

The Rights of the Girl-Child

Protecting and Promoting the Rights of the Girl-Child in Commonwealth Jurisdictions with emphasis on Commercial Sexual Exploitation

*Florence Butegwa**

Introduction

Children are an integral part of humanity. Consequently, international, regional and national standards for the protection of human rights apply to children as equally as they apply to adults. Thus, the Convention on the Rights of the Child (the CRC)¹ guarantees rights such as the right to life, the freedom of expression, freedom of thought, conscience and religion and the freedom of association and of peaceful assembly. The CRC also guarantees the fundamental right to privacy and family and the right of the child to the enjoyment of the highest attainable standard of health, including a right to facilities for the treatment of illness.²

Children also have special needs and rights because of their age and resultant vulnerability. The Universal Declaration of Human Rights³ proclaims that children are entitled to special care and assistance. This is necessary for the full and harmonious development of the child's personality and to prepare him or her to live an individual life in society. The ideal was aptly stated by the international community of states in the following terms:

"The Children of the world are innocent, vulnerable and dependent. They are also curious, active and full of hope. Their time should be one of joy and peace, of playing, learning and growing. Their future should be shaped in harmony and co-operation. Their lives should mature, as they broaden their perspectives and gain new experiences."⁴

*Management Consultant, Associates for Change, Kampala, Uganda

¹ GA Res 44/25, UN Doc A/44/49 (1989) at 166, reprinted in 28 ILM 1448 (1989).

² See Articles 6, 12,13,14,15,16 and 24 respectively.

³ GA Res 217A (III), adopted on 10 December 1948.

⁴ World Declaration on the Survival, Protection and Development of Children agreed to and adopted at the World Summit for Children, New York September 1990. For text of the Declaration see <http://www.unicef.org/wsc/index.htm>. See also Plan of Action for the Implementing of the World Declaration on the Survival, Protection and Development of Children at <http://www.unicef.org/wsc/plan.html>.

The CRC sets universal legal standards for the protection of children against neglect, abuse and exploitation as well as guaranteeing to them their basic human rights. This Convention has been ratified by almost all countries of the world.⁵ Ratification imports state responsibility to ensure for each child, without discrimination, the enjoyment of the rights stated in the Convention.

Despite these guarantees, children suffer all manner of abuse including neglect, cruelty and exploitation. They are denied the rights to childhood, dignity, and integrity, and many live under circumstances in which the fundamental right to life is under constant threat. While the rights of many children, as a group, are either violated or under serious threat, the girl-child's vulnerability is reinforced by her childhood and by her gender. She is discriminated against by her own family, community and by state policy and practices. She suffers different forms of abuse, including sexual abuse, simply because she is a girl.

This paper outlines state responsibility for the protection of the girl-child in Commonwealth jurisdictions, particularly with respect to commercial sexual exploitation. It also explores the role of the judiciary and attempts to make suggestions for greater protection and promotion of the rights of girls.

What is commercial sexual exploitation of girls?

Commercial sexual exploitation of the girl-child is a complex phenomenon that is increasingly prevalent within and between different countries. It involves the sexual exploitation of a girl in return for money or other valuable considerations to the girl, her parents or other third parties. Commercial sexual exploitation includes child prostitution, sex tourism, trafficking in girls for purposes of prostitution or forced marriages. It also includes child pornography.

Child prostitution is the act of engaging or offering the services of a child to perform sexual acts for money or other consideration.⁶ In sex tourism, the opportunity to engage in sex with children is offered to potential tourists as part of the tour package. It becomes part of the attractions which a country has to offer. Trafficking is the procurement and transportation of girls for purposes of prostitution, pornography or forced marriages. The procurement may or may not involve kidnapping, deceit of the

⁵ As of July 1998, the Convention on the Rights of the Child has been ratified by all States with the exception of the USA, which is signatory to the Convention, and Somalia, which has neither signed nor ratified. For up to date information on the status of signatories, ratification and accession to the Convention see <http://www.un.org/Depts/Treaty/> and <http://www.unicef.org/crc/status.htm>.

⁶ Provisional report prepared by Ofelia Calcetas-Santos, Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography, UN Doc A/50/456 (1995) [hereinafter *Calcetas-Santos report*].

girl or her parents, sale of the girls by their parents or guardian. The trafficking may be from one part of the country to another or across national borders.⁷ In the *Calcetas-Santos report* the definition of child pornography was found to include "the visual depiction of a child engaged in explicit sexual conduct, real or simulated, or the lewd exhibition of the genitals intended for the sexual gratification of the user, and involves the production, distribution and or use of such materials."⁸

Although there have not been systematic studies, there is increasing evidence that girls of all ages in many countries, both Commonwealth and non-Commonwealth, are subjected to these different forms of sexual exploitation.⁹ Many girls are at risk and the indications are that commercial sexual exploitation of girls is increasing at an alarming rate. The World Congress Against Commercial Sexual Exploitation of Children,¹⁰ held in Stockholm in 1996, acknowledges this trend and calls for urgent action at national, regional and international level to combat the practice.

Causes of commercial sexual exploitation

Just as the circumstances in which girls are victimised are many, so are the underlying causes of commercial sexual exploitation of the girls. Causal factors are many, complex and interrelated. They range from poverty, the promotion and idolisation of market forces and consumerism to armed conflicts and other disasters with the consequent displacement of people.

Poverty with its many manifestations has played a role in the sexual exploitation of the girl-child. Parents in Asia, Africa, Latin America and parts of Eastern Europe unable to send their children to school and at times to feed them are more willing to entrust their daughters to those who promise them lucrative jobs. The prospects of the girls contributing to the family income or even ensuring material security for the parents through their earnings is an incentive many parents cannot ignore. There are reported cases of parents actually selling their daughters or placing them into bondage until the repayment of loans. These girls are often trafficked or forced into

⁷ Background document to the World Congress Against Commercial Sexual Exploitation of Children at 4. World Congress Against Commercial Sexual Exploitation of Children (Stockholm, August 1996). For the Report of the Congress, the Declaration and the background papers prepared for it, see <http://www.childhub.ch/webpub/csechome>.

⁸ *Calcetas-Santos report*, supra note 5, at para 25.

⁹ See F Butegwa, "The Commercial Sexual Exploitation of the Girl-child: The African Perspective", Commonwealth Secretariat WAMM (96) (WHR) 3. See also Savitri Goonesekere, "The Commercial Sexual Exploitation of the Girl-child: The Asian Perspective", Commonwealth Secretariat WAMM (96) (WH) at 4.

¹⁰ *Supra* note 7.

prostitution by those to whom they are entrusted or other agencies and brothels. As Professor Savitri Goonesekere has put it:

"The economic context ... creates a predatory family and community environment in which some of the worst exploiters are parents, family members, relatives or friends. [Cultural values] become distorted, encouraging exploitation of children rather than providing them with family and community support and care."¹¹

The emergence of a market economy, liberalisation of trade and immigration regulation has played a role in the commercial sexual exploitation of girls. Tourists and so-called investors continue to move into developing economies. They bring much needed foreign currency but also create a market for commercial sex with young girls. Local tour agents procure girls as young as eight to meet the demand. In some countries, the tourists take advantage of the local customs of early marriage. To them it is just indulging in the exotic. To the girls it is exploitation and a violation of their fundamental rights.

Armed conflict has been and continues to be a characteristic feature of many developing countries. There are almost 20 countries in Africa alone currently experiencing internal armed conflict of varying intensity. Families have been displaced within the same countries or have crossed borders as refugees. The dislocation severs familial ties, social order and makes families incapable of supporting themselves. Young girls are separated from older family members or the latter are not able to exercise the kind of control and guidance over the girls that was possible under normal circumstances. Inability to meet basic requirements from meagre hand-outs or other resources, combined with the concentration of many people in a small area of the camp, combine to make many girls extremely vulnerable to commercial sexual exploitation.

The problem has been significantly aggravated by the HIV/AIDS pandemic. Statistics on HIV/AIDS indicate a high rate of infection among adults particularly in Africa. Men are resorting to young girls who are perceived as HIV-free. There is evidence that the age of the girls sought is becoming lower. Brothel operators, tour agents and operators of escort agencies are again cashing in on the demand by providing the young girls.

Underlying all these factors is the culture of according a low value and status to women and female children. Girls are seen as growing up for the purpose of sexually gratifying a man. That is ultimately seen as her destiny. She is of little other value to many families, rather she is often viewed as a drain on scarce family resources. Poverty and the other factors only serve as catalysts to parents, traffickers and pimps to force girls into sexually exploitative and abusive situations.

¹¹ Goonesekere, *supra* note 8, at 6.

Consequences of commercial sexual exploitation

Commercial sexual exploitation is a graphic demonstration of the violation of the fundamental human rights of the girl-child. It demonstrates the failure of states to follow through with the ideals stated in the Universal Declaration of Human Rights and the commitments made at the World Summit on Children. The negative impact on the children are profound and often permanent.

Due to repeated sexual intercourse with many different adult men, girl victims of forced prostitution often suffer rectal fissures, lesions, poor sphincter control and lacerated vaginas. Many have objects like bottles thrust into their vaginas or anus. They are beaten by clients and/or those under whose control they work. Commercially-exploited girls are exposed daily to the risk of infection with various sexually transmitted diseases, including HIV. Because their vaginas are still young, the risk of HIV infection is much higher than in adult women due to the lacerations which occur during intercourse.

Girls forced into prostitution or pornography are subjected to immense psychological trauma and abuse. They are socially ostracised even where parents and family played a part in their situation. Those trafficked or prostituted are traumatised by the slave-like conditions in which they work, and being away from home and family. Where parents and family sell or pressure the girl into sexually exploitative situations, she is tormented by a sense of betrayal and hopelessness. They also run the risk of pregnancy and all the physical and psychological trauma associated with pregnancy in their circumstances. Such girls tend to risk unsafe abortion and consequent death. In many affected countries abortion is illegal.

In addition to the physical and psychological consequences, sexually-exploited girls are often deprived of their earnings. These go to their employers, pimps, parents or towards the repayment of debts by family members or traffickers. Girls forced into prostitution in a foreign country are often deprived of their travel documents and risk prosecution and imprisonment as illegal aliens. These circumstances place the girls at the mercy of their exploiters. They cannot move or travel freely or give up prostitution or contact government family and service organisations for assistance. They are deprived of the opportunity of education and the right to childhood.

Applicable human rights standards

Commercial sexual exploitation of the girl is a human rights issue. There are many international human rights instruments guaranteeing the girl-child the rights which are so widely violated. Below is an outline of some of the standards.

Convention on the Rights of the Child

The CRC embodies the most comprehensive standards applicable to children. It recognises that every child has the inherent right to life and States undertake to ensure to the maximum extent the survival of the child.¹² Many forms of commercial sexual exploitation are life-threatening.

A child has the right not to be separated from her parents and States parties are under a duty to combat the illicit transfer and non-return of children abroad.¹³ Children have a right to privacy and to protection by the State against interference or attacks on that privacy, honour and reputation.¹⁴ Children have a right not to be subjected to violence, injury, abuse or exploitation including sexual abuse.¹⁵ The CRC also provides that the child has a right to the enjoyment of the highest attainable standard of health and to education. Article 32 guarantees the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

Article 34 of the CRC reads:

"States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes States parties shall in particular take all appropriate national bilateral and multilateral measures to prevent:

- (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) the exploitative use of children in prostitution or other unlawful sexual practices;
- (c) the exploitative use of children in pornographic performances and materials."

Children also have the right not to be sold or trafficked for any purpose or in any form and not to be subjected to any other form of exploitation.¹⁶ They have a right not to be subjected to torture or other cruel, inhuman or degrading treatment.¹⁷

¹² Article 6.

¹³ Article 11.

¹⁴ Article 16.

¹⁵ Article 19.

¹⁶ Articles 35 and 36, respectively.

¹⁷ Article 37.

State obligations under the Convention on the Rights of the Child

The obligations assumed by States parties to the CRC are extensive and specific. They explicitly bind states not only to refrain from violating the rights of the child but to ensure that private individuals and entities also respect them. States shall undertake all appropriate legislative administrative and other measures for the implementation of the rights recognised by the Convention.¹⁸ In the case of article 19 States shall take all appropriate measures to protect the child from violence, abuse and exploitation even when in the care of parent(s), legal guardian(s) or "any other person who has the care of the child."

Once a state has ratified the CRC, its provisions are binding on the state ratifying it. All Commonwealth countries have ratified the Convention.¹⁹

Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW Convention)²⁰ was adopted to reinforce the fundamental right to equality and freedom from discrimination on the basis of sex. States parties to the Convention undertake to eliminate discrimination in law and practice. The Convention provides that States parties shall take all appropriate measures including legislation to suppress all forms of traffic in women and exploitation of prostitution of women. This applies to the girl-child too. In a recent commentary on article 6, the Centre for Human Rights of the United Nations affirms that states which tolerate the existence of exploitative prostitution, girl-child prostitution and pornography and other slave-like practices are in clear violations of their obligations under the article.²¹ Many countries of the Commonwealth are parties to the CEDAW.²²

Other human rights instruments

Standards for the protection of the girl-child against commercial sexual exploitation can be found in other human rights instruments. For instance, the International

¹⁸ Article 4.

¹⁹ For details, see the sources noted *supra* note 5.

²⁰ GA Res 34/180, 1249 UNTS 13.

²¹ UN Human Rights Fact Sheet No 22 at 13.

²² For up to date information on the status of signatories, ratification and accession to the Convention on the Elimination of All Forms of Discrimination against Women see <http://www.un.org/womenwatch/daw/cedaw>.

Covenant on Civil and Political Rights (ICCPR)²³ guarantees the right to life, to personal security and integrity, to privacy, and to equal protection of the law and non-discrimination. The 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others²⁴ obliges States parties to prosecute and punish any person who traffics or exploits the prostitution of a girl or woman, or attempts to do so. Unfortunately, very few countries have ratified this Convention.²⁵ Anti-slavery conventions also apply.²⁶

In addition to the conventions, States have reaffirmed the need to protect women and the girl-child against violence and sexual exploitation in other instances. The World Conference on Human Rights, held in Vienna in 1993, reaffirmed that the human rights of women and of the girl-child are an inalienable integral and indivisible part of universal human rights. States unanimously declared that gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person and are to be eliminated.²⁷ The Beijing Platform for Action²⁸ with regard to trafficking and forced prostitution, calls on States to take appropriate measures to address the root factors, including external factors, that encourage trafficking in women and girls for prostitution and other forms of commercialised sex.

The United Nations Declaration on the Elimination of Violence against Women,²⁹ and *General Recommendation No 19* of the Committee on the Elimination of

²³ 999 UNTS 171, adopted on 16 December 1966, entered into force 23 March 1976.

²⁴ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 101 UNTS 30, adopted 21 March 1950, entered into force 25 July 1951.

²⁵ As of July 1998 there are 14 signatories and 72 State parties to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others 1950, see <http://www.un.org/Depts/treaties>.

²⁶ Slavery Convention, 60 UNTS 253, adopted 25 September 1926, entered into force 9 March 1927; Protocol Amending the Slavery Convention, 182 UNTS 51, adopted 7 December 1953, entered into force 7 December 1953; Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 266 UNTS 3, adopted 7 September 1956, entered into force 30 April 1957.

²⁷ Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, held in Vienna in June 1993, UN Doc A/CONF.157/24 (1993), 32 ILM 1661.

²⁸ Beijing Declaration and Platform for Action, in *Report of the Fourth World Conference on Women*, Beijing September 1995, UN Doc A/CONF.177/20 (17 October 1995), 35 ILM 401.

²⁹ GA Res 48/104 (1994), 1 IHRR 329. The text of the Declaration is also reproduced in Jane Connors and Andrew Byrnes, *Assessing the Status of Women: A Guide to Reporting under the Convention on the Elimination of All Forms of Discrimination against Women* (Commonwealth Secretariat and International Women's Rights Action Watch, 2nd ed 1996).

Commercial sexual exploitation of the girl-child

Discrimination Against Women (the CEDAW Committee)³⁰ rightfully consider sexual exploitation and trafficking as forms of violence against women and girls.

Measures taken at national level

Legislative measures

There is clearly a broad framework which Commonwealth countries can use as a basis for protecting the girl-child against commercial sexual exploitation. Individual States have in fact taken some steps to create a legal framework at national level, which would facilitate this protection. The penal laws of most countries criminalise trafficking and sexual exploitation of the girl-child. In Uganda for instance:

"Any person who:

- (a) procures or attempts to procure any girl or woman under the age of 21 years to have unlawful carnal connection, either in Uganda or elsewhere, with any person or persons; or
- (b) procures or attempts to procure any woman or girl to become either in Uganda or elsewhere a common prostitute; or
- (c) procures or attempt to procure any woman or girl to leave Uganda with intent that she may become an inmate of or frequent a brothel elsewhere;

is guilty of an offence and shall be liable to imprisonment for seven years."³¹

Similar provisions exist in Nigeria and Kenya and perhaps in other Commonwealth countries. Legislative provisions on defilement, statutory rape and living off the earnings of the prostitution of others can also be used to prosecute and punish offenders. Countries like Sri Lanka have amended penal laws to provide stiffer sentences and protect girls against forced prostitution.

³⁰ Committee on the Elimination of Discrimination against Women *General recommendation No 19* (Eleventh Session, 1992) (*Violence against Women*), UN Doc HRI/GEN/1/Rev. 3, at 128 (1997). For the text of CEDAW *General recommendations* see Connors and Byrnes, *supra* note 29. Also available at <http://www.un.org/womenwatch/daw/cedaw/committee.html>.

³¹ Penal Code Act (Cap 106), s 125.

Unfortunately, the existence of laws has not been of much benefit to girls who have been sexually exploited for commercial purposes. The provisions against trafficking in girls have not been enforced. A recent study in Kenya, Uganda, Nigeria and Mali did not refer to any reported court cases, despite the prevalence of trafficking in girls³².

Cultural notions of family honour often prevent victims and or their parents from reporting the offences. This is aggravated by the discriminatory practices of law enforcement officers who always tend to arrest the girl and women prostitutes and leave the male clients and pimps. The victims are thus further targeted for prosecution and harassment. The effect is to protect the violators of the girls' rights.

Another factor which makes laws ineffective is the fact that the victim is treated by police and courts as an accomplice whose evidence is not to be trusted. In addition, because the victim is a minor, her evidence is further discredited. Court procedures, rules of evidence and cross-examination all combine to reduce any prospect of a successful prosecution. The environment of open court, and the demeanour of defence counsel and judicial officials often are too frightening to a child. All these combine to contribute to the non-reporting of cases and the impunity with which girls continue to be sexually exploited for gain.

Special units for better surveillance

A few countries have set up special police units to patrol areas in which children are especially at risk of being sexually exploited for gain. These include brothels, massage parlours, and tourist or entertainment areas suspected of harbouring children for prostitution and pornography. These specially trained units, in some countries working closely with social workers, can be found in South Africa, Namibia, Australia, Kenya (e.g. beach management programme) and Malta to name but a few³³.

Provision of services

In some countries both government and non-governmental organisations offer support services to girls who are victims of commercial sexual exploitation. Such services range from counselling, medical treatment, legal aid and to residential homes. These services exist only in a few countries and their appropriateness needs to be assessed. In the majority of countries, however, commercial sexual exploitation

³² F Butegwa, "Trafficking in Women in Africa: A Regional Report", part of a global study coordinated by the Global Alliance Against Trafficking in Women (unpublished) (1996).

³³ See William Schurink et al, "Children involved in Prostitution: Exploring a Social Profession to Manage the Problem in South Africa", Human Sciences Research Council, South Africa (1995). See also Government of Malta, "Action on Violence Against Women", Commonwealth Secretariat Document WAMM (96) (WHR) MLT.

has hardly been acknowledged as a problem. Consequently, no appropriate services (and policies) have been developed. In one country a 13 year-old girl who was rescued from an incestuous ordeal with her father ended up in a remand home for juvenile suspected offenders. The government concerned had no facilities to cater for child victims of sexual abuse.

The role of the judiciary

The judiciary has an important role to play in the protection of the rights of the girl-child against commercial sexual exploitation. Where international human rights standards have been incorporated in national law, courts should apply them to cases of sexual exploitation.

Even in those cases where international standards are yet to be incorporated in domestic law, a court can be informed by these standards in interpreting existing laws. As long as a country has ratified a convention it is under a legal obligation to comply with its tenets. Courts and other relevant national bodies are under a corresponding obligation not to do anything which might lead the country to contravene its obligations. It is encouraging to note that the judiciary in a number of Commonwealth countries are indeed using international human rights standards as guides in the interpretation of domestic law. These are to be commended and emulated. Their experiences should also be documented and widely disseminated to other countries.³⁴

Rules of evidence and cross-examination should not be used to deny young complainants the justice which they seek. The practice of putting the complainant in sexual offences on trial needs to end and judges have the responsibility for ensuring this.

It is possible, in my view, for the court to protect both the defence's right to cross-examine witnesses and witnesses' right not to be intimidated and unduly harassed. This is crucial in cases where the girl-child is a victim of sexual abuse and exploitation. She will have already gone through a terrible ordeal and will be traumatised. The court-room environment becomes a further factor in the continuation of her torment. The judiciary must take the initiative in making courts and the entire proceedings victim-friendly. This will encourage victims of commercial sexual exploitation and other forms of sexual abuse to seek redress in our courts. Steps in this regard, taken by countries like Zimbabwe, are commendable and should be emulated.

³⁴ See A. Byrnes, J. Connors, Lum Bik (eds) *Advancing the Human Rights of Women: Using International Human Rights Standards in Domestic Litigation* (London, Commonwealth Secretariat, 1997).

The judiciary are already tackling the above problems in the criminal courts. Should the role of the judiciary only be invoked then? In other words, do the courts have power to assume jurisdiction over cases not "properly" before them? This is an important question which needs to be asked and debated openly, particularly in developing countries where levels of literacy are extremely low and the per capita ratio to practising lawyers is high. Lawyers are concentrated in the major urban centres and charge fees out of the reach of the majority of the population. Most people are not aware of their rights and are therefore unlikely to report cases. Police stations cater for large areas, are under-resourced and are manned by officers who are not gender-sensitive. Low pay and low morale also mean that officers can be corrupted easily by those who benefit from the sexual exploitation of girls.

Under these circumstances should a judge or magistrate assume jurisdiction over cases of commercial sexual exploitation reported, *inter alia*, in the newspapers, in a letter, communicated verbally? This Colloquium is an opportunity to reflect on this question. The experiences of India in this regard should be shared and given the attention they deserve. There are judges and magistrates in other countries, for example Uganda, who have taken the initiative to set up complaints desks to receive and deal with such cases.

The judiciary in most countries is dedicated and committed to administering justice. Naturally what is just in any particular situation is influenced greatly by the culture and value system in which the judicial officers were brought up. Unfortunately, many of those values regard women and girls as subordinate, as sex objects and as liable to distort reality in matters of sexual offences. Judgements from many jurisdictions carry statements indicative of this reality. Members of the judiciary therefore need to participate in available gender-sensitisation programmes. The Commonwealth Secretariat can also play a role in supplementing national efforts in this regard.

Conclusions

Commercial sexual exploitation of girl-child is a serious problem whose magnitude is increasing. It results in the violation of human rights guaranteed by international human rights law. While the problem is receiving attention in some Commonwealth countries, in others the issue remains under wraps with very low levels of awareness within government and the public. The Convention on the Rights of the Child, together with other human rights instruments, provides a comprehensive legal framework for the protection of the girl-child against commercial sexual exploitation. Most Commonwealth countries have ratified these instruments. There are strategies at national, regional and international levels to give effect to the standards and combat the exploitation while offering some support to victims. However, these efforts remain inadequate and not systematic. Further action is required along the following lines:

National level

1. States must ensure that national laws and practices are in conformity with their international obligations.
2. To facilitate the enforcement of these laws, States should be encouraged to establish special police units or retrain the police in investigating and prosecuting cases of commercial sexual exploitation of girls.
3. States should design and implement education campaigns to make the public more aware of the problem and to streamline reporting of suspected cases to appropriate officers.
4. The judiciary should rise to the challenge of efficient, just and humane handling of sexual offences. To facilitate this process judges and magistrates should participate in gender-sensitisation programmes or others which highlight the relevance of gender sensitivity in the administration of justice.
5. The problem of child pornography requires a special response, given the fact that Commonwealth countries have constitutional guarantees on freedom of speech and information dissemination. This is particularly so in light of developments in other jurisdictions where government attempts to combat pornography have been interpreted as muzzling the media and restricting the right to information. Research and public debate should be encouraged in order to develop proposals for legal reform which balance the right of the girl-child against sexual exploitation and the right to information and freedom of expression.³⁵
6. As Professor Gooneskere put it, unless the status of the girl-child is improved and it is recognised that discriminatory traditions must be eliminated, it will be impossible to address the root causes of the continued sexual exploitation of girls.³⁶ States must develop comprehensive strategies to bring about change in attitudes towards girls. Programmes which encourage parents to value all children and give them equal opportunities in life must be a priority concern for states.
7. States must consider themselves under an obligation to put in place an effective system for services to victims of commercial sexual exploitation. These include shelter, counselling, legal advice and representation. The involvement of girls who are or have been commercially exploited in the

³⁵ Gooneskere, *supra* note 8.

³⁶ *Ibid.*

design and implementation of the service may ensure that these services respond to the real needs, build trust and improve access. Non-governmental organisations offering similar services should be supported by governments.

Regional level

1. Commercial sexual exploitation often means that girls are forced to cross borders within a region. Even where no such crossing takes place, patterns of sexual exploitation of girls within a region tend to be similar. Countries within a region should therefore endeavour to collaborate in research, legal reform and in the development and implementation of other strategies.
2. Where regional human rights regimes exist, they provide a forum and mechanism for developing contextualised strategies for the further protection of the rights of the girl child.

International level

1. States which have entered reservations on ratification of the Convention on the Elimination of All Forms of Discrimination against Women should be encouraged to withdraw them. As indicated earlier, discrimination and exploitation of girls is inextricably linked to discrimination against women.
2. Governments should use the reporting procedures under the various human rights instruments as opportunities to review the progress made in the protection and promotion of the rights of the girl-child. State reports should, therefore, address commercial sexual exploitation of the girl-child, among other situations.
3. There is a need for greater co-operation and co-ordination in respect of the rights of the girl-child among various human rights mechanisms, particularly the CEDAW Committee; the Human Rights Committee; the Committee on the Rights of the Child; the Special Rapporteur on the Sale of Children, Child Prostitution and Pornography, and the Special Rapporteur on Violence against Women, its causes and consequences. Country-specific rapporteurs should also be encouraged to pay attention to the issue of commercial sexual exploitation in the countries of their mandate.
4. Inter-governmental and non-governmental organisations with the expertise and resources should assist government machineries, including the police and the judiciary, in building capacities to detect, investigate and handle cases of commercial sexual exploitation more effectively.

Protecting and Promoting the Rights of the Girl-Child in Caribbean Jurisdictions

*Denise Noel-DeBique**

Introduction

The United Nations Fourth World Conference on Women held in Beijing in 1995 established a global agenda for girls' empowerment and gender equity.¹ This reaffirmed States' commitment to the full implementation of the human rights and freedoms of the girl-child as an inalienable, integral and indivisible part of all human rights and freedoms. Acting from this, Commonwealth Caribbean Community (CARICOM) countries have agreed to give urgent attention to the protection of the rights of children. In particular, there is increased concern about the psycho-social and physical risks of girl-children to exploitation, abuse and abandonment.²

Following ratification of the Convention on the Rights of the Child (the CRC)³ and the Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW Convention)⁴ by many countries of the Commonwealth Caribbean, there has been significant rationalising of laws affecting children in the region, influenced by specific articles of these Conventions.

Government is given the primary responsibility to implement the provisions of the Conventions through the reorientation of policy and administrative measures. These measures aim to correct the dysfunctions that perpetuate the maltreatment of children. Gender mainstreaming has been explicitly recognised and endorsed by CARICOM countries as a fundamental strategy to enable national institutions to fulfill these measures effectively and to ensure that before decisions are taken on issues concerning children and youths, an analysis is made of their impact on both

* Director, Women's Affairs Division, Ministry of Community Development, Culture and Women's Affairs, Trinidad and Tobago.

¹ Beijing Declaration and Platform for Action, in *Report of the Fourth World Conference on Women*, Beijing September 1995, UN Doc A/CONF.177/20 (17 October 1995), 35 ILM 401.

² Priority areas of concern expressed at The Caribbean Convention on the Rights of the Child Conference in Belize, 1996.

³ GA Res 44/25, UN Doc A/44/49, at 166 (1989), adopted on 20 November 1989, entered into force 2 September 1990. For up-to-date information on signatories, ratification and accession to the Convention see <http://www.un.org/Depts/Treaty/> or <http://www.unicef.org/crc/status.htm>.

⁴ 1249 UNTS 13, adopted 1 March 1980, entered into force 3 September 1981. For up to date information on signatories, ratification and accession to the Convention see also <http://www.un.org/womenwatch/daw/cedaw>.

girls and boys. Some CARICOM countries have already begun to strengthen their institutional capacity in gender analysis and gender planning. This process requires dynamic and sustainable interaction with all economic and social sectors, and is accompanied by an agenda for social legal and administrative reform.⁵

This paper sets out to:

- discuss the plight of the girl-child in the Commonwealth Caribbean;
- explore how international human rights standards can be used to promote and protect the rights of the girl-child;
- review measures to implement international human rights, particularly in relation to the CEDAW Convention and the CRC;
- indicate the strategies that can be used by national courts to promote and protect the rights of girl-children, suggesting the barriers that may be encountered in domestic litigation.

Methodology

This paper has been developed from a literature review which included the national reports on women produced for the United Nations Fourth World Conference on Women, reports of regional meetings on development issues concerning women and girls, and on the basis of information received from field-workers across the region.

The conceptual standpoint of the paper is that mainstreaming gender rights is critical to the empowerment of girls and women and to the consolidation of democracy.

The situation of the girl-child in the Commonwealth Caribbean

Women's primary role across the Caribbean has been defined in similar paradoxical ways, reinforced by their socialisation, dominant gender-stereotypes, and by the demands placed on them by rapidly changing political, cultural and economic factors. They are nurturers of families and, increasingly, they also provide the livelihoods to meet the family's basic needs. This is indicative of the growing potential for gender equality in the Caribbean. National reports on the situation of women, prepared for the United Nations Fourth World Conference on Women, indicate areas of sharp differentiation between women and men. Women

⁵ Training in gender and development has been provided for senior government employees in Jamaica, Barbados, St Kitts and Nevis, and Trinidad and Tobago.

on average work longer hours than men, are paid less, have less representation in government and municipal bodies, but are over-represented among the poor.

The experience of girls is fraught with equivalent contradictions. In many countries of the Commonwealth Caribbean, girls' school attendance is equal to boys. While data show that they often exceed boys academically, this pattern has not translated into equal opportunities for them in the workplace or in opportunity for employment in later years.⁶ As governments in the region integrate gender analysis into their development initiatives, there is growing awareness of the consequences of gender discrimination on the lives of girls in relation to increasing poverty, and the depletion of social services, falling household incomes and occupational segregation in the formal and informal sectors.

Socio-economic situation

Because of the relatively small land size and small populations of Caribbean countries, the main socio-economic realities relate to their vulnerability and marginalisation. Small land size and small populations restrict resource diversification and development. There has been a high dependence on external trade, limited access to international capital markets and insufficient human resources to make effective use of markets.

Shifts in the global market since the beginning of this decade have therefore had a negative effect on the regional economic climate. World trade adjustments have brought increased competition and erosion of preferential market access. These have contributed to a decline in GDP growth and increased commodity dependence in some of the smaller territories between 1990 and 1994. These countries have therefore been vulnerable to slight shifts in the major sectors in their economies.

Economic development has facilitated an increase in private enterprise and foreign investment. There has been an accompanying decline in state intervention in the social sector in many countries. In Guyana, for example, reduced social investment has resulted in a depreciation in the quality and scope of the health and educational services. According to national statistical reports, access to piped water has declined from 33.1% coverage in 1981 to 20.6% in 1991.⁷ According to UNICEF, between 1991 and 1994 an estimated 31% of the population had limited access to

⁶ *Developing Profiles of Women and Girls in Latin America and the Caribbean* (UNICEF, Colombia, 1996).

⁷ *1995 Digest of Selected Demographic & Social Indicators 1960-1994 for CDCC Member Countries* (UNECLAC/CDCC, Demography Unit, Port of Spain).

safe water.⁸ This situation impacts upon the survival of the children, especially those who live in poor communities.

Growing levels of poverty in the region have had a critical effect on the ability of governments to strengthen the economic and social protection of women and children. The pressure on poor women is manifested in diverse ways. Within households the domestic workload of women and girls has increased. The vulnerability of girls to abuse, pregnancy and HIV/AIDS has also markedly increased. Newspapers report a growing commercial sex trade of girls linked to an expanding sex tourism industry in the region, and to poverty as well.

It is also becoming difficult within communities, to find solutions to the problems associated with the low status of women and children such as domestic violence and responsibilities for child care. In some countries more than 40% of households are headed by women (Table 1). There is a highly significant connection between poverty and female-headed households.⁹ This is most marked among rural and indigenous families headed by women. In the national reports on the situation of women in Guyana and Dominica the factors which discriminate against indigenous women are described as: their isolation from economic opportunity, illiteracy and cultural traditions.¹⁰

Table 1
Heads of Households by Sex
1980/1981 and 1990/1991 Census

Country	1980/81		1990/91	
	Female	Male	Female	Male
Barbados	43.9	56.1	43.5	56.5
Belize	22.3	77.7	21.8	78.2
British Virgin Is	25.4	74.6	28.7	71.3
Dominica	37.7	62.3	36.9	63.1
Grenada	45.2	54.8	42.7	57.3
Guyana	24.4	75.6	28.5	71.5
Montserrat	42.1	57.9	39.6	60.4
St Lucia	38.8	61.2	40.4	59.6
St Vincent & the Grenadines	42.4	57.6	39.3	60.7
Trinidad & Tobago	25.3	74.7	28.0	72.0

Source: National Census Reports 1980/1981 and 1990/1991

⁸ *The Progress of Nations* (UNICEF, New York, 1994).

⁹ *Supra* note 6, at 23.

¹⁰ *Id.*

Employment

Recent regional statistical trends highlight unemployment among youth, particularly among young women, as being higher than the national averages. In Jamaica in 1993, female unemployment was double that of male unemployment in nearly every age group.¹¹ There is increasing competition amongst young women for low-income jobs in the services sector, as revealed by labour force statistics.

Even with the acute economic situation, the participation rates of young women in the labour force are increasing in many countries. Failure to provide marketable skills and employment to the young, and to keep minimum wages apace with the prices for essential goods has resulted in many women having multiple jobs, many of which are in low-income sectors. This phenomenon is also reflective of the status of legislation on minimum wages in some countries, where there is no regulation or protection for workers offering cheap labour. The lives of girls are particularly burdened, since, in order to adjust to the demands of the work environment, women's responsibilities for domestic tasks are passed on to older children, mostly to the girl-children.

Child labour is fast becoming a growing social issue. The situation has not yet been quantified, though reports are that children are employed as a form of cheap labour in both the formal and informal sectors of the economy.¹² Many children work extra hours in the family business or in small urban or agricultural enterprises to support their own economic needs and those of the households. It is obvious that many children, as wage-earners, also combine work with study.

Children are also removed from school and put to work to support the household.¹³ As noted earlier, the implications of this are the risks to girl children to labour and sexual exploitation. In Trinidad and Tobago, Henry and Dumas reported on children's involvement in subsistence production and marketing of agricultural produce, on the streets during school hours.¹⁴ This situation is aggravated by a lack of places in secondary school after the common entrance examination.

¹¹ "Labour Force Survey, 1994" *Country Summaries of Girls and Women in Latin America and the Caribbean* (UNICEF, Colombia, 1996) at 38.

¹² *Regional Plan of Action on Gender and Development to the Year 2000* (CARICOM Secretariat). For information on the Caribbean Community (CARICOM), see <http://www.caricom.org>.

¹³ *Supra* note 6, at 23.

¹⁴ Henry and Dumas, *Situation Analysis of Women and Children in Trinidad and Tobago* (UNICEF, Port of Spain, 1990).

Fertility

Adolescent fertility rates in some countries, such as St Vincent and the Grenadines, and Grenada are unacceptably high. This situation is exacerbated by the relative high proportions of young people and the age-dependence structure of populations. The non-governmental organisations (NGOs), particularly the Family Planning Associations, have engaged in innovative approaches with adolescents to provide information and education and in promoting their sexual and reproductive rights.¹⁵ The extent of the influence of these approaches is dependent on their capacity and ability to counter strong cultural attitudes and values relating to fertility and male dominance.¹⁶ In countries such as Jamaica, it has been reported that women are pressurised into having children. They are called mules if they do not bear children. However, the advocacy work of NGOs serves to institutionalise standards in respect of gender equality, male responsibility and the reproductive rights of adolescent girls and boys.

Available adolescent fertility data, however, must be noted and challenged. This data is not yet disaggregated and, in particular jurisdictions, may lead to some confusion over the true situation. In Guyana, for example, where the legal age of consent is the lowest in the region, sexual relations between an adult male and a girl of 12 years are not unlawful.¹⁷ In Trinidad and Tobago, marriage laws allow minors to enter into long-term marriage commitments with the potential for early pregnancy.¹⁸ Overall, however, teenage pregnancy is discussed when it takes place outside of marriage and is dominated by the social and economic consequences of early motherhood. The pregnant girl is likely to be cut off from sources of adequate support and information. As such, teenage pregnancy is discussed in relation to the transmission of poverty, the abuse of early sexual activity and exposure, and girls' limited access to care and support.

Some governments, supported by NGOs and international donor agencies, are targeting resources directly to teen-mothers. In Jamaica, there have been policy shifts to facilitate the child-rearing activities of teen-mothers and the continued education of pregnant teens. New approaches, emerging largely among the NGOs,

¹⁵ *Annual Report of the Family Planning Association Trinidad and Tobago*, 1996.

¹⁶ *Supra* note 6, at 19.

¹⁷ *Supra* note 6, at 32.

¹⁸ In Trinidad and Tobago, three different situations apply as follows:

- Under the Hindu Marriage Act (Chapter 45:03) a girl may marry at 14 and a boy at 18.
- Under the Muslim Marriage and Divorce Act (Chapter 45:02), a girl may marry at 12 and a boy at 16.
- Under common law, the ages are 12 years for a girl and 14 years for a boy.

call for male reproductive health services and for the rights of fathers to participate in the responsibility of child-rearing.¹⁹

The protection issues for girls, which emerge within the fertility discourse, relate to their sexuality. These issues are often not always carefully determined and, even where they have been, require much advocacy and political support to impact on legal, policy and administrative reform in this area. Indeed, there may be reason to believe that family law itself in many countries perpetuates deep gender biases which relate to the sexuality of girls and women.²⁰ It is therefore not surprising to find that, despite regional consensus following international conferences, the discourse on fertility in the region is still quite limited in its articulation of the reproductive and sexual rights of adolescents to protection and information. A major task of governments, through the gender-mainstreaming process in the region, is the creation of an enabling environment for the promotion of the sexual and reproductive rights of women and girls.²¹

Migration

Over the last decades, demographic shifts in the population of some countries have largely been as a result of social and economic stresses within and outside the countries.²² In-migration to the Bahamas and Belize has been as a result of occurrences in neighbouring countries.²³ Among the OECS countries, St Kitts and Nevis, Anguilla and Antigua and Barbuda have also had very high levels of immigration. By and large, the percentage of women migrating is higher than men.

For receiving countries this has placed strain on the resources of their social sectors, with shortfalls particularly in respect of children of migrating families.

¹⁹ *Vision 2000*, the strategic plan of the International Planned Parenthood Federation, has directed the activities of family planning services among member associations towards increasing men's commitment and joint responsibility in all areas of sexual and reproductive health. In Trinidad and Tobago, the Family Planning Association provides a clinic, *For Men Only*, with accompanying support to men with low incomes, promoting a positive role for men to play within the sexual and reproductive health care.

²⁰ Evidence of bias is found where pregnant girls are denied the opportunity to complete their education in some countries.

²¹ *Supra* note 12.

²² *Human Development Report* (United Nations Development Programme, 1996).

²³ The Government of the Commonwealth of the Bahamas, upon signing and ratifying the Convention on the Rights of the Child on 30 October 1990 and 20 February 1991 respectively, "reserved the right not to apply the provisions of article 2 of the Convention, in so far as those provisions relate to conferment of citizenship upon a child, having regard to the provisions of the Constitution of that country". For text of the Convention on the Rights of the Child including reservations see <http://www.un.org/Depts/Treaty> and <http://www.unicef.org>.

Social workers describe situations where migrant parents leave children alone, usually in the care of a girl-child, placing both her and the other children of the family at a great risk. Additionally, children have been found migrating from rural areas to cities in search of employment to escape dysfunction and abuse in families.²⁴ These situations have been found to disrupt family life with negative consequences on the development of children. It is important to stress that they also increase the vulnerability of girls in these societies.

Violence, abuse and exploitation

Violation of the human rights of girl-children remains quiet and undetermined, emerging as incest, sexual and labour exploitation and sometimes occurring within family situations. The incidence of abused children is growing rapidly despite growing public awareness of the problem. Indeed in some countries of the Caribbean there has been unparalleled levels of violence against women and girls, particularly in domestic situations.

Even in the absence of accurate data, it is reasonable to conclude from the reports of countries, that a higher number of girls are neglected and abused within their families. While the situation of abused children is a matter of growing social concern, in many countries there is no central registry. This limits efforts to assess the historical trend in abandonment and abuse cases. Inadequate monitoring systems also affect the ability to follow up cases. There are limited facilities to treat or rescue abandoned or abused children. In some countries there is a movement away from institutionalised care because of the cost associated with providing girls and boys with the quality of care they need.

While there is a growing problem of street children, boys rather than girls are more prevalent in this situation. Indications are that children may be sold illicitly across borders as part of a sex trade.²⁵ As noted earlier, sex tourism is a significant aspect of the growth of the tourism industry. In Trinidad and Tobago, older girls are engaged as erotic dancers and provide escort services. Police reports reveal that some of these girls have come from other countries, notably Guyana. It is believed that girls become involved in order to survive the effects of poverty, since their earnings supply their basic needs for shelter and education. Models of good practice are emerging among NGOs who operate programmes of education, economic empowerment and personal development, especially among disadvantaged sectors.

²⁴ Bishop and Sharpe, *Report of Children in Difficult Circumstances: Trinidad and Tobago* (UNICEF, 1993).

²⁵ Statement by the Minister of Social Development of Trinidad and Tobago to the Parliament in June 1996.

National institutions

In order to achieve a comprehensive approach to improving the status of women and girls, many governments have set up special departments to deal with children and women. These act as administrative mechanisms with analytical, co-ordinating and organising functions. Over the past decade, the machinery for women has had a positive influence on the growth of public interest in women's and gender issues.

Forde noted that there are genuine efforts to rethink and reform the legal rules in respect of the treatment of children.²⁶ However, given the commitments made at the United Nations Fourth World Conference on Women to the empowerment of women and children, the situation has become more complicated and urgent in respect of the gender implications of current approaches. Is there gender bias within legal systems, administrative systems and the legal culture which may perpetuate inequity against girls in the region? The question applies in many circumstances, two of which are of note. First, at an institutional level where the mandate and plan of action of the institution are not gender-sensitive or essentially, not based on non-discrimination. Second, where the legal culture itself is resistant to change, and where, even though it may be working with a marginalised population group, it does not see itself as representing the interests of such people.

Human rights standards in the protection and promotion of the rights of the girl-child in the Commonwealth Caribbean

There are a number of ways in which human rights standards have been used to set guidelines to legal systems and national courts for the promotion of non-discrimination in many aspects of women's lives across the life-cycle. Some of these are outlined as follows:

- The Convention on the Rights of the Child (CRC), adopted by the United Nations General Assembly in 1989 is a political programme and legal instrument which seeks to preserve and protect the human rights of children below the age of 18 years. As with the CEDAW Convention, adopted in 1979 to address gender equality issues, the CRC further clarifies the nature of discrimination in respect of abuse and violence. Its articles contain particularly innovative provisions in respect to discrimination of girls and it addresses the concerns of rural girls.

²⁶ Norma Monica Forde, "The Convention on the Rights of the Child and Legal Reform: The Caribbean Experience" in *The Report of the Caribbean Conference on the Rights of the Child: Meeting the Post Ratification Challenge*, UNICEF Workshop, Belize, 7-10 October 1996.

- Convention No 138 of the International Labour Organisation encourages States to set a minimum age of employment.²⁷ This Convention, presently being considered by CARICOM Ministers of Labour sets a framework for establishing priorities in assessing and improving the situation of working children in the region.
- The Inter-American Convention on the Protection, Punishment and Eradication of Violence against Women, an instrument developed by the Organisation of American States,²⁸ has been ratified by many regional States. The articles of this Convention clearly outline the obligations of States in relation to the protection of women against violence.

Upon adoption and ratification of any or all of these conventions there has been subsequent development of law and the legal systems in Commonwealth Caribbean countries in respect of the provision of protection to women and children. This strategy has been a prerequisite for addressing more sustained challenges to the rights of girls. However, the fragile socio-economic environment of the Caribbean is a major issue that impacts on the sustainability of current measures. It has also been observed that despite the relative gains in basic rights (for example, in food, shelter and education) poverty still represents, in no small way, a very real threat to the loss of those rights, as well as of their other rights to development and participation, for girls in particular.

Though there is regional consensus that women and girls remain vulnerable to intolerable levels of discrimination and violence, the scope and nature of the discrimination against the girl-child remains relatively unexplored. The Beijing Platform for Action recognises the multifaceted nature of gender-based discrimination of girls' globally. It provides an integrated human rights, gender-based framework for analysis and implementation of plans to address national priorities. In respect of the girl-child, the Platform provides new opportunities for the implementation of human rights standards in the creation of action against the persistent structures, attitudes and customs that negate the full protection, participation and development of girls and boys in the society.²⁹

²⁷ Convention concerning Minimum Age for Admission to Employment (ILO Convention No 1383, Cmdd 5829, adopted 26 June 1973, entered into force 19 June 1976.

²⁸ Inter-American Convention on the Protection, Punishment and Eradication of Violence against Women 1994, (Convention of Belém do Para) 33 ILM 1534. For the text of this Convention see the Organisation of American States' website at <http://www.oas.org>.

²⁹ See Platform for Action, *supra* note 1, Section L The Girl Child, paragraphs 259–285, available at <http://www.un.org/womenwatch/daw/beijing/platform/girl.htm>.

National initiatives

The CEDAW Convention and CRC impose on States parties obligations to undertake appropriate measures, both legal and administrative, to ensure the implementation of the rights recognised in the treaties. In this regard, States have established and strengthened appropriate institutions, enacted and upgraded relevant legislation and developed and implemented programmes aimed at ensuring the protection of rights of girls.

The institutional framework

Countries have developed implementation strategies based on collaboration between governments and the non-governmental sector. These plans include strategies for legal reform, policy development, education and training for values and attitudinal change, institutionalised care and rehabilitation and advocacy.

Legal measures

The first step in the implementation of the CEDAW and the CRC is the harmonisation of national laws. Legal reform is considered as establishing the foundation for ensuring the rights of children. The legal reform process however is a lengthy one. All countries were able to identify areas where harmonising is necessary. From a review of the Situational Analyses of Children and their Families in the region, major areas identified for reform include:

"Age limits in respect of marriage, sexual consent, employment and compulsory education, age of criminal responsibility, maintenance, domestic violence, sexual offences, foster care, and juveniles in conflict with the law."

The following table is the current status, as of April 1997, of legal reform in respect of children in some of the Commonwealth Caribbean countries.

Trinidad and Tobago and Jamaica have assessed existing legislation within the articles of the CRC and suitable legislation drafted.³⁰ In Trinidad and Tobago there

³⁰ See:

Antigua and Barbuda, Status of Children Act 1980,
Barbados, Status of Child Reform; Act 1979,
Belize, Status of Child Act 1980,
Grenada, Status of Children Act 1991,
Guyana, Children Born out of Wedlock Removal Discrimination Act 1989,
Jamaica, Status of Children Act 1976,
St Kitts and Nevis, Status of Children Act 1983,
St Vincent and The Grenadines, Status of Children Act 1980,
Trinidad and Tobago, Status of Children Act 1981.

Caribbean Judicial Colloquium on Women's Rights

Country	Legal Reform	Comments in respect of the provision of protection for girls
Barbados	Juvenile Offenders Act Protection of Children's Act 1990 Sexual Offences Act 1992 Domestic Violence (Protection Order) Act 1992	Legal aid services extended to minors. Protection from child pornography. Court can remove perpetrator from home.
Belize	Children's Act Juvenile Offender Act Criminal Code	Under review
Dominica	Sexual Offences Act	In-camera hearings Restriction on press
Grenada	Status of Child Act (1991) Maintenance Amendment Act No 54 Adoption Amendment Act No 17 Care and Protection at Risk Family Court Act	Removes discrimination of illegitimate children Amount increased Established Adoption Board
Guyana	Adoption Foster care Maintenance Infancy Equality of rights Criminal Law Juvenile offenders Employment of children Whipping of children Education Age limits	Intended areas of reform
Jamaica	Child Abuse Adoption Child Care Disabled Children education Sexual Exploitation Juvenile Justice	Under review
St Vincent	Family Court Criminal Code	Age limit raised to 18 for life imprisonment and death sentence
Trinidad and Tobago	Attachment of Earnings Act Child Care Services Bill 1992 The Children (Amendment) Act 1992	

have been further amendments to the Children's Act to provide the court with the necessary power to make a care order, empowering social workers to remove a child to a place of safety.³¹ In respect of children's universal right to protection, some Commonwealth countries have enacted status of children legislation to abolish any rule of law which excludes any children from claiming benefits from their parents and permits parents to enjoy relationships with their children.

In relation to the sexual exploitation of children and child prostitution, articles 34, 35 and 36 of the CRC urge States parties towards national, multilateral and bilateral arrangements to protect children. In accordance with article 34 of the CRC, some States have enacted a Sexual Offences Act based on the CARICOM model legislation.³²

A number of countries have instituted a family court system to ensure the well-being of families and children and provide effective and efficient justice for related problems.

Because of prevailing gender stereotypes and the low status of girls in families, the provision of financial support necessary girls to gain access to education and training is often resisted. In some jurisdictions legislation regarding the attachment of earnings and garnishments has been introduced. In the case of Trinidad and Tobago, the Attachments of Earnings Act 1988 enables persons entitled to maintenance orders to obtain an attachment order from the High Court or the Magistrate's Court which would direct the debtor's employers to deduct a special amount from his or her earnings. Some women's organisations have expressed concern over circumstances. They advocate less harsh measures which could reduce the levels of violence which is inflicted by men on women who bring them before the courts for maintenance of children.

Education and training

In compliance with article 28 (1)(a) of the CRC and article 10 of the CEDAW Convention, most countries offer compulsory co-education till the end of primary school.³³ There is still concern across the region about placement after the common entrance examination. The general situation is that a significant percentage of students are not given the opportunity of secondary level education. In Grenada, though an equal number of boys and girls enrol in primary school every year, there is a high attrition rate among the boys, giving an impression that girls are achieving better grades as a result of the examination. Initiatives by NGOs provide

³¹ Children (Amendment) Act 1992.

³² Commonwealth Secretariat and CARICOM Secretariat, Commonwealth Fund for Technical Cooperation, *CARICOM model legislation with regard to sexual offences*.

³³ Education to this level is not mandatory in St. Vincent and the Grenadines: UNICEF Caribbean Office, July 1996.

education to support those children who have not been placed and for those who have dropped out of the primary school system in poor communities.

St Kitts and Nevis introduced the principle of free secondary education for all. This was accompanied by the abolition of the common entrance examination and the democratisation of secondary education. The government also supplies textbooks to all, regardless of parental ability to pay.

Articles 28(1)(b) and (d) and article (9) of the CRC broaden the scope of education to include the right to vocational education. Article 10 of the CEDAW Convention refers to the elimination of any stereotype concept for girls and women in curricula. Technical and vocational education is conducted within most education systems and in some countries this is extended to a system of remaining open to older teenagers. Vocational education in the Eastern Caribbean has been linked to the provision of an adequate workforce. While girls have done well in the subjects to which they have been exposed, there are efforts to revise these work programmes to ensure they can enter non-traditional areas of employment. In most territories, there have been adjustments in the curricula to redress the gender imbalance and link girls to the new demands of the construction and tourism sectors.

Article 29 of the CRC speaks of education that includes respect for human rights. In the Bahamas, in particular, programmes target at risk populations. In Guyana, a rights-based curriculum has been introduced in the school curriculum and community education system with the support of NGOs such as Amnesty International of Guyana. There are other collaborative programmes across the region between governments and NGOs which target girls as juveniles in institutions and pregnant teenagers, offering them child care facilities and an opportunity to continue their education. In accordance with the provisions of articles 5 and 18 of the CRC and article 5(b) of the CEDAW Convention, which recognise the common responsibility of men and women in the upbringing and development of their children, programmes in Grenada and Jamaica also target the partners of these girls, to encourage them to share in the responsibilities of child-rearing.

There is still an imbalance in sports education for girls in the formal system, no doubt linked to the lack of facilities and trainers for young women. Redressing this imbalance is supported by NGOs and sporting clubs.

Other social programmes under articles 19, 34 and 36 of the Convention on the Rights of the Child

Social mobilisation and advocacy are critical to support legal initiatives on the protection of children. Through the support of the private sector, Jamaica's Coalition on the Rights of the Child has set up a telephone counselling and rehabilitative service now accessible to abused children and their families,

launched a national initiative for street children service and developed a national policy on children.

The provisions of article 32 of the CRC are to protect children from economic exploitation. The CARICOM Regional Plan of Action on Gender refers to the growing problem of child domestic labour and other forms of child labour. This initiative resulted from public consultations across the region prior to the Beijing Conference and also because of the growing awareness within the region of unwaged work carried out by women and the economic exploitation of children. Trinidad and Tobago has enacted legislation on unwaged work by women and men. It has been suggested that this model be adopted by other countries in the region as a legal position on quantifying and recognising the work that children do. The purpose of the legislation is not simply to develop indicators but ultimately to assist with positive policy outcomes in the public and private sectors for those who are most affected.

The Juvenile Liaison Scheme in Barbados offers family counselling and conducts public education campaigns. It also supports Big Brother and Big Sister Projects in its thrust towards prevention and rehabilitation.

In Trinidad and Tobago, priority areas for programming include maternal and child health and family planning, basic education and literacy, children in especially difficult circumstances, and education. Parenting education is supported through the work of Servol, an NGO, which conducts an outreach programme into the rural areas.

The Bahamas Child Welfare Services investigates children at risk. Care is provided through counselling, alternative care by relatives, foster care, adoption and institutional care. In relation to the provisions of articles 20 and 22 of the CRC, the children of undocumented migrants are accorded equal care and support. Jamaica has introduced community-based care to support its institutionalised care programme for children. This may assist in removing some of the gender biases against girls which are finely entrenched in institutionalised care, and which impact on their re-entry into society.

The role of national courts

In some countries over the last decade, there has been a positive shift in the legal system to advance the status of women towards women's rights. However, as the national reports on women indicate, legal reform has not kept pace with the increasing vulnerability of women and girls to exploitation, discrimination and violence.

It is evident that the protection of girls in families is not understood from a rights perspective. There is still a pervasive belief that the violence perpetrated on them

and the sexual exploitation they experience is due to a sense of possession and property which men feel for their family. This is translated into feelings of great insecurity when there is the threat of loss of a job or relationship.³⁴

The multi-cultural character of many of our Commonwealth Caribbean societies has also made it difficult to improve legislation and the enforcement machinery in response to the emerging critical concerns of girls in Caribbean societies. Indeed, many girls face revictimisation in their attempts to seek justice from the courts. Newspaper reports of judicial rulings in cases of rape, incest and other forms of violence against girls in certain jurisdictions indicate that they promote prejudicial unequal gender relations.

Girls are particularly vulnerable to re-victimisation within the court system because of the lack of consistency around issues such as the minimum age for marriage and employment. Indeed in the Caribbean, as household wages shrink there is growing pressure on girls to work inside and outside the family unit from an early age. Approaches are needed to deal with premature employment and the establishment of good personnel practices within the private sector to protect working children. However, other approaches will be necessary within the informal sector of the economy and in family enterprises. Difficulties with the latter may arise because of deeply entrenched negative cultural attitudes towards women in society, a lack of respect for their integrity and for the rights of minors over their bodies and sexuality. Reference is made here as to how culture can work against the reform process. The law in relation to the minimum permissible age of marriage in Trinidad and Tobago is governed by both statutory and common law.³⁵ Parental consent is required for all marriages of minors except in respect of a Hindu girl who has attained the age of 16 years. Attempts to adjust this minimum age through public consultations have failed.

Practitioners within the courts and legal advisory services reporting on the response of girls and women to their applications for justice, particularly in situations of violence, tell of the inadequacies and gaps occurring in national courts. Other burning problems relate to:

- the costs of litigation and girls' access to legal aid in criminal matters;

³⁴ Stephanie Daly, *Child and Family Law: Trinidad and Tobago* (1992) states that there should be uniformity in relation to the obligations of the State and others to ensure the care of children. She also states that while it is appropriate to have varied age limits within the category of "minors" in relation to different matters, these age limits should not fail to give protection to persons still within the age group. She cites the Children Act (Chapter 46:01) which provides for children and young persons up to the age of 16 to be taken into care and custody granted to a fit person. The Summary Court Act (Chapter 4:20) only offers protection to a person up to the age of 14 years, leaving those who are 16 and 17 unprotected.

³⁵ *Supra* note 18.

The girl-child in Caribbean jurisdictions

- legal provisions which cannot be challenged;³⁶
- lack of a consistent legal approach;
- legal processes that do not prioritise juvenile matters;
- lack of empathy and understanding by court personnel;
- lack of recognition by practitioners of key legal and social changes;
- inadequate systems for monitoring and evaluation;
- lack of training of personnel to work with child witnesses; and
- intimidation and stress while giving evidence.

There are fundamental issues which stand in the way the court is able to use international human rights standards in domestic litigation in different jurisdictions.

1. There are preconceived notions about the social identity of girls and women, the work they do and their decision-making power in their families and communities in the Caribbean. These notions impede policy development, legal reform and acceptance of girls' rights.
2. A lack of an enabling environment for the development of adequate basic instruments, such as minimum age legislation, child labour legislation and compulsory education legislation with appropriate enforcement. These include:
 - Resources: reduced expenditure in social sector spending, reduced size of the public service with an impact on remuneration and the training of professionals;
 - Advocacy: weakened trade union movement; and
 - Poverty: facilitating early labour market entry, the demand for cheap labour, early child bearing, single motherhood and girl domestic workers.³⁷
3. Key economic and social issues which impact directly on the strategies of national courts to promote the rights of the girl-child:
 - increasing fragility of the family structure and its ability to assist with supervision mandated by the court;

³⁶ This is found to be relevant to the inconsistencies within the law on children regarding different definitions and of age.

³⁷ It may be opportune to consider the conclusions of the Caribbean Conference on the Rights of the Child held in Belize in 1966, which identified the following areas as critical areas of emphasis for the promotion and protection of rights of children around the Caribbean: restrictions on governments budgets; inadequate legislation; multifaceted approaches to child protection; increased measures for appropriate family care; data gaps in the incidence of child abuse; and cultural patterns which reinforce the invisibility of children.

Caribbean Judicial Colloquium on Women's Rights

- a lack of trained officers of the court such as probation officers, social workers, law enforcement officers, and lawyers, particularly in respect of their sensitivity to gender issues;
- an imbalance between the skills training of girls in institutions and the formal education system, and in the labour market;
- inadequate data collection and analysis within the court for use in planning and policy development needed to address the gender gaps in the experiences of children before the court;
- the prevailing negative attitudes of men and a culture which supports flogging and the physical punishment of children; and
- a lack of resources to improve support services within the Family Court and for the proper management of integrated services of psychological, legal and medical care for girls.

The role of national courts is to administer the law and advance the status of girls and women by developing strategies to challenge the legal system to address any inequalities girls may face in their legal status, in their access to legal services and in the administration of justice. There must, therefore, be continued co-ordination and communication between the legal and social sectors.

In so doing, the courts must ensure that the legal system is an effective tool for achieving and maintaining positive gains in the status of girls. This requires an assessment of the capabilities and processes of the court in its responsibilities for promoting and protecting the rights of girls. It also requires a commitment by the court to engendering its processes. This means that the court must take account of gender differences in all of policy, programme, administrative and financial activities and organisational procedures.

The following strategies are proposed:

1. Capacity Building. Gender training along with the CRC for all court personnel, consistent with their portfolio. All practitioners must be trained to enable them to conform to ethical professional and gender-sensitive standards, as required by international human rights standards.
2. Information systems for the production of gender-disaggregated data for research, policy formulation and for planning timely interventions. The type of information that would be useful to collect at the level of the court includes the number and type of offences; case profiles; family and socio-economic background of offender and victim; types of rehabilitative services and their accessibility; decisions of the Court; and follow up of cases.

The girl-child in Caribbean jurisdictions

Data can be also be incorporated into continuing legal education strategies in different jurisdictions and within current legal education programmes in the region, to influence the content and application of the law in respect of advancing the legal status of girls. Data can also be used for advocacy of the rights of girls and for human rights programmes development by relevant institutions.

3. Development of monitoring and evaluation systems based on culturally-specific, gender-sensitive indicators around protection rights: this would require much dialogue and endorsement from the community.³⁸
4. Establishment, or strengthening of, networks between the court and civil society incorporating the experiences of the non-governmental organisations such as workers' organisations in the design of networking strategies.
5. Enhancement of the role of the police and empower the community in enforcement, by the systematic participation of the local community in monitoring the experiences of children.

Conclusions

I have advanced the standpoint in this paper that mainstreaming a gender rights perspective within the law and national courts is critical to the empowerment of girls and women across the life cycle and to the consolidation of democracy.

The challenge this poses is both of issue and of process. It will take, on one hand, a commitment to advancing the conceptual underpinnings of girls' oppression based on:

- the realities of their family life, in terms of their socialisation and experience of labour;
- their concerns for the safety of their bodies and their sexuality; and
- their needs for protection.

³⁸ The language of family law and the Children Act must be reviewed and amended to be gender-sensitive where necessary. In addition, provision should be made to address issues such as the privacy and confidentiality of children's reports and evidence; girls' access to sex education and family life education; financial support to minors (particularly to support the girls who are staying in schools longer than boys); pregnant girls access to continued education; and access to legal aid in criminal matters.

Caribbean Judicial Colloquium on Women's Rights

It also requires strong commitment to the gender perspective within institutions of governance and leadership, and the continued commitment to resources for training, monitoring, public education and support.

In preparation for the Fourth World Conference on Women, member countries of the Commonwealth Caribbean were given the opportunity to review the status of women and make that critical link across the life cycle to the girl-children in their societies. All reports highlighted women's loss of security and feelings of disempowerment as the major issues of the Caribbean. The preparatory process was based on willing partnerships between governments, NGOs, women and men in communities and the international community, working together for common purposes. In implementing the outcomes of the conference, a similar cohesion of perspectives is necessary.

And what does this entail in Caribbean jurisdictions? In addition to strong political and juridical will, I wish to propose building alliances for girls among key stakeholders, inclusive of community organisations.