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BREAKING THE SILENCE: A MULTI-SECTORAL APPROACH TO PREVENTING AND ADDRESSING CHILD SEXUAL ABUSE IN TRINIDAD AND TOBAGO

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Break the Silence

end child sexual abuse

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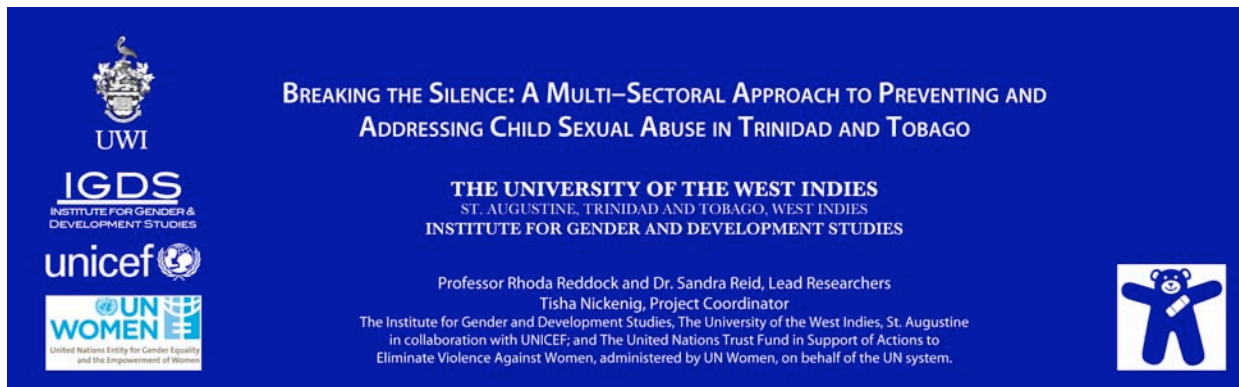
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LEGISLATION

Sexual Offences Act

The *Sexual Offences Act Chap. 11:28* is the primary statute in Trinidad and Tobago dealing with sexual offending against minors¹ and adults. The principal statute, which was enacted in 1986, revised and consolidated the law dealing with sexual crimes against children and adults. Among the several reforms that were introduced in this Act, include heavier penalties and statutory definitions for the offences of rape and indecent assault. Further, the offence of incest was extended to include additional blood relationships and greater protection for minors against sexual intercourse by close non-blood relatives such as step-parents and adoptive parents. An offence of sexual assault for the protection of wives, albeit in very limited circumstances, was also established. Additionally, certain rules of evidence, which were discriminatory in their effect, were abolished or modified and *in camera* hearings were introduced. The Act was amended in 2000, and the amending statute—the *Sexual Offences (Amendment) Act 2000*—also introduced far-reaching reforms, such as abolishing the immunity of a husband from prosecution for rape (the offence of sexual assault was also repealed), rape was redefined to extend to male victims, an offence of grievous sexual assault was established, heavier penalties were specified for certain offences, mandatory reporting of sexual offences against minors was instituted, provision was made for the notification and registration of sexual offenders and for the admissibility of a minor's statement where such a minor is being prevented. The amending legislation also made video-recorded evidence admissible and introduced a measure of screening a minor witness from the view of the accused.

Notwithstanding these several reforms, several gaps are still evident with respect to the protection of children against sexual abuse and exploitation as outlined below.

Sexual Intercourse

The *Sexual Offences Act Chap.11:28* establishes 16 as the age of consent for sexual intercourse for both girls and boys. The relevant offences are set out in sections 7 of the Act. It is nevertheless applied quite differently to both sexes with the result that the protection conferred on boys is less than that conferred on girls. The inconsistencies between the two sections and the unequal outcomes that flow are rooted in the common law which, historically has viewed sexual intercourse with under-age females as a much more serious offence than sexual intercourse with under-age males. While the Section 8 offence reflects the view of the common law that young boys (minors) should be protected against sexual intercourse with married women, marriage is available as a defense under sections 7 and 8 because minors under 16 are capable of contracting a marriage (see *The Marriage Exception* below) Rape may be charged where a husband or wife (including a minor husband or wife) did not consent to sexual intercourse.

While offences under sections 7 and 8 are relevant to CSA in certain cases, there are many relationships which fall outside of these two sections where children are particularly vulnerable to sexual abuse. These include close relationships of affinity, teacher-pupil relationships and carer/baby sitter relationships, among others. The *Children Bill 2009* (see *Children's Bill 2009* below) proposes to remove many of these limitations.

Serious Indecency

¹ The Act uses the term "minor" which refers to a person under 18.

The *Sexual Offences Act Chap. 11:28* outlines serious **indecent as an act other than sexual intercourse (whether natural or unnatural) by a person involving the use of the genital organ for the purpose of arousing or gratifying sexual desire**. A gap in the legislation, however, is that married spouses, including minors, are exempted from the offence.

Grievous Sexual Assault

Under the *Sexual Offences (Amendment) Act 2000*, grievous sexual assault is classified as

- the penetration of the vagina or anus by a body part other than the penis of the accused;
- the penetration of the vagina or anus by an object manipulated by the accused or third person, except when such penetration is accomplished for medically recognized treatment;
- the placing of the penis of the accused or third person into the mouth of the complainant; and
- the placing of the mouth of the accused or third person onto or into the vagina of the complainant.

The offence applies to non-consensual heterosexual and same-sex conduct. However, no age of consent is established and consent is therefore available to the accused as a defense irrespective of the age of the victim and his or her relationship with the accused. Children, therefore, have no special protection under the offence and this also applies when family members perpetrate the offence. This is a significant defect, especially where older children are the complainants.

It may thus be easier to secure a conviction for indecent assault against a minor under 16 since consent in this case is irrelevant. The penalties differ in their severity, however. For indecent assault, it is 5 years for a first offence and 10 years for a subsequent offence, while it is life imprisonment for grievous sexual assault.

The “Young Person’s Defence”

The so-called “young person’s defense” under sections 7 and 8 has been discussed under the section dealing with mutually agreed conduct between adolescents. Based on the foregoing, it is clear that the protection of children under 14 (or a lower age if this is determined to be appropriate for this society) against all forms of sexual activity needs to be strengthened. In establishing such offences, the legislation should make explicit whether a defense of mistake of fact as to age is available. The *Children Bill 2009* proposes to address some of these inadequacies.

Consent

Consent is frequently the pivotal issue that determines the outcome of trials of alleged non-consensual sexual offences. Where consent is raised as a defence, the burden shifts in the normal way to the prosecution to prove absence of consent. In many cases, this may prove to be a somewhat insurmountable hurdle, particularly where the only evidence is the victim’s word against that of the accused. *The Sexual Offences Act Chap. 11:28* does not define the term “consent”, however, which limits the available protection for minors.

Incest

Section 9 under the *Sexual Offences (Amendment) Act 2000* provides that a person commits the offence of incest who, knowing that another person is by blood relationship his or her parent, child, brother (including half-brother), sister (including half-sister), grandparent, grandchild, uncle, aunt, niece or nephew as the case may be, has sexual intercourse with that person. The essential ingredients of the offence are (a) sexual intercourse and (b) knowledge on the part of the accused that the person with whom he or she had the sexual intercourse fell within the prohibited categories. The offence may be committed by a male or female blood relative. However, lack of knowledge of the relationship provides a complete defence. Section 9 criminalises non-consensual and consensual incest, however, consent may be a factor in sentencing, if upheld thus the child victim is not fully protected. The penalty for incest is life imprisonment in all cases except where the conduct is between minors who are between 14 and 18 years, in which case it is imprisonment for 2 years. The low penalty in the latter instance is perhaps a reflection that conduct between two minors in that age category is likely to be consensual.

Conduct other than sexual intercourse

Children are protected against other kinds of sexual conduct by family members, whether or not related by blood, under the general offences of grievous sexual assault, buggery, indecent assault and serious indecency. Children have no special protection under the offence of grievous sexual assault as consent is available as a defence. Similarly, children between 16 and 18 have no special protection under the offences of indecent assault (section 15) and serious indecency (section 16) since consent is available as a defense in respect of heterosexual conduct. A mistaken but reasonable belief (in accordance with section 28) that the victim was over 16 entitles the accused to be acquitted. Under the offence of buggery, a similar defense that the victim was over 18

at the time of the act may entitle the accused to be sentenced to a lesser penalty.

Sexual intercourse with an adopted child, stepchild, foster child, ward or dependant in the custody of [the adult].

Section 10 of the *Sexual Offences (Amendment) Act 2000* makes it an offence for an adult to have sexual intercourse with his or her adopted child, stepchild, foster child, ward or dependant. The offence does not make it clear whether a defense of mistake of fact as to age (that is, strict liability as to age) arises for the purposes of convicting for the more serious "life offence" versus the "25 year offence". A second gap under this section is that marriage is available as a defense.

The Marriage Exception

Marriage is established as an exception to the age of consent to sexual intercourse under sections 7 (sexual intercourse with a girl between 14 and 16) and 8 (sexual intercourse with a boy under 16) as well as under section 6 (sexual intercourse with a girl under 14) because children under these ages can legally enter into marriage. Four different legal positions regarding the minimum ages for marriage exist in Trinidad and Tobago.² In several instances, these minimum ages for marriage are in conflict with the child protection goals of the sexual offences legislation which establishes 16 as the age of consent to sexual activity. The Trinidad and Tobago Second Periodic Report on the Convention on the Rights of the Child (2003) notes that, in 1998, an attempt was made by the Government of Trinidad and Tobago to review the existing marriage laws and to make recommendations regarding the issues of a minimum age, registration, consent and notice. 12 According to the Report, consultations with the wider community failed to produce consensus as regards to a minimum age of marriage. The Report notes further that the official position of the representatives of the Muslim and Hindu communities was that the minimum ages represented in the Muslim and Hindu Marriage statutes should not be altered, largely because of the traditional beliefs of these groups. The report does not state whether

recommendations were made regarding the common law position. The common law ages, however, offend the child protection goals reflected in the *Sexual Offences Act Chap. 11:28* to a greater degree than the *Muslim Marriage and Divorce Act, Chap. 45:02* and the *Hindu Marriage Act, Chap. 45:03*. 13 Notwithstanding that relatively few child marriages occur, it is nevertheless important to resolve the conflict between the various minimum ages of marriage and the age of sexual consent. The law sends a powerful yet contradictory message when it permits under-age sex under the cloak of marriage while at the same time prescribing extremely severe penalties for similar under-age sex outside of marriage.

Positions of Trust

Although the phrase "positions of trust" is not used in the *Sexual Offences Act Chap. 11:28*, section 11 attempts to establish such an offence in order to protect a minor employee against sexual misconduct by his or her adult employer. Owing to the power imbalance which exists in such relationships, a minor employee may be pressured into consenting to sexual intercourse in circumstances that stop short of coercion so that a non-consensual offence cannot be proven. The intent of the section appears to be, therefore, to confer protection on minors up to the age of 18 in an employee-employer relationship, which protection exceeds that offered under sections 7 and 8. The section nevertheless establishes consent as a defense which defeats the intention of providing special protection to minor employees. The result of this is that rape, which carries a higher penalty, confers greater protection on a minor employee than a section 11 offence. The *Children Bill 2009* proposes to address this deficiency.

Overall, the *Sexual Offences (Amendment) Act 2000* Act does not reflect a clear, coherent and consistent approach to dealing with sexual conduct perpetrated by family members. In many instances, children are not adequately protected. The protection of children against familial conduct that comes within the offences of grievous sexual assault and indecent assault also needs to be strengthened as the cycle of CSA may begin with acts

² 1. **The Marriage Act Chap.45:01:** Under this Act, males can contract a marriage at age 14 while females can enter into marriage at age 12 (which are the minimum ages for marriage at common law). This applies to Christian and to civil marriages.

2. **The Muslim Marriage and Divorce Act, Chap. 45:02:** The age at which a person, being of the Muslim faith, is capable of contracting a marriage under this Act is 16 years in the case of males and 12 in the case of females.

3. **The Hindu Marriage Act, Chap.:45:03:** The age at which a person, being of the Hindu faith, is capable of contracting a marriage under this Act is 18 years in the case of males and 14 years in the case of females.

4. **The Orisha Marriage Act Chap.45:04:** The age at which a person, being of the Orisha faith, is capable of contracting a marriage is 18 years in the case of males and 16 years in the case of females.

such as fondling and genital contact, particularly where the child is very young, and may be committed repeatedly causing severe trauma. The law needs to state clearly whether a defense of mistake of fact as to age is available to an accused person. It is submitted that this ought not to be available to an accused in a familial relationship with the child. The categories of family relationships also need to be widened to include persons related by affinity and other persons with whom children may come into frequent contact such as persons in a visiting relationship or persons living in the same household as the child. The *Children Bill 2009* proposes to extend the categories of familial relationships and to protect children up to age 18 in all cases. Consent will be immaterial. However, the Bill proposes to make mistake of fact as to age (reasonable belief) available to an accused where the child is between 14 and 18. It should nevertheless, be noted that the continued underreporting of incest (as well as other forms of criminal conduct perpetrated by family members) highlights the severe limits of the criminal law in addressing the issue. While it is important to introduce reforms to ensure that children receive the maximum protection of the law against sexual abuse by family members, the criminal law by itself is of limited preventive or remedial value. A multidisciplinary approach that equally emphasises prevention of child sexual abuse as well as its detection and treatment is critical. The role of the Children's Authority (when established) in guiding and coordinating such an approach would be pivotal.

The Domestic Violence Act, Chap. 45:56

The Domestic Violence Act provides an injunctive remedy—a protection order—as well as criminal remedies for breach of the order. A protection order may be granted by a magistrate for the protection of a child against sexual abuse by a parent, guardian or member of the child's household as specified under the Act. The magistrate also has the power to attach a range of conditions for the protection of the child (or other applicant) if deemed necessary. Although a wide range of persons are given the power to make an application for a protection order for a child, this power appears to be rarely invoked.

Children Act, Chap. 46:01

The *Children Act Chap. 46:01*, as amended by the *Children (Amendment) Act 1994*, is the primary piece of legislation concerned with child protection. It sets out the procedures for responding to children who have been abused or who are at risk of such abuse. The Act also deals with the taking of evidence of young children and generally with juvenile offenders. It nevertheless retains

two criminal provisions which deal with child sexual abuse both directly and indirectly.

Cruelty

Section 3 of the Act establishes an offence of cruelty which targets conduct against children or young persons by those who have their custody, charge or care.

Offences related to being in a brothel and to child prostitution

The offences of (1) allowing children or young persons to reside in or frequent a brothel and (2) causing, or encouraging or favouring the seduction or encouraging prostitution or unlawful carnal knowledge of a child or young person are to be found in the *Children Act Chap. 46:01*, in sections 7 and 8 respectively. Persons liable under the section 8 offence are limited to those having the custody, charge or care of the child or young person. The offences are repeated in the *Children Bill 2009* and will apply to children up to age 18 in accordance with the proposed definition of a child. Increased penalties are also proposed. Under section 9 of the Act, a magistrate may cause a parent or guardian to enter into a recognisance to exercise due care and supervision of a child or young person if with their knowledge, the child or young person is exposed to the "risk of seduction or prostitution or of being unlawfully carnally known or living a life of prostitution". The *Children Bill 2009* proposes to extend the protection to a child up to age 18, to require a parent or guardian to enter into a recognisance for a period not exceeding eight years and to confer on the Court the power to make a supervision order under the *Children's Authority Act* and to bring the child to the attention of the Children's Authority.

The *Children Act* also specifies the persons and/or agencies authorised to intervene and the procedures to be followed where a child has been harmed or is at risk of such harm which includes child sexual abuse and exploitation. Thus, a constable, a public officer experienced or qualified in social work who is approved by the Minister in writing or any person authorised by a Magistrate, may take to a place of safety any child or young person in respect of whom an offence under the Act or any of the offences mentioned in the Schedule to the Act, has been, or there is reason to believe has been, or is likely to be committed. Although there have been amendments to the parent statute from time to time, they did not alter the structure of the child protection framework laid out in the Act. Various shortcomings identified, however, include the lack of an integrated, coordinated and multidisciplinary approach to child

protection, the absence of regulation of children's homes and institutions, the absence of a formal foster care system and the lack of adequate support services including psycho-social support, shelter, and rehabilitation. The approach to the protection of children has therefore remained fragmented as has been highlighted by several high profile child abuse cases in recent years.

Children Bill 2009

The *Children Bill 2009* proposed to repeal and replace the *Children Act Chap. 46:01* by, *inter alia*, introducing a new set of sexual offences for the increased protection of children. The Bill seeks to enlarge the offences against abuse by persons in familial relationships and introduce "positions of trust" offences. It also introduces certain new offences including "causing a child to watch for sexual gratification" and "grooming" offences. Further, it seeks to extend protection against sexual penetration and sexual touching for minors up to age 18. Consent is immaterial except where a "young person's" defense is set out. Comprehensive provisions to address the sexual exploitation of children through prostitution, pornography and trafficking are also proposed. In the Bill, a child under 14 is unable to give legal consent and, hence, the defendant's belief in consent will not be relevant. A defense of reasonable belief as to the child's age will also not be available. The offence is intended to apply equally to boys and girls. Marriage is not specified as a defense, but this appears to be an oversight.

Age of Consent

The Bill, by proposing to protect minors up to age 18, effectively raises the age of consent to sexual activity to 18. Raising the age of consent to 18, however, will only serve to deepen the conflict between the low minimum ages for marriage and the age of consent to sexual activity. The issue of whether the age of consent should be raised to age 18 needs to be reconsidered and should be subject to wider consultation. It is felt, however, that the offences against children under 14 should be set out separately in order to make a clear statement about the seriousness of such sexual conduct and to set penalties which would be in keeping with the seriousness of such offences. Whether the conduct amounting to "rape of a child" under 14 should be subsumed under an offence of "sexual penetration of a child under 14" should also be reconsidered.

The Bill also proposes to establish a so-called young person's defense where the two parties are fairly close in age. The defense, as discussed earlier, recognises that

mutually agreed sexual activity between two persons reasonably close in age ought not, as a matter of public policy, to be criminalised. However, as also noted earlier, it can lead to arbitrary and unjust outcomes since there is no logical rationale for the cut-off dates. Thus, mutually agreed heterosexual conduct between adolescents that falls marginally outside the exception will constitute a criminal offence while the same behaviour will be exempt if the parties come within the exception. On the other hand, a person aged 16 and over who consents under pressure (the other person being less than three years older) in circumstances short of coercion may not be able to get justice. It is perhaps true that mutually agreed conduct between adolescents is rarely policed in practice. However, as mentioned earlier, a clear policy is needed on what should be the most appropriate approach to dealing with such conduct. It is submitted non-criminal approaches are needed which must work in tandem with the investigative process.

The Bill proposes to establish "positions of trust" offences. These offences are primarily concerned with the child who gives ostensible consent to the activity, but that consent is not relevant because of their particular relationship with the abuser. It is felt that the heavier penalties proposed for "positions of trust" offences should be reviewed. A criminal policy on sexual offences against children needs to state clearly what is the primary concern of such offences. For example, the issue of whether the offences should target adult and child offenders equally needs to be addressed. If the aim is to provide increased protection through heavier penalties as reflected in the Bill, then the issue of whether the penalties are in keeping with an overall penal policy for sexual offending needs to be addressed.

Minor Offenders

A range of new sentencing options for minor offenders is proposed under the Bill. Notwithstanding the foregoing, the fines and periods of detention or imprisonment proposed for offenders, particularly for offenders between 14 and 18, appear to place an almost equal emphasis on juvenile offending as they do on adult offending. The penalties (fines and imprisonment) need to be reviewed in the context of a clear and consistent policy on juvenile offending.

Cruelty

The *Children Bill 2009* proposes to modify the offence of cruelty by replacing "injury to his health" (including injury to or loss of sight or hearing, or limb or organ of the body, and any mental derangement) with "injury to [a child's]

physical, mental or emotional health” and by extending protection against conduct amounting to cruelty to minors up to age 18. The Bill, however, retains 16 as the age at which liability accrues. 30 It also proposes to make the defense a wholly indictable one and to increase the penalty to a fine of \$50,000 and imprisonment for five years.

Familial Relationships

The Bill removes many of the limitations of the *Sexual Offences Act Chap. 11:28* by widening the categories of persons in familial relationships and by considerably extending the range of conduct for which a family member may be liable (clauses 21, 24, 27, 30 and 33).

Sexual Offences Act Chap.11:28 and the Children Bill, 2009

The rationale for establishing a new regime of sexual offences to increase the protection of children against sexual abuse and exploitation via the *Children Bill 2009* instead of via reforms to the *Sexual Offences (Amendment) Act 2000*. One of the aims of the sexual offences legislation was to provide a single coherent framework for addressing abuse and exploitation of children, women and other vulnerable persons. It achieved this to some extent through the consolidation and revision of the then existing sexual offences laws and this was reflected in a single statute. The Children Bill does not propose any nonconsensual offences prohibiting conduct covered in the general child offences. As such, where a nonconsensual offence has to be charged, reference will have to be made to the nonconsensual offences in the *Sexual Offences Act Chap. 11:28*. However, in some instances it may not be possible to reconcile the existing offences in the Act with those proposed in the Bill since some of the offences are new. In order to bridge this gap, the *Sexual Offences (Amendment) Act 2000* will need to be reformed anyway. It is felt, therefore that all sexual offences and related evidential and procedural rules should be in one statute.

Mandatory Reporting

Mandatory reporting is an important legislative tool for the detection of CSA and was introduced under the *Sexual Offences (Amendment) Act 2000*. Under the relevant provision, a person coming within certain specified categories who has reasonable grounds for believing that a sexual offence has been committed against a minor is required to make a report to a police officer as soon as is reasonably practicable. Certain key professionals such as

social workers, probation officers and psychologists who are likely to encounter CSA in their professional lives are, however, omitted from these categories.

The provision mandates reporting where there is a belief that a “sexual offence” has been committed. There may be a need, however, to consider whether a broad definition

Offences under the Sexual Offences Act, Chap.11:28

Section 4 Rape.

Section 4A Grievous sexual assault.

Section 6 Sexual intercourse with a female under 14.

Section 7 Sexual intercourse with a female between 14 and 16.

Section 8 Sexual intercourse with a male under 16.

Section 9 Incest.

Section 10 Sexual intercourse with an adopted child, stepchild, foster child, ward or dependant in the custody of [the adult].

Section 11 Sexual intercourse with a minor employee.

Section 12 Sexual intercourse with a mentally subnormal person.

Section 13 Buggery.

Section 15 Indecent assault.

Section 16 Serious indecency.

Section 17 Procurement of a minor under sixteen years to have sexual intercourse with any person either in Trinidad and Tobago or elsewhere; procurement of another for prostitution, either in Trinidad and Tobago or elsewhere and procuring another person to become an inmate of a brothel in Trinidad and Tobago or elsewhere.

Section 18 Procuring defilement of a person (sexual intercourse) by threats or intimidation, deception, application or administering any drug or causing any drug to be taken.

Section 19 Forced detention of a person in any premises or in any brothel with the intent that the person may have sexual intercourse with another person.

Section 20 Abduction of a female to marry her or to have sexual intercourse with her or to cause her to marry or to have sexual intercourse with a male person.

Section 21 Owner/Occupier/Manager of premises permitting defilement of a minor under 16 who is on the premises for the purpose of having sexual intercourse.

of sexual abuse should be substituted for the purposes of reporting. This would cover cases of sexual abuse where the child is unable to communicate the precise nature of the abuse but the person nevertheless forms a belief that sexual abuse has taken place. This is particularly important where very young children or children who are mentally challenged are involved.

Whether the mandatory reporting has resulted in increased reporting is not clear. It is important regardless to ensure that measures such as education, sensitisation and training are in place to facilitate such reporting. Many persons may also be reluctant to go to the police because of the sensitive nature of the matter, the absence of

trained police officers or other personnel to receive such reports and the lack of safe spaces at police stations for making a report. Parents and/or guardians may also be reluctant to put the child through the court system because of the lengthy delays that are frequently encountered before the matter reaches trial and the disruption to the family this may cause. Provision therefore needs to be made to enable reports to be made to an alternative body or institution such as the Children's Authority (when established). The Children's Authority should also assume responsibility for the implementation of the mandatory reporting provisions in order to facilitate reporting. There is also a need to explore precisely how the reporting provisions are being currently implemented.

Children's Authority Act 2000

In 2000, sweeping reforms were introduced to address many of the shortcomings of the existing protective framework. The enactment of the *Children's Authority 2000* (No. 64 of 2000) and the *Children's Community Residences, Foster Homes and Nurseries Act 2000* (No.65 of 2000) sought to replace the existing framework with one that makes provision for a central coordinating authority for dealing with children who have been harmed or are at risk of harm (*the Children's Authority 2000* - No. 64 of 2000) and for a system of licensing of children's homes, foster homes and nurseries (*Children's Community Residences, Foster Homes and Nurseries Act 2000* - No. 65 of 2000). The Acts have since been amended by the *Children's Authority (Amendment) Act 2008* and the *Children's Community Residences Foster Care and Nurseries (Amendment) Bill 2008*.

The *Children's Authority Act 2000*, as amended by the *Children's Authority (Amendment) Act*

2008 seeks to put structures in place to address prevention, detection and treatment of child abuse that are lacking in the existing legislative framework. The Act establishes an Authority which is to function as a central coordinating body with wide responsibilities for children at risk of harm and those who have been harmed. The Authority is required to act as an advocate for the rights of all children in Trinidad and Tobago and to monitor all children's homes, rehabilitation centres, foster homes, nurseries, and agencies addressing children's issues. It is also mandated to take all reasonable steps to prevent children from suffering ill-treatment and neglect. Implicit in its mandate is the need for comprehensive prevention, detection and treatment. The Authority will be required therefore to play a critical role in the prevention, detection and treatment of child sexual abuse. The prevention and detection of abuse in children's homes

The sexual offences proposed in the *Children Bill 2009* are as follows:

Clause 17: Sexual penetration of a child under 14 (includes penile penetration of a vagina, anus or mouth of a child or penetration with an object or other body part or insertion of a child's penis into a person's mouth or the placing of a person's vagina on the mouth of a child);
 Clause 18: Sexual penetration of a child fourteen and over but under 18;
 Clause 19: Sexual touching of a child ("includes bringing into contact of any part of a person's body with a part of another person's body or any other object");
 Clause 20: Sexual touching of a child by persons in positions of trust;
 Clause 21: Sexual touching by persons in familial relationships;
 Clause 22: Causing or inciting a child to engage in sexual activity with a third person (such as making a child strip or promising them rewards for sexual behaviour);
 Clause 23: Persons in positions of trust causing or inciting a child to engage in sexual activity;
 Clause 24: Causing or inciting a child to engage in sexual activity by persons in familial relationships;
 Clause 25: Engaging in sexual activity in the presence of a child;
 Clause 26: Persons in positions of trust engaging in sexual activity in the presence of a child;
 Clause 27: Engaging in sexual activity in the presence of a child for the purpose of sexual gratification by persons in a familial relationship;
 Clause 28: Causing a child to watch a sexual act for sexual gratification;
 Clause 29: Persons in positions of trust causing a child to watch a sexual act for sexual gratification;
 Clause 30: Causing a child to watch a sexual act for sexual gratification by persons in familial relationships;
 Clause 31: Meeting a child following sexual grooming;
 Clause 32: Meeting a child following grooming by persons in positions of trust;
 Clause 33: Meeting a child following sexual grooming by persons in familial relationships.

and institutions is to be addressed via the *Children's Community Residences, Foster Homes and Nurseries Act 2000*, as amended by the *Children's Community Residences, Foster Homes and Nurseries (Amendment) Act 2008*, which makes provision for licensing, regulation and monitoring of such homes and institutions.

Recommendations

- ✦ There should be a single coherent and comprehensive policy on sexual offending dealing with adults and child complainants which should be reflected in a single statute. Having regard to the protection of children, the policy should make provision for or address the following:
 - An age of consent to sexual activity that reflects a broad societal consensus to be applied consistently across all relevant offences and equally to boys and girls should be established. This report recommends that the age of consent should remain at age 16, subject to what may emerge as a societal consensus, with protection

up to age 18 against conduct by family members and persons in “positions of trust”. The *Children Bill 2009* proposes that the age of consent be raised to 18.

- ▶ A non-criminal approach to dealing with mutually agreed sexual activity between adolescents. Parallel to this, the young person’s defence should be abolished and guidelines issued to enable a determination as to whether minors should be charged or prosecuted for a sexual offence. Reference may be made to the factors to be taken into account for this purpose issued by the Criminal Prosecution Service (UK) outlined in this report.
- ▶ The minimum ages of marriage permitted under the common law which are applicable under the *Marriage Act Chap. 45:01* (12 for girls and 14 for boys) should be abolished and replaced by a single minimum age of at least 16.
- ▶ Separate offences to cover all forms of sexual conduct that may be perpetrated against children under 14 with appropriate penalties clearly spelt out should be established. No defences should be available to an accused, except marriage in the case of girls under 14.
- ▶ A definition of “consent” should be included in the sexual offences legislation.
- ▶ The rule requiring independent corroboration of the testimony of children (under 14) should be abolished and the question of what weight should be attached to such testimony should be left to a jury.
- ▶ A clear and coherent penal policy with respect to minor and adult sexual offending should be developed and reflected in sexual offences legislation. The policy needs to reflect the primary concern of the sexual offences law in relation to children, which is their protection against sexual abuse and exploitation by adults.
- ▶ Measures to reduce the courtroom trauma of child complainants such as the use of video technology, screens and the use of electronic links for the purposes of cross-examination which have been enacted should be

implemented.

- ▶ The Children’s Authority, when established, should assume responsibility for implementation of the mandatory reporting provision under the *Sexual Offences Act Chap. 11:28*. Effective implementation of this provision is critical to improved reporting of child sexual abuse. Provision should also be made for the Children’s Authority to receive child abuse reports.
- ▶ Non-legislative measures such as the training of police officers to handle child abuse cases, the creation of safe spaces at police stations to receive reports and adequate support services such as counselling, psychiatric services and adequate temporary accommodation should be put in place to facilitate the implementation of the criminal law.
- ▶ Research should be undertaken on critical issues to inform the overall policy on sexual offending and, particularly, with regard to issues affecting the criminal legislative policy.
- ◆ Renewed efforts should be made to enter into dialogue with the Hindu and Muslim groups in the society as well as with the wider society with a view to establishing a single minimum age for marriage that will not conflict with the age of consent to sexual activity.
- ◆ Consideration should be given to enacting legislation to protect a child against cruelty where more than one person has the charge, care or custody of a child and the perpetrator of the offence cannot be identified. At the very least, a positive duty ought to be put on a person who has undertaken responsibility for a child if he or she fails, so far as is reasonably practicable, to protect the child from serious harm.
- ◆ The *Children’s Authority Act 2000*, as amended by the *Children’s Authority (Amendment) Act 2008*, and the *Children’s Community Residences, Foster Homes and Nurseries Act 2000*, as amended by the *Children’s Community Residences, Foster Homes and Nurseries (Amendment) Act 2008*, should be implemented.