://www.restorativejustice.org.uk/what-restorative-justice>

²⁵ Ibid.

67. It is recommended that there is community involvement in the rehabilitation of young offenders to make sure that they have respect for the community which nurtures them; respect for the fact that they are a part of society and respect for societal values.

There must be structured community building projects, dispute resolution training, self-enhancement programmes and community service for these young offenders.

68. The Act must expressly state that parents cannot refuse legal representation for their children.

In addition, although Legal Aid is available for young persons, this fact may not be widely known, and should be publicized. It must also be provided that parents cannot waive legal their children's rights to legal representation.

Commentary on Draft Juvenile Justice Bill

Through contacts made in researching this paper, it became apparent that a proposed new Juvenile Justice Bill is now in circulation. While it was not sent to this author for comment, it has become necessary to do so for completeness.

It is to be noted that the Bill, which appears to be based on the OECS Model Bill, incorporates most of the principles, concepts and reforms previously proposed in the White Paper *Review of Laws Relating to Children, Women and their Families in Barbados: Analysis, Harmonization and the Case for Reform* by this author. For example, the Bill proposes raising the definition of a minor to the age of 18; the use of restorative justice; use of Youth Panels and family conferences to assist the Court; repeal of the very antiquated Juvenile Justice Act and Reform and Industrial Schools Act.

The following concerns remain, however:

1. Although it may seem cosmetic, it is recommended that the Bill be renamed the “Youth” Justice Bill, a more modern term, since “Juvenile” is now considered pejorative.
2. The Bill does not establish a specialized Youth Court.
3. It does not provide enough direction regarding counselling, and in particular family counselling.
4. The question of legal representation should be enhanced and simplified with the proposal of a Children’s Attorney so that the child is guaranteed representation, without more. In the new Bill, there are many obstacles to legal representation and it is left up to the Court to appoint an attorney. It would be preferable to have the Children’s Attorney available in all cases. It must also be provided that parents cannot waive legal their children’s rights to legal representation.

5. There should be emphasis placed on community service for 16-18 year-olds.
6. While the status offences have been repealed and minors found wandering may now be taken to a place of safety, the place of safety may still be the reform school so that there is no difference to what presently occurs. The Bill must clearly spell out that the Reform School is not to be considered a place of safety in such instances.
7. The Act should make express provision for the sealing of a minor's record.

Conclusion

The introduction to Barbados's Second Report on the Implementation of the Convention on the Rights of the Child states:

The Government of Barbados considers the Convention on the Rights of the Child (CRC) as one of the most important international agreements in its toolkit for addressing social ills and enhancing the rights and social protection of its citizens. It believes that the implementation of the Convention can be used as a measure of the progress being made towards the goal of improving the quality of life of its people and achieving "developed country status".

It must be re-emphasized that much of what is contained in the proposed legislation already exists in current practice, the new legislation simply codifies or strengthens existing processes.

It is also suggested that there needs to be an intensive public awareness campaign and increased training for those involved in working with children and families. There must also be increased transparency and efficiency of all agencies and departments which work with children and families. In particular, statistics, disaggregated by gender and age, should be published periodically so as to inform research and reform.

It is recommended that there be increased collaboration between the various state agencies which work with children. There should also be increased integration of non-governmental organizations into the system as these civil partners are already playing a significant role in relation to supporting children and families and training children in social responsibility.

The changes proposed in this document will bring Barbados closer to its goal of improving the quality of life of its children and young persons.

Acknowledgement

The assistance of Ms. Nailah Robinson, Attorney-at-Law and Associate, is gratefully acknowledged.