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Implementing the Child Protection and Family Provisions of the Convention on the Rights of the Child in Trinidad and Tobago

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IMPLEMENTING THE CHILD PROTECTION AND FAMILY PROVISIONS OF THE
CONVENTION ON THE RIGHTS OF THE CHILD IN TRINIDAD AND TOBAGO
Kele Stewart

INTRODUCTION

Trinidad and Tobago (“Trinbago”) recently passed child protection legislation intended to implement the United Nations Convention on the Rights of the Child (CRC). The new law establishes the Children’s Authority as a centralized agency to investigate and respond to child abuse. Absent from the law is an express policy with respect to permanency, the term used in child protection for ensuring that each child has an enduring family. Partly in response to feedback from stakeholders, including children, the Children’s Authority has said it plans to prioritize family settings for children. This article explores what that means for a country embarking on its first comprehensive state-run civil child protection system. The article argues that the CRC requires states to prioritize family integrity and to use local norms in defining family. In doing so, Trinbago should seek to leverage and strengthen its rich local tradition of kinship and communal child-rearing. It also offers a comparative view from established Western

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1 Professor of Clinical Education and Co-Director of the Children & Youth Law Clinic, University of Miami School of Law. I am grateful to the J. William Fulbright Scholar program for the opportunity to teach and work in Trinidad and Tobago in 2011-2012. Thank you to the Hugh Wooding Law School and Children’s Authority of Trinidad and Tobago for graciously welcoming me to their institutions. I would also like to thank my working group at the Clinical Law Review Writer’s Workshop: Angela Burton, Marty Guggenheim, Sabrina Balgamwalla, Liz Keyes and Laurie Kohn, as well as research assistants Casandra Johnson and Jake Weinberg.

2 Children’s Authority Act, Act No. 65 of 2000 (partially proclaimed in 2008); Children’s Community Residences, Foster Homes and Nurseries Act, Act No. 65 of 2000 (not proclaimed); Children’s Amendment Act, Act No. 68, 2000; Miscellaneous Provision (Children) Act, Act 66 of 2000 (proclaimed in 2000); and Adoption of Children Act, Act 67 of 2000 (not proclaimed).


child protection systems to highlight the myriad ways in which a philosophy about permanency impacts the structure of the child protection system. Although situated in the Trinidad and Tobago context, the framework offered for thinking about permanency has broader application for child protection system design.

Contemporary child protection law seeks to balance protecting children from harm by caregivers against family autonomy. States use the coercive force of law to remove a child from the home when necessary, but also adopt the view that the family is the ideal setting for child development. They provide varying degrees of supervision and support so that children can stay with or return safely to their families. Long-term state care is seen as the least desirable option, and when used, institutional care has been abandoned in favor of foster care and more family-like care settings. Implementation of a family-focused philosophy requires that every aspect of the child protection system reinforce the goal of keeping children safely within families. It is reflected in decisions about which children are brought into the care system, what supports and services are provided to children and families, what legal standards apply in care proceedings, how resources are allocated not only for child protection but for other social supports, and a host of other questions. Practicing family preservation requires a committed and concerted effort not just by the specialized child protection agency, but by other executive agencies, the legislature, judiciary, NGOs involved in child and family services, and the community.

The framework used in this article looks both externally, analyzing international models in developed child protection systems, and internally at local culture and values. Comparisons are useful, particularly for a country embarking on its first comprehensive child protection effort, to understand existing models and consider what

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may be desirable or pitfalls to avoid. The value in international comparisons is not to suggest that any system is superior or any practice is “best,” but to illustrate how different priorities and choices get reflected in system design, and consider whether a procedure or program used elsewhere might improve what is currently done in Trinidad and Tobago.\footnote{Gary Cameron and Nancy Freymond, \textit{Understanding International Comparisons of Child Protection, Family Service, and Community Caring Systems of Child and Family Welfare} in \textit{Towards Positive Systems of Child and Family Welfare} 3-4 (Nancy Freymond and Gary Cameron eds. 2006).}

It is equally important that any lessons from other societies feasibly adapt to local institutions, culture and values. There is research to suggest that culture is a more powerful determinant of overall functioning of a child protection system than structure or professional social work ideology.\footnote{Rachel Hetherington, \textit{Learning from Difference: Comparing Child Welfare Systems} in \textit{Towards Positive Systems of Child and Family Welfare} 43-45 (Nancy Freymond and Gary Cameron eds. 2006). The term culture is used to describe “the nexus of views, understanding, habits of mind, patterns of living, and use of language that are built up in a community, nation, or state by the shared history, language and social circumstances in which people grow up and live. The culture of a society is pervasive. It is expressed in part through the structures of the society, but also through the use that society makes of those structures." \textit{Id.} at 36.}

Regardless of what the law says or what structure is built, culture will be an important factor in the way child protection is practiced and whether it is effective. As Trinidad and Tobago develops its permanency policy, it should have a firm understanding of its goals and the relevant choices, for which international experience provides useful information, while seeking congruence with local norms.

This article argues that the tradition of shared childrearing and socialization within extended families is a strength that can be leveraged in Trinbago’s approach to child protection. These patterns include informal arrangements for relatives and fictive kin to care for children, as well as shared parenting within extended families.\footnote{Christine Barrow, \textit{Family in the Caribbean: Themes and Perspectives} 2-24 (James Curry Limited 1996); Jaipaul Roopmarine et. al., \textit{Parent-Child Relationships in African and Indo Caribbean Families: A Social Psychological Assessment} in \textit{Social Psychological Dynamics} 151 (D. Chadee & A. Kostic eds, University of West Indies Press).} Although this norm of kinship care had different origins, forms and functions among different
ethnicities and socio-economic groups, there is a shared cultural understanding that parents are not exclusively responsible for children, and that extended family and community members play an important role in raising children.\textsuperscript{10} This norm informally acts as a safety net for vulnerable children even today. It must be said, however, that this tradition is eroding with the preference for nuclear households, and an increase in violence, adolescent births and other social factors pose new risks for children and put pressure on traditional support systems. Notwithstanding these challenges, strong family connections and the prominence of extended family helping to socialize and care for children remain a feature of contemporary society and part of the collective memory. Empowering families and communities to protect children may be a wiser investment than expanding state care.

Part I of this article argues that the Convention on the Rights of the Child requires respect for the child’s natural family and encourages a concept of family broad enough to encompass local understandings of family structure and responsibilities. Part II describes the existing child protection system and recent legislation in Trinidad and Tobago. Part III explains that established child protection systems agree that efforts should be made to keep children with families, but reflect different choices about how this should be achieved. This part examines how permanency policies are reflected in law and practice in Australia, Canada, the United States, and the United Kingdom. These countries were chosen because the Trinbago legislation is oriented most closely to the general approach shared these systems\textsuperscript{11} and they are often used as a source of model programs. Part IV examines family structure and the culture of kinship care in Trinidad and Tobago. Part V makes some suggestions for thinking about permanency in Trinidad and Tobago in light of existing models and the culture of kinship care.

I. The Role of the Family and Child Protection in the Convention on the Rights of the Child

\textsuperscript{10} Id.
The CRC reflects global consensus on a broad range of civil, political, economic, social and cultural rights of children. It articulates human rights addressed in other international instruments from a child-centered perspective. The key principles recognize children as autonomous rights-holders with a right to be heard in matters concerning them, as well as the right to education, health care, survival, development and several participatory rights. The best interests of the child must be the primary consideration in all legal, policy and practice decisions involving children, and children must be protected from abuse, exploitation and discrimination. The CRC’s provisions must be read together, and several provisions provide guiding principles for child protection systems. These provisions seek to recognize and support the role of parents and primary caregivers, while ensuring the protection of the state when parents fail in their responsibilities.

The CRC recognizes the family as the fundamental unit of society and the optimal setting for development of children. The preamble to the CRC provides:

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

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12 One Step Forward or Two Steps Sideways?: Assessing the First Decade of the Children’s Convention on the Rights of the Child in Revisiting Children’s Rights: 10 Years of the UN Convention on the Rights of the Child 1-4 (Deidre Fottrell ed.).
13 One Step Forward or Two Steps Sideways?: Assessing the First Decade of the Children’s Convention on the Rights of the Child in Revisiting Children’s Rights: 10 Years of the UN Convention on the Rights of the Child (Deidre Fottrell ed.)
14 Article 3.
Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.\(^\text{18}\)

Nineteen articles of the CRC expressly acknowledge the importance of parents and families in the lives of children.\(^\text{19}\) For example, Article 5 provides that signatories shall respect the responsibilities, rights and duties of parents, extended family and other legal guardians. A child also has the right to “know and be cared for by his or her parents” (Article 7); “not be separated from his or her parents against their will” (Article 9); and not be subjected to arbitrary interference with his or her family and home (Article 16).

Article 18 of the CRC recognizes that parents or legal guardians have the primary responsibility for the upbringing and development of the child. These and other provisions underscore that the rights of the child are “most appropriately realized within the family unit” except where the bests interests of the child demand a different approach.\(^\text{20}\)

States must assist parents in fulfilling their responsibilities. Article 18 requires states to provide appropriate assistance to help parents and guardians meet their child-rearing responsibilities and to develop institutions, facilities and services for the care of children.\(^\text{21}\) Commentators have argued that appropriate assistance may be interpreted in light of the Declaration on Social Progress and Development to mean assistance at a level which enables the family to assume its responsibilities fully within the community.\(^\text{22}\)

While acknowledging that parents have the primary responsibility to provide an adequate standard of living for a child’s development, Article 27 requires states to provide parents in need with material assistance and support programmes. Article 19(2) also requires programs for the prevention of child abuse and neglect. All of these provisions require a


\(^{20}\) One Step Forward or Two Steps Sideways?: Assessing the First Decade of the Children’s Convention on the Rights of the Child in REVISITING CHILDREN’S RIGHTS: 10 YEARS OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD 6 (Deidre Fottrell ed.)

\(^{21}\) Art. 18(2); Art. 27(3).

\(^{22}\)
considerable investment of resources, and the Committee on the Rights of the Child has repeatedly stressed that all states are required to take measures to promote children’s economic, social and cultural rights “to the maximum extent of their available resources.”

The CRC acknowledges and seeks to accommodate different cultural approaches to the concept of family. Article 5 provides that States must:

- respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercises by the child of the rights recognized in the present convention.

The first reading of the convention referred only to parents, legal guardians and other individuals legally responsible for the child. The amendments in the second reading that included extended family and community reflects an understanding that within a State party there may be divergent approaches to defining family according to local custom. In particular, it reflects the influence of norms and values of African and Asian countries where child care is regarded as a communal responsibility. Thus the state should respect extended family or community where local custom accord responsibilities, rights and duties to extended family.

When parents and guardians fail in these responsibilities, the government must step in to protect children from all forms of abuse and exploitation, and to provide alternative care where necessary. States must take appropriate legislative,

27 Article 11 (prevent and remedy the kidnapping and retention abroad by a parent or third-party); Article 19 (protection from abuse, exploitation and maltreatment); Article 34 (protection from sexual exploitation and abuse); Article 32 (protection from work that threatens his or her health, education, or development); Article 35 (prevent sale,
administrative, social and educational measures to prevent, identify, and intervene when
children are maltreated.28 “One of the underlying premises of the convention is that
intervention by the state in the form of separation of the child and the family is an
extreme solution to an extreme situation.”29 Separating a child from his or her parents
against their will is allowed only when the relevant authorities subject to judicial review
determine, in accordance with applicable law and procedures, that separation is in the
child’s best interests. Poverty should never be a reason to justify separating children
from their families.30

When a child must be removed, the state has a duty to provide for the physical,
psychological and social reintegration of the child, as well as alternative care. This
should take place in an environment that fosters the health, self-respect and dignity of the
child. Article 20 expresses a preference for family-based alternative care over
institutional settings.31 Article 20 provides:

1. A child temporarily or permanently deprived of his or her family environment,
or in whose best interests cannot be allowed to remain in that environment, shall
be entitled to special protection and assistance provided by the State.
2. State parties shall in accordance with their national laws ensure alternative care
on behalf of such a child.
3. Such care could include, *inter alia*, foster placement, *kafalah* of Islamic law,
adoption or if necessary placement in suitable institutions for the care of children.
When considering solutions, due regard shall be paid to the desirability of
continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and
linguistic background.32

Article 20 talks about children deprived of their “family environment.” While the initial
draft developed by the CRC working group referred to “a child deprived of parental care,”

28 Article 19,
29 Geraldine Van Bueren, *The International Law on the Rights of the Child* 87
(Martinus Nijhoff Publishers, 1994)
30 Geraldine Van Bueren, *The International Law on the Rights of the Child* 80-81
(Martinus Nijhoff Publishers, 1994)
to the “Travaux Préparatoires”* 297 (1992); Geraldine Van Bueren, *The
32 Article 20.
the final version said “family environment.” This broader language suggests that if a child is separated from his or her parents, the government should seek to place the child with relatives before seeking non-relative care. Article 20 also states that countries must consider “the desirability of continuity in the child’s upbringing” and must pay attention to the child’s ethnic, religious, cultural and linguistic background. This implies that states should afford children the opportunity to maintain contact with family members, and ideally alternative care should be located in a child’s community. Finally, Article 20 states that alternative care could include foster care, kafalah, adoption, “or if necessary” institutional care. The qualifying language “if necessary” implies that institutional care should be considered only as a last resort when it is in the child’s best interests.

II. CHILD PROTECTION IN TRINIDAD AND TOBAGO

A. Overview of New Child Protection Legislation

In 2000, the Trinidad and Tobago Parliament passed several pieces of legislation known as the “package of children’s legislation” intended to domesticate the CRC and modernize the legal framework for child protection. The purpose of the Children’s Authority Act, the centerpiece of this legislation, is to “promote the well being of all children in Trinidad and Tobago; provide care and protection for vulnerable children; and comply with certain obligations under the United Nations Convention on the Rights of the Child.” In 2008, the package was significantly amended and certain sections were

34 Maya Grosz, Provisions for Alternative Care for Children Deprived of their Family Environment in [] 209.
36 The Children’s Authority Act, Act No. 65 of 2000, § 3A.
37 The 2008 package of children’s legislation consisted of seven pieces of legislation: amendments to the Children’s Authority Act 2000, Act 14, 2008 (passed and partially proclaimed in 2008); amendments to the Community Residences, Foster Homes and Nurseries Act, Act 15 2008 (passed but not proclaimed); International Child Abduction Act, Act 8, 2008 (passed and proclaimed), Family Court Bill 2008
proclaimed by the President, allowing those sections to take effect. As of publication of this article, key pieces of legislation included in the package are still not in effect.

Although the CRC catalyzed the political process that produced the package of children’s legislation, Trinidad and Tobago’s efforts to reform its child protection system pre-dates its ratification of the CRC. During the 1980s, government social workers frustrated by legal and bureaucratic barriers limiting their ability to assist abused children, began advocating for change. At their urging, in 1987, the Cabinet appointed a committee to make recommendations with respect to child abuse and the family service delivery system. The committee made wide-ranging proposals, many of which are reflected in the package of children’s legislation and remain relevant today. Trinidad and Tobago’s ratification of the Convention on the Rights of the Child on December 5, 1991 facilitated changes in the law. Because international treaties are not self-executing, the CRC requires domestic legislation for local enforceability. The CRC engendered sufficient political will and engagement by the legal community to allow passage of the package of children’s legislation.

Before turning to the new legislation, a brief description of the prior (and, to a large extent, still current) child protection system is useful. Trinbago, a former British colony, inherited a common law legal system, UK children’s legislation and a model of institutional care. The child protection legal system and the social service delivery

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38 While this is sufficient for some laws to take effect, certain laws go into force only upon further proclamation by the President.
39 Interview with Huldah Ambrose, former hospital social worker, dated DATE
40 Report of the Committee to Examine the Entire Family Services Delivery System in Trinidad and Tobago; Interview with Huldah Ambrose, former hospital social worker, dated DATE
41 Trinidad and Tobago gained independence in 1962. In colonial times, under the doctrine of reception and British colonial practice, UK common law and statutes generally applied in Trinidad and Tobago. Rose Marie Belle Antoine, COMMONWEALTH CARIBBEAN LAW AND PRACTICE 73-74, 83 (Routledge-Cavendish 2d ed. 2008). Upon independence, a reception of law clause in the Trinidad and Tobago Judicature Act of 1962, common law, doctrine of equity and UK law of general application in force on March 1, 1848 (Trinidad) and January 1, 1889 (Tobago) to be the law of Trinidad and Tobago. The Supreme Court Judicature Act 1962, Ch. 4:01, § 12; see also id. at 83.
system operated largely independent of each other. Child protection legislation consisted primarily of criminal penalties for crimes against children and provisions governing orphanages.\textsuperscript{42} The Children Act 1925, which has been amended several times, criminalizes cruelty to children and other offences rooted in Elizabethan poor laws.\textsuperscript{43} Court intervention was sought primarily in four ways. First, the police, who serve as prosecutors for less serious crimes, may bring a criminal proceeding in which an order is made concerning care of the child pending resolution of the criminal case.\textsuperscript{44} Second, the Children Act 1925 allows social workers or another person believed to be acting in the interests of the child to file a complaint alleging that a child is being harmed.\textsuperscript{45} These social workers, however, do not have the legal authority to enter homes to investigate abuse or to remove children. Third, there is a provision that allows Magistrates to “commit” a child to an orphanage for reasons such as parental unfitness and homelessness. Finally, parents may request court intervention if he or she is “unable to control the child,”\textsuperscript{46} a provision commonly known as “beyond control,” which is thought to account for a significant percentage of children currently in care. Sometimes, but not always, the Magistrate requests a social investigation from the court’s probation department before making one of these orders.\textsuperscript{47} Once the Court makes a placement

\textsuperscript{42} Zanifa McDowell, \textit{ELEMENTS OF CHILD LAW IN THE COMMONWEALTH CARIBBEAN 221} (2000).

\textsuperscript{43} The Children Act 1925, Chap. 46:01 § 3, 5, 6 and 7. Crimes against children are also included in generally applicable laws. See. Eg, The Offences Against the Person Act, Chap. 11:08.

\textsuperscript{44} The Children Act, Chap. 46:01 § 11 If the child’s parent or guardian is the offender, the Magistrate may order that the child be placed in the custody of a relative, other fit person or orphanage for some period until the child turns 16. The Children Act, Chap. 46:01 § 12

\textsuperscript{45} In those cases, the Magistrate may order that the child remain in the custody of the parent under supervision, or be committed to the care of a relative or fit person.

\textsuperscript{46} The Children Act 1925, Chap. 46:01 § 44(4).

\textsuperscript{47} In one recent example, a mother was sentenced to five months in prison for abandonment of her five children. The Magistrate also committed the children, who ranged in age from six month to eight years old, to a children’s home until age 16. On appeal, the mother’s lawyer argued that the Magistrate should not have declared the children wards of the state without first determining if the father was fit and able to care for the children or obtaining a probation officer’s report. Nikita Braxton-Benjamin, \textit{Appeal against pregnant mom’s 5-month jail term}, \textit{TRINIDAD EXPRESS NEWSPAPER}, July 3, 2012, at
decision, there is no court oversight of the placement and the court order is typically not revisited.

The current system for providing family and child social services is fragmented and uncoordinated. The main social service agency responsible for child protection is National Family Services Division, a unit within the Ministry of People and Social Development, that provides social work case management, counseling and other services to families at risk. The office oversees a small foster care program. According to Family Services Division, there are 30-40 children in foster care placements with 17 active foster parents. Child protection is not the Division’s sole responsibility, and high caseloads and understaffing have plagued the office for years. Social workers employed by hospitals, schools, the courts, children’s homes and the victim support unit of the police department also identify and assist abused children. These social workers are not formally coordinated, and there is no clear demarcation of responsibilities or mechanisms for transferring information. The Social Welfare Department of the Ministry of People and Social Development provides social benefits aimed at ameliorating poverty. Non-governmental organizations attempt to fill gaps in services to children and families.

The package of children’s legislation was intended to create a comprehensive child protection system in which the legal and social service structures complement each other. The Children’s Authority Act creates the overarching framework for civil child protection, while the other legislation in the package address specific aspects of care and protection. The Act establishes the Children’s Authority of Trinidad and Tobago to “act

trinidadexpress.com/news/Appeal_against_pregnant_mom_s_5-month_jail_term-161173755.html.

The organization’s mission is to “promote healthy family functioning through the provision of preventive, developmental and remedial programmes and services.”http://mpsd.gov.tt/OurServices/NATIONALFAMILYSERVICESDIVISION.asp

Some of these organizations include Rape Crisis Society, Coalition against Domestic Violence, Child Line, and Families in Action. There is no state child abuse hotline, but one of these organizations runs a line called Child Line that provides counseling and referrals to children and adults alike. Other organizations provide counseling, parenting programs, and will informally try to address situations involving abuse.

The Children’s Authority Act was partially proclaimed in 2008 to allow the Children’s Authority to set up its administrative structure, but the sections of the Act that allow actual operation are not yet proclaimed.
as the guardian of the children of Trinidad and Tobago.” The Authority’s functions cover the spectrum of child protection activities including: investigating complaints of child mistreatment; removing a child from his home where there is imminent danger; conducting assessments of children in care; providing care, protection and rehabilitation of children in need of care and protection; and monitoring community residences, foster homes and nurseries. The sections of the Children’s Authority Act that have been proclaimed allow the Authority to hire staff and establish an administrative structure, but the Authority does not yet have the legal authority to work with children.

The Children’s Authority Act outlines a new type of care and protection civil proceeding. If the Authority believes that a child is in “need of care and protection” and that its intervention is in the best interests of the child, it may receive the child into its care. Where the Authority receives a child into its care, it must immediately apply for either a Wardship Order, a remedy found in existing legislation that makes a child a ward of the Court, or one of twelve orders listed in section 25 of the Act addressing custody or services for children in care. The Court has discretion to grant an appropriate order if it is satisfied that the child is in need of care and protection as defined in the Act.

52 The Children’s Authority Act, Act No. 65 of 2000, § 5 and 14.
53 The Children’s Authority Act, Act No. 65 of 2000, §
54 Wardship Orders are governed by the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Act 15 of 1981, § 35..
55 Section 25 Orders are a Family Assistance Order; a Secure Accommodation Order; a Care Order; a Child Assessment Order; an Emergency Protection Order; a Recovery Order; a Fit Person Order; a Recognisance Order; a Foster Care Order; an Order freeing a child for adoption; a Contribution Order; or any other Order including an interim Order as the Court thinks fit.
56 The Act defines a child in need of care and protection broadly to include a child who:
(a) has neither parent nor guardian who is fit to exercise care and guardianship;
(b) is lost of has been and remains abandoned by his parent or guardian;
(c) whose parent or guardian is prevented by –
   (i) reason of mental or bodily disease;
   (ii) infirmity or other incapacity; or
   (iii) any other circumstances,
   from providing for his up-bringing, and there is no available person or persons capable, fit or willing to undertake the care of such child;
(d) is exposed to moral danger;
(e) is beyond the control of his or her parent or guardian;
The Children’s Community Residences, Foster Care and Nurseries Act (“Community Residences Act”), which was passed but not proclaimed, provides a mechanism for government oversight of all homes that care for children. The Act subjects existing and new homes to an initial inspection and, if a license is granted, to ongoing monitoring. The Act contemplates that the Authority will have some oversight responsibility for all children in care. Within 60 days of the Community Residences Act taking effect, existing children’s homes must provide the Authority with biographic information about each child and their relatives, the circumstances under which the child came into the home and the treatment plan prepared for the child. The Authority must assess the suitability of the placement, and then may direct the community residence about appropriate steps to ensure proper care of the child or request a court order to move the child. Any new children that come to a community residence must be brought to the attention of the Authority.

The Community Residences Act also establishes a formal foster care system to be operated by the Children’s Authority. The current foster care system was authorized by Parliament as a pilot project and currently is operated on a small scale by the National Family Services Division. The Community Residences Act requires that foster parents undergo an initial screening and annual renewal process, appropriate training, and periodic visits from the Authority. Foster parents are responsible for the health,

(f) is ill-treated or neglected in a manner likely to cause him suffering or injury to health;
(g) is destitute or is wandering without any settled place of abode and without visible means of subsistence;
(h) is begging or receiving alms;
(i) is found loitering for the purpose of begging or receiving alms;
(j) frequents the company of any criminal;

frequents the company of any common or reputed prostitute not being the mother of the child. The Children’s Authority Act, § 22.

Anyone who runs a children’s home without a license will face criminal fines. Id. at § 17.n. The Authority has the power to issue corrective action or revoke licenses where established standards have not been met. Id. § 11. The Authority may inspect community residences and their residents, as well as investigate complaints about mistreatment of children.

57 Children’s Community Residences, Foster Care and Nurseries Act §§ 3-7, 11, 17. 58 Children’s Community Residences, Foster Care and Nurseries Act § 25.
59 Children’s Community Residences, Foster Care and Nurseries Act § 26.
education and welfare needs of children in their care, and must maintain an environment
that is suitable for children. The foster care provisions do not apply to relatives or legal
guardians, a person with custody of a child under a fit person order or a person to whom a
child is released from a community residence.60

Adoptions are currently governed by the Adoption of Children Act, which was
enacted in 1946 and most recently amended in 1981.61 Under the Act, private adoptions
are illegal and an adoption board appointed by the Ministry of People and Social
Development is responsible for arranging adoptions. The 2000 Adoption Act, like its
predecessor, establishes an adoption board responsible for investigating prospective
adopters and recommending adoption to the Court.62 Some of the major changes to
adoption law include: incorporating a best interest standard for adoptions; allowing
persons outside of Trinidad and Tobago to adopt a child; providing for the Children’s
Authority to assume care of children not yet placed with a prospective adopter; and
repealing a provision that prohibited single males from adopting. Substantial
amendments to the 2000 Adoption Act were introduced in Parliament in 2007, but were
never passed. One key amendment in the 2007 bill would have replaced the adoption
board with the Children’s Authority as the government entity responsible for the adoption
system in Trinidad and Tobago. As such, unless the Adoption Act is amended, a separate
agency will be responsible for adoptions.

B. Permanency in the New Child Protection System

The Children’s Authority Act does not articulate an express policy with respect to
permanency, a term that refers to the child protection goal of placing each child with an
enduring family.63 As detailed in Part III, established child welfare systems operate on

60 Children’s Community Residences, Foster Care and Nurseries Act § 41.b
61 The Adoption of Children Act 1946, Ch. 46:03. A new Adoption of Children Act
was assented to by the President in 2000 but was never proclaimed.
62 The Adoption of Children’s Act was passed and assented to in 2000 but was never
proclaimed. Adoption of Children Act, No. 67 of 2000 §§ 3, 8.
63 Permanence first gained prominence as a child protection policy in the 1980s
when it was identified as a primary goal in US federal legislation. Deborah L.
Sanders, Toward Creating a Policy of Permanence for America’s Disposable Children
29 J. LEGIS. 51, 52 (2002). Since then permanency planning has become a central
consideration in [Western] child welfare policy. Some psychological studies that
came to prominence during the 1970s influenced the policy focus on permanency.
the premise that children should remain with parents unless removal is absolutely necessary, and if that is not possible, should be placed in another family setting. Countries vary in the way this policy gets implemented and in how permanency should be achieved, but the emphasis on permanency endures. In the Trinidad and Tobago legislation, there is no stated preference for leaving children with parents or relatives, or for quick reunification when children must be removed.

The Children’s Authority Act does, however, recognize that family should be considered in determining a child’s best interests. Section 6 of the Act requires the Authority to serve the child’s best interests and lists 15 factors relevant to the best interest determination. Among these factors are:

(a) the love, affection, and other emotional ties existing between the parties involved and the child; . . .

(ca) where appropriate, preserving the family unit and reuniting the child with his relatives at the earliest opportunity;

(cb) the right of the child to the enjoyment of family life;

(d) the permanence of the family unit; . . .

(f) the willingness and ability of each parent to facilitate and encourage a close parent-child relationship between the child and the other parent or the child and the parents;

(g) the willingness and ability of relatives to facilitate and encourage familial relationships between the child and other family members.\textsuperscript{64}

While these factors acknowledge the relevance of family relationships, it provides no guidance on the weight that should be accorded each factor and simply leaves it to the discretion of the Authority to weigh these among several other factors in individual cases.

The Children’s Authority adopted in its strategic plan a philosophy that children should grow up in a family environment. The first approach should be family reintegration. If that is not possible, then the child should be placed in foster care or where possible considered for adoption. When these options fail, then community residences should be considered. This approach is consistent with the Convention on the Rights of the Child and Western practice. It also reflects feedback from a broad range of local stakeholders including those who run community residences, NGOs that work with fragile families, and children in institutional care. Establishing this policy at the outset is, therefore, a commendable and important step. Because it is not clearly expressed in legislation, however, it leaves it to successive administrations of the Children’s Authority to embrace and implement the policy. Moreover, implementing this philosophy has implications for every aspect of the child protection system and requires careful consideration of a range of issues discussed in this paper.

It is particularly important that a policy in favor of keeping families together guide the development of the new child protection system because there are features of the Children’s Authority Act that run counter to the goal of keeping children with their families. The definition of children for whom the Authority can intervene is so broad that, in the absence of guiding principles that specify the circumstances and extent of intervention, there is the potential that large numbers of children will be brought into care. The Children’s Authority may “receive [a] child into its care” where the child is “in need of care and protection” and intervention is in the child’s best interests. The definition of “children in need of care and protection” includes, for example, children who are begging, loitering, frequenting the company of criminals or prostitutes, and in moral danger. These definitions can be interpreted in a way that creates a risk that a large number of children will be swept into the child protection system.

\textsuperscript{64} Children’s Authority Act § 6(2).
The legislation does not provide guidance to Courts on how to assess permanency, nor a mechanism for providing oversight after it has been awarded. If the Court is satisfied that the child is in need of care and protection, it may make one of several orders relating to care of the child. As discussed above, the legislation states that the Authority must consider the best interests of the child, and several of the best interests factors, talk about the role of family. There is no corresponding duty that the Court base its decision about which orders to grant on a consideration of what is in the child’s best interests. Reliance on the common law dictate that the court will likely base its decision on the principle that the welfare of the child is the paramount interests. The paramount interest determination in the child protection context is different, however, from a child custody determination. And again, without guidance, the courts may not apply this principle in a way that accords due deference to the role of the family. Moreover, the legislation does not specify a role for courts once an initial order has been granted. This means that if, for example, a court orders that a parent be provided with certain services before reunification with a child, there is currently no judicial mechanism to ensure that the services are provided and the child is actually reunified.

The legislation also fails to provide guidance about the permanency planning process, or about the most appropriate placement options if a child cannot return to his or her family. The legislation contemplates that “treatment plans” will be developed for each child, but does not specify that permanency be considered in these treatment plans, nor provide either an administrative or judicial mechanism to ensure that treatment plans are implemented. The Act provides that the Children’s Authority will assume responsibility for adoptions and foster care, but does not guide when either of these placement options will be pursued. Essentially, the legislation provides a mechanism for getting children into the care and protection system, but does not provide a clear avenue for keeping or getting them out.

Current practice and societal expectations may also encourage an increase in the number of children brought into the child protection system. The current child protection system uses children’s homes are used as a first, not a last resort, and children stay in care
for extended periods. In addition to the four large statutory homes, there are approximately 40 smaller children’s homes operated by churches, non-governmental organizations or community members. Magistrates have broad discretion to send children to the larger statutory children’s homes, and many children are taken to private children’s homes by the police, social workers, parents or others in the community without a court order. Once placed there, only rarely is there further court action to assess or change the placement and, with little government oversight, the care and planning for the child depends entirely on the practices of the particular home.

The majority of children in care are in large institutional settings, rather than a family setting. A 2005 study found a total of 1,230 children in children’s homes. Of these 43% lived in homes with more than 50 children, 23% lived in homes with 30-50 children, 30% lived in homes with 11 to 29 children and only 4% lived in homes with fewer than 10 children. Less than 40 children are in the pilot foster care system. One reason for the high numbers of children in institutional care is the lack of preventive

66 The four statutory homes receive government funding and some government oversight. The private homes may receive limited government assistance, but not to the extent of the statutory homes. Adele Jones and Michele Sogren, *A Study of Children’s Homes in Trinidad and Tobago*, Government of Trinidad and Tobago, University of the West Indies: Trinidad (April 2005).
67 The Act refers to Orphanages and Industrial Schools and certified four existing church-run institutions. Two of the homes follow a children’s home model while two follow a juvenile detention model. A child may be sent to a statutory home if he or she is found: begging or receiving alms; homeless or wandering and the parent or guardian does not exercise proper guardianship; destitute or has parents in prison; has no parents or guardian able and willing to provide for or control him; is under the care of an unfit parent; is the daughter of a father convicted of molesting one of his daughters; frequents the company of a thief or prostitute; or lives in a house used for prostitution. The Court may send any child fitting one of these descriptions to an orphanage “if satisfied that it is expedient so to deal with him.” The Children Act 1925, Chap. 46:01 § 44. In the alternative, the court may place the child in the care of a relative or other fit person. The Children Act 1925, Chap. 46:01 § 44(5).
68 Adele Jones and Michele Sogren, *A Study of Children’s Homes in Trinidad and Tobago*, Government of Trinidad and Tobago, University of the West Indies: Trinidad 20 (April 2005).
69 Adele Jones and Michele Sogren, *A Study of Children’s Homes in Trinidad and Tobago*, Government of Trinidad and Tobago, University of the West Indies: Trinidad 18 (April 2005).
actions to prevent children from entering institutions and insufficient reintegration of children home or to another family.\textsuperscript{70} To the extent there are efforts to prevent family breakdown or reunify families, it is done in an \textit{ad hoc} way rather than as part of any concerted effort. As one commentator noted, “children are dumped in the home, and then abandoned by the system that put them there in the first place.”\textsuperscript{71} Unless there are policies and resources devoted to shifting this practice, the new legislation could simply replicate and formalize current practice.

Another factor that will make it difficult to keep children with their families is the fragmented social service delivery system. The Children’s Authority Act contemplates that the Children’s Authority will provide services to children either directly or through referrals. It is silent with respect to the provision of services to parents and families. Parents and families may require a broad range of services to ameliorate the circumstances that put the child at risk and to strengthen the family for the child’s safe return. Examples of these services may include counseling, parenting skills, substance abuse treatment, mental health services, child care, as well as housing and other services aimed at ameliorating poverty. In the current system, these services are provided in a fragmented way by different agencies. Many of these programs are under-resourced and do not have the capacity to take on additional caseloads. Unless there is supportive policy and efficient mechanisms for working with the entire family, it will be difficult to address the root causes of abuse and neglect.

The final factor that could encourage an explosion in the number of children in care is that the community is waiting with baited breath for the Children’s Authority to become operational to save the children whose stories of abuse and death are carried all too frequently in the newspaper. For example, in the case of Amy Annamunthudo who was brutally killed by her stepfather after years of abuse, subsequent investigation and neighbors accounts reveal that Amy was admitted to the hospital three multiple times,

\textsuperscript{70} Patricia Lim Ah Ken, \textit{Children Without Parental Care in the Caribbean: Systems of Protection} 17 (2007).
\textsuperscript{71} Charisse Clarke, The Paradox of Children’s Rights in Trinidad and Tobago, University of the West Indies 65.
referred to and even briefly removed by government social workers.\textsuperscript{72} The community is appropriately outraged at these tragic deaths, and is justified in invoking the names of Amy and others to call attention to the failure of government and society to adequately protect children. The challenge is that a child protection system must be equipped to deal with not only these extreme cases, but the many more cases that are grey and complex, and reflect poor parenting skills and judgment, neglect, mental illness or other factors. Each society has to develop its own threshold and tolerance for “good enough” parenting if it hopes to avoid mass state care for children.

\section{III. Permanency in Established Child Protection Systems}

\subsection{A. The Legal and Policy Approach to Permanency}

The package of children’s legislation envisions a child protection system similar to that of Australia, Canada, United Kingdom and United States. Scholars have noted that, although there is substantial variation between and within these jurisdictions, their child protection systems share certain values and characteristics derived from their broader social welfare context.\textsuperscript{73} The primary focus is to protect children from harm in their own homes.\textsuperscript{74} Some salient features of these systems include concentration on families where risk of abuse is immediate and high; stand-alone child protection agencies separated from other social services; emphasis on individual rights; a social service framework that is highly bureaucratic and investigative; and reliance on an adversarial

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\item[72] Sean Douglas, \textit{State Failed Amy}, Newsday, March 10, 2012 (Former Minister of Gender, Youth and Child Development, Verna St. Rose-Greaves’ account of the findings of the report by Justice Monica Barnes into Amy’s death); Denzil Mohammed, We Killed Amy Annamunthodo, The Trinidad Guardian Newspaper, March 4, 2012.
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\end{footnotesize}
legal system to confer authority.\textsuperscript{75} Because the Trinbago legislative framework shares some of these features, and a common law tradition, the comparative analysis draws primarily from the United States, Canada, the UK and Australia.\textsuperscript{76} I argue that, although Trinidad and Tobago legislation was modeled on these systems, it does not reflect a preference for family integrity that is a common feature of all of these systems.

\textbf{Overarching Principles}

Child protection involves a careful balance between non-interference in family life and state intervention to protect children. On the one hand is the principle that governments should not intrude on family autonomy. The principle that parents have a protected interest in their children is firmly entrenched in U.S. and Canadian constitutional law.\textsuperscript{77} An overarching principle of the Children Act 1989 in England is non-intervention in family life.\textsuperscript{78} On the other hand, is the parens patrae doctrine derived from English common law, giving the state power to intervene and act as the parent for

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\item \textit{New Brunswick (Minister of Health) v. G(J)} (1999) (holding that parents have a vital interest in their children protected under section 7 of the charter as an aspect of security of person).
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those who cannot protect themselves. Child protection law, policy, judicial decisions and practice reflect choices about when individual privacy-based rights should yield to child safety concerns.

Established child protection systems typically adopt an overarching philosophy that children should be raised in their families and involuntary state care should be used as a last resort. The Children Act 1989 in England and Wales, as well as the implementing regulations and guidelines, reflects the principle of non-intervention and an emphasis on working with families when child safety issues arise. Although each jurisdiction in Canada is different, they all have core principles that reflect respect for family autonomy and the importance of stability and continuity for the child. As a Canadian court noted:

The community ought not to interfere merely because our institutions may be able to offer a greater opportunity to the children to achieve their potential. Society’s

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80 I acknowledge that any effort to describe a country’s child welfare system will inevitably result in some oversimplification or statements that do not reflect actual practice in certain localities. There are different laws and policies within countries, especially those that are federal or very decentralized.


82 Ontario’s Child and Family Services Act states that: while parents often need help in caring for children, that help should give support to the autonomy and integrity of the family.” S.I.(b), as enacted S.O. 1999, c. 6. Manitoba’s Child and Family Services Act says that” Children have a right to a continuous family environment in which they can flourish.” R.S.M. 1987, c. C80, Declaration of Principles. Quebec’s Youth Protection Act provides:

Every decision made under this Act must contemplate the child’s remaining with his family. If in the interest of the child, his remaining with [his family] . . . is impossible, the decision must contemplate his being provided with continuous care and stable conditions of life . . . as nearly similar to those of a normal family environment as possible.”

R.S.Q. 1977, c. P-34.1, s. 4, as amended by S.Q. 1984, c. 4, s. 5.
interference in the natural family is only justified when the level of care of the children falls below that which no child in this country should be subjected to.\footnote{1975, 9 O.R. (2d) 185 at 189 (Ont. Co. Ct.)}

Permanency is one of the overarching policy goals of US federal child protection policy, with family reunification as the first priority before seeking another permanent home.

The legislative and policy focus on permanence was influenced by the work of child psychologists that came to prominence during the early 1970s. The “psychological parent” theory posits that children form their primary attachment with the person who provides day-to-day care for the child whether or not that person is the biological parent.\footnote{The Best Interests of Children} According to these theorists, continuity in the child’s relationship with the primary caregiver is essential for normal psychological development.\footnote{Libby S. Adler, The Meanings of Permanency: A Critical Analysis of the Adoption and Safe Families Act of 1997, 38 Harv. J. on Legis. 1 (2001).} Attachment to a permanent caregiver gives the child a sense of security and “belonging rooted in cultural norms.”\footnote{Sacha Coupet, Swimming Upstream Against the Great Adoption Tide: Making the Case for “Impermanence”, 34 CAP. U. L. REV. 405 (2005)} This theory has had an enduring influence on child welfare policy, and is often used to support policies that favor adoption.\footnote{Eliza Patten, The Subordination of Subsidized Guardianship in Child Welfare Proceedings, 29 N.Y.U. REV. L & SOC. CHANGE 237, ___ (2004).} Although aspects of the psychological parent theory have been criticized, more recent research confirms the idea that children need a strong attachment to at least one caring adult for healthy social and emotional functioning.\footnote{Madelyn Freundlich at al., The Meaning of Permanency in Child Welfare: Multiple Stakeholder Perspectives, 28 CHILD AND YOUTH SERVICES REVIEW, 741, 743 (2006)}

There are also recent studies suggesting that the biological parent-child relationship is important in determining the child’s personality, resilience and relationships regardless of whether the child lives with that parent. Studies also show that children can have multiple attachments, and that the child’s security comes not from an exclusive relationship with one continuous psychological parent but from a familiar network of attachments formed with adults in the child’s environment.\footnote{Eliza Patten, The Subordination of Subsidized Guardianship in Child Welfare Proceedings, 29 N.Y.U. REV. L & SOC. CHANGE 237, ___ (2004); Peggy Cooper Davis, The}
the world show that children in long-term institutional care have poor health, behavioral and other outcomes. There are potential adverse consequences for children raised in foster homes. While these might be mitigated through appropriate screening and training of foster parents, placement stability and other practices, critics of established foster care systems contend that long-term state care of any sort should be avoided if possible.

The policy approach and debate in Western countries has been polarized between efforts to keep children with their biological families or court-mandated intervention to move children quickly to another family primarily through adoption. In the United States, federal child welfare policy began with considerable emphasis on family preservation. Concerns about the large numbers of children languishing in care for lengthy periods prompted significant reforms in 1997. Although these reforms still prioritized keeping the child at home or speedy reunification, it adopted deadlines, court reviews, case planning and other mechanisms to find the child another home if family preservation efforts fail. These reforms showed a preference for adoption over other options, causing some critics to argue that permanency has become synonymous with adoption to the detriment of children and their families. This policy shift between family preservation and adoption mirrors policy debates and legislative reforms in

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92 Adoptions and Safe Families Act.

93 Sacha Coupet, *Swimming Upstream Against the Great Adoption Tide: Making the Case for Impermanence*, 34 CAP. U. L. REV. 405 (2005); Martin Guggenheim, *Somebody’s Children, Sustaining the Family’s Place in Child Welfare Policy*, 133 HARV. L. REV. 1716 (2000). If a child cannot be reunified within prescribed time-frames, the child welfare system is no longer obligated to pursue family reunification, and must instead, pursue adoption, guardianship or another planned permanent living arrangement.
Canada, Britain and Australia. According to the rhetoric, the “emphasis on family preservation has been at the expense of children and there is a choice to be made between the rights of parents and the rights of children.” Presenting such a binary choice tends to influence politicians to pursue measures to increase adoption.

**The trigger for state intervention**

State intervention everywhere runs a spectrum that includes voluntary and involuntary services, as well as monitoring the child at home or in state care. Following an abuse report, an investigation is done to determine whether to: take no further action; refer the family for community services; suggest voluntary services and monitoring while the child remains at home; or pursue involuntary services and monitoring of the child at home or in state care. There may be a high degree of coercion even in voluntary cases as families participate to avoid court mandate. Court intervention is typically required for removal and a determination of the child’s placement, and may also be used to mandate services for parents and monitor the plan developed for children.

Involuntary intervention typically requires significant harm or risk of harm to the child, reflected in statutory definitions refined through case law. The burden of proof falls on the state to clearly establish the need for intervention. There are mechanisms that allow emergency removal of children who face immediate risk, but these often require closer scrutiny for ongoing intervention. The threshold for removal from parents or legal guardians is high, with many places requiring courts to consider whether there are less intrusive options. These key concepts, which lie at the heart of intervention in the North America/UK/Australia model, translate into many variations in law and practice.

94 CANADIAN CHILD WELFARE LAW: CHILDREN, FAMILIES AND THE STATE 8 (2nd Ed. Nicholas Bala et al. 2004)
95 In Britain, changes in the Adoption and Children Act 2002 were intended to increase the numbers of children adopted out of care. [cite]. See also White Paper, Adoption: A New Approach, CM 5017 (2000).
96 In Australia, efforts to pass legislation that would have prioritized adoption were defeated. Patrick Parkinson, Child Protection, Permanency Planning and Children’s Right to Family Life, 17 Int’l Journal of Policy and Family 147, 150 (August 2003)
In Canada, most jurisdictions have developed standardized approaches to the assessment of risk of abuse or neglect.\textsuperscript{99} This allows child protection agencies to consistently narrow the children whose risk of harm justifies involuntary state intervention. Each jurisdiction has a different definition of “children in need of care and protection” but all include physical, sexual and emotional abuse, or risk thereof; neglect; abandonment, death or absence of parents; and inadequate parental care, supervision or control. All provide for bringing children into care by parental consent and where parents have serious difficulties caring for adolescents.\textsuperscript{100} The Court, after hearing the evidence and arguments, will make a determination that the child is in need of care and protection. Then the court must determine what disposition serves the child’s best interests.

Apprehension, the power to immediately remove a child from the care of parents or guardian, is an extreme step taken only if there is a substantial risk of harm that cannot be addressed without removal.\textsuperscript{101} Legislation in most jurisdictions allows removal only if the child is in need of protection and there is imminent risk of harm. In several jurisdictions, before apprehension, there must be a consideration of whether less intrusive options could adequately protect the child. Most provincial statutes require consideration of placements with relatives or in the community before a child is placed in the care of an agency.\textsuperscript{102}

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\item \textsuperscript{99} \textbf{Canadian Child Welfare Law: Children, Families and the State} 8 (2\textsuperscript{nd} Ed. Nicholas Bala \textit{et. al.} 2004)
\item \textsuperscript{100} \textbf{Canadian Child Welfare Law: Children, Families and the State} 71 (2\textsuperscript{nd} Ed. Nicholas Bala \textit{et. al.} 2004)
\item \textsuperscript{101} \textbf{Canadian Child Welfare Law: Children, Families and the State} 46 (2\textsuperscript{nd} Ed. Nicholas Bala \textit{et. al.} 2004)
\item \textsuperscript{102} For example, in Ontario the Court shall not make an order removing the child from the care of the person who had charge of the child immediately before intervention “unless the court is satisfied that alternatives that are less disruptive to the child, including non-residential services . . . would be inadequate to protect the child.” Ontario, s. 7(2). Further, before making a child a temporary or permanent ward, the court shall consider “whether it is possible to place the child with a relative, neighbor or other member of the child’s community or extended family” under a supervision order. Ontario, s. 57(4). In Canada, there are two strands of judicial interpretation. The first that interprets this as a pre-requisite before you can consider best interests, and the other
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Similarly, each US state has narrowly defined grounds for intervention, which focus on physical, sexual and psychological abuse, abandonment and neglect. During its investigation and assessment process, an agency makes an initial determination that the standard has been met, while a court makes the final determination that abuse, abandonment or neglect was substantiated. Federal law requires every state to use reasonable efforts to prevent the removal of children from their families or reunify children with their family when removal is necessary. It is also common practice to explore relatives or non-relatives who can care for the child before state care is used. The US process is driven by due process protection for parents to a greater extent than other systems, providing additional checks against state power.\textsuperscript{103}

In England, legal proceedings are seen as the last resort used where risks are too great or parents are unwilling to cooperate with the local authority’s plan to protect the child.\textsuperscript{104} Courts may place the child either in the care of or under the supervision of the local child protection authority. To obtain a care of supervision order, the local authority must meet the “significant harm test” and prove that the order is in the child’s interests.\textsuperscript{105} The significant harm test requires proof that the child is suffering or likely to suffer significant harm; and that the harm is attributable to (i) the care given to the child or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give him; or (ii) the child is beyond parenting control.\textsuperscript{106}

The more intrusive the level of state intervention the higher the evidentiary threshold for significant harm. A local authority can investigate abuse and obtain an emergency protection order if access to the child is denied based on a showing that there is reasonable cause to suspect significant harm.\textsuperscript{107} For an emergency protection order, allowing removal up to 8 days, or an interim care and protection order, the authority must views it as part of the best interest determination. \textit{Canadian Child Welfare Law: Children, Families and the State} 93 (2\textsuperscript{nd} Ed, Nicholas Bala \textit{et. al.} 2004).

\textsuperscript{103} \textit{Protecting Children and their Families from Abuse: The Cleveland Crisis and the Children Act}, 23 \textit{Case Western J. Int’l Law} 255 (YEAR).

\textsuperscript{104} Hunt \textit{et al.}, \textit{The Last Resort} 66 (1999).

\textsuperscript{105} England Children Act 1989 Ch. 41 § 31.v

\textsuperscript{106} England Children Act § 33(3).

\textsuperscript{107} England Children Act 1989 47(1)(b) and 43(1)(a).
prove reasonable cause to believe significant harm.\textsuperscript{108} However, a final care or supervision order requires actual proof that the child is suffering or likely to suffer significant harm.\textsuperscript{109} The court cannot issue a care order “unless it considers that doing so would be better for the child than making no order at all.”\textsuperscript{110}

\textbf{The best interests standard in the child protection context}

Once a child protection agency establishes sufficient harm to justify supervision or removal, a best interest standard is often used to decide an appropriate disposition or guide other decisions about the child and family. The best interest standard originated in other types of family matters most notably custody disputes between parents. In the family context, the best interest standard typically involves the weighing of a number of factors, with no individual factor carrying outcome determinative weight. There has been much scholarly debate about the meaning and application of the standard, but little dispute that it leaves tremendous discretion to the trial judge.

In the child welfare context, the best interest standard is often applied differently than in the family context, with safety and the principal of non-intervention as driving concerns. As one Canadian scholar noted:

> the concept of best interests in a child protection context is more restrictive than in a family law context. In child protection proceedings, the statutory statements or principle and the definitions of “best interests” of the child acknowledge the importance of the child’s family and cultural heritage, thus creating a presumption that it is in the child’s best interests to be in the care of his or her family. While the term best interests of the child is used in child protection statutes, it has been consistently interpreted by the courts in a way that places a significant onus on the state agency to justify removal of a child from his or her family.\textsuperscript{111}

The principle that “the welfare of the child is of paramount concern” in British common law has also been evolved differently in the child protection context.

\textbf{The role of family for children in state care}

\textsuperscript{108} England Children Act §§
\textsuperscript{110} England Act § 1 (5).
\textsuperscript{111} CANADIAN CHILD WELFARE LAW: CHILDREN, FAMILIES AND THE STATE 67 (2\textsuperscript{nd} Ed. Nicholas Bala \textit{et. al.} 2004)
In the United States, if there is a basis for intervention, a case plan is developed to establish a permanency goal and determine appropriate services for the child and family. The services are intended to either further reunification efforts or ensure the child’s well-being. Federal law prioritizes possible permanency goals as family reunification, adoption, guardianship, and another planned permanent living arrangement. Case plans must be approved by the court regardless of whether the child is in at-home supervision, with relatives or in state care.

Agencies typically work at reunification efforts in the first year after a child enters care, after which the law encourages alternative permanency options to be pursued. When a child enters care, custodial rights are shifted to the state, but parents retain or share the right to make some decisions about the child’s health and welfare. Once it becomes clear that reunification is unlikely, child protection agencies may seek to permanently sever all parental rights even when there is no immediate prospect of adoption. While reunification is being pursued, agencies generally seek to ensure that children visit with parents and siblings. Child protection agencies may, but do not necessarily, continue to promote these relationships if reunification has not occurred within the statutory timeframes.

In England and Wales, the local authority must submit a care plan with proposals for the child’s care in order to obtain a care or supervision order. When a care order is in force, the local authority has parental responsibility but may “determine the extent to which a parent or guardian of the child may meet his or her parental responsibility” for the child. This power to limit the parents’ responsibility may be exercised only if necessary to safeguard or promote the child’s welfare. Even where the local authority limits parental involvement in the care and upbringing of the child, a parent may still do what is reasonable to promote the child’s welfare.\footnote{England and Wales Children Act 1989, § 33(3), 34.} A child in care in England and Wales must have contact with parents and guardians, and contact can be severed entirely only by court order.\footnote{England and Wales Children Act 1989 § 34.}

In Canada there are essentially 3 types of orders once a child is found to be in need of protection: supervision, temporary wardship or permanent wardship. Under
a supervision order, the child remains at home, while the agency does supervised visits
and the parent may be required to do services. The maximum duration for in-home
supervision is from six to twelve months. Temporary wards are placed in the care of the
child protection agency, usually in a foster or group home, for a maximum period ranging
from three to twenty-four months. The state becomes the child’s legal guardian, but
reunification with parents is generally pursued and parents have the right to visit. The
length of a temporary wardship should be consistent with the plan of care for the child,
whether that be assessment and treatment or rehabilitation of parents, but not so long as
to become the status quo for the child. Some states authorize courts to impose conditions
on parents, but the majority do not provide statutory authority for anything other than
access. Children made permanent wards are generally expected to be wards of the state
until adulthood.

In Australia, where there is a reasonable prospect of reunification, the
child protection agency is required to develop a restoration plan. It should include a
description of the minimum outcomes the agency believes must be achieved before it is
safe for the child to return home; the services it is able to provide, or which it has
arranged from other service providers, to the child or family; other services the court
could request from other government departments or non-government agencies; and a
statement of the length of time during which restoration should be actively pursued.114

The role of courts in maintaining family integrity

As already discussed, courts everywhere determine whether the risk to the child
justifies intervention or removal, and must often determine whether intervention or
removal are the least intrusive option to keep the child safe. Beyond this, courts play a
very different role in different jurisdictions. The United States represents the highest
level of court involvement. Courts must approve the case plan developed for the family,
and conducts regular hearings to monitor implementation of the case plan. Within twelve
months after a child enters care, federal law requires courts to hold a “permanency
hearing” to assess reunification efforts and determine a permanency goal for the case.115
The court must then hold regular status hearings to review compliance with the case plan.

114 Children and Young Persons (Care and Protection) Act 1998 (NSW) § 84.
115 42 U.S.C § 671(a)(15)(D).
The court case is closed only when the child achieves a permanency goal or when the child ages out of foster care.

This level of court involvement following disposition is largely absent in other jurisdictions. In Canada, child protection legislation in each jurisdiction provides for court review of prior orders, and may result in the termination, extension or alteration of a prior order. In England and Wales, the court has no power to require an agency to change its care plan or care for the child in a particular way, but can refuse to grant a final care order. The Court does have the authority to delay closure of the case through interim orders or grant a parent contact even if access conflicts with the local authority’s care order. Once a care order is granted, the local authority can vary the care plan without returning to court.\textsuperscript{116}

\textit{Adoption}

As discussed previously, adoption is often seen as the preferred alternative when children cannot return to their families. The deadlines imposed by federal policy in the United States tends to encourage termination of parental rights, even when no adoptive placements have been identified. The US system encourages family visitation while reunification efforts are being attempted, but does not actively foster these relationships once reunification is no longer the goal. This results in significant numbers of legal orphans who may spend years in state care with all ties to their natural family severed and no realistic prospect of adoption. Although other countries encourage adoption, this pressure to terminate parental rights seems to not be as common in other places.

IV. \textbf{The Construct of Family and the Culture of Kinship Care in Trinidad and Tobago}

As developing countries seek to implement the CRC, it is important that Convention principles should be adapted to the local context. Wholesale importation of structures and policies from developed countries are likely to provide inadequate solutions. Child protection policies are more likely to be implemented and effective if they are congruent with local institutions and culture. Trinidad and Tobago’s historical

and cultural tradition of shared parenting among extended kinship networks is a potential asset that should be considered and maximized in its child protection efforts.

In Trinidad and Tobago, and throughout the Caribbean, there is a historical and cultural norm of shared childrearing and socialization within extended families.\textsuperscript{117} “Parental responsibility for children, including ‘owning’ (accepting paternity of), ‘minding’ (financially supporting) and ‘caring’ (rearing), are distributed and allocated not only to those identified as biological and social parents, but also to extended family and community members”\textsuperscript{118} Although shared parenting has different origins, forms and functions based on ethnicity and socio-economic factors, there is a common understanding that parents are not the exclusive holder of rights and responsibilities towards children, and that extended family or even non-relatives play an important role in raising children.\textsuperscript{119} A child may be raised with extended relatives in the same household or close proximity. Although parents participate in the day-to-day care of the child, other relatives may regularly provide financial support, child care, discipline and socialization. Another form of shared parenting, sometimes referred to as child shifting, occurs when biological parents delegate childrearing responsibilities to another household for some period of time or the entire childhood.\textsuperscript{120} When this happens, the biological parent often remains a significant figure in the child’s life. Although children may be raised entirely by someone other than their biological parent, few children are legally adopted.

The definition of family in Trinidad and Tobago, and the Caribbean, extends beyond the nuclear family to include not only extended blood relatives but social

\textsuperscript{119} Many terms are used in the social science literature for these arrangements. Child sharing, child shifting, informal adoption or fostering, just to name a few.
Family bonds transcend national boundaries as a result of migration across the globe. Grandparents, particularly grandmothers, are often substitute caregivers, but it is not unusual for parenting to be shared with a varied network of kin including older siblings, uncles and aunts (particularly those without children of their own), and even non-relatives who are close family friends or members of the same community. Sometimes these caregivers contribute to the support, care and socialization of the child at the same time, with different functions being allocated among several caregivers. As one researcher noted, “[t]he stress which our informants put on the inclusiveness of family membership and the role this performed for them as children, as indicated by the frequency and apparent ease with which children moved between family carers, suggests an ideology, or culture, of family which plays a communal role in childcare and which, in adulthood, is confirmed through strong, and extensive kinship bonds.”

There are historical, socio-economic and cultural reasons for Caribbean family structure. Some anthropologists argue that, for those of African descent, family structure derived from similar institutions in Africa, while others contend family patterns did not survive slavery and instead are vestiges of plantation life. Early studies on Caribbean families identified visiting unions, child shifting and matrifocality as features of lower-

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121 Christine Barrow, CARIBBEAN CHILDHOODS: OUTSIDE, ADOPTED OR LEFT BEHIND: GOOD ENOUGH PARENTING AND MORAL FAMILIES 29
122 Jaipaul L. Roopnarine, Fathers in Caribbean Cultural Communities in FATHERS IN CULTURAL CONTEXT 203 (Routledge 2012) (describing a case study in which child care for an East Indian married couple is provided by the paternal grandmother and the child’s aunt and uncle who still reside in the family home); Jaipaul Roopmarine et. al., Parent-Child Relationships in African and Indo Caribbean Families: A Social Psychological Assessment in SOCIAL PSYCHOLOGICAL DYNAMICS 151 (D. Chadee & A. Kostic eds, University of West Indies Press) (citing a 1992 study pf Trinidadian families where 16.3 percent of care interactions were by siblings and 17.6 percent were by grandparents.
124 Christine Barrow, FAMILY IN THE CARIBBEAN: THEMES AND PERSPECTIVES 3- (James Curry Limited 1996).
class black households. Under the plantation system, the authority of males as husbands and fathers was eroded because the offspring of slaves belonged to the mother’s owner, and family composition was continually disrupted by the sale of members. The result was the reduction of the family unit to mother and dependent children. Mothers who worked in the field could not care for their children during the day, and child care was instead provided by elderly women on the plantation. Female-centered communal child care persisted well beyond emancipation and has been attributed in recent times to socio-economic factors. Children live with other relatives when parents migrate, or when parents are unable to adequately care for children due to death, work, poverty, incarceration, illness or domestic conflict. Some scholars explain it primarily as a functional solution that allows mothers to work and financially support children in the absence of fathers. More recent scholarship has reassessed the role of Caribbean fathers, situating their role in raising children within a context where parenting responsibilities are allocated among multiple adults, and within a network of female caregivers rather than marginal to it.

There are mixed results within the literature about how these child sharing practices impacted the child’s well-being. Some studies show positive results for children and characterize Caribbean families as “flexible, adaptive and anchored by

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126 Christine Barrow, Family in the Caribbean: Themes and Perspectives 7 (James Curry Limited 1996); Jaipaul L. Roopnarine, Fathers in Caribbean Cultural Communities in Fathers in Cultural Context 205 (Routledge 2012).
127 Christine Barrow, Family in the Caribbean: Themes and Perspectives 22 (James Curry Limited 1996)
129 Rodman 183 (1971);
female-centered networks.” Others found negative psycho-social outcomes for children in kinship care. For example, one study found that children who transferred from one parent to the next as a result of a parents’ migration suffer impaired mental health. A holistic look at the research seems to suggest that it is not the fact of kinship care, but rather the quality of these extended relationships that determined the child’s well-being. When the child was accepted and made to feel part of the new household, and where there is some degree of stability, children grow up with few negative consequences.

Trinbagonians of East Indian descent, comprising approximately 45% of the population also have a tradition of communal child care, albeit with different forms and origins. East Indians arrived in Trinidad in 1845 as indentured laborers to work on plantations after slavery ended. There is debate regarding whether East Indian family patterns survived migration, or changed largely due to economic conditions in the Caribbean. Marriage is the historical norm among Indian families, and traditionally

131 Christine Barrow, Caribbean Childhoods: Outside, Adopted or Left Behind: Good Enough Parenting and Moral Families 106; Pottinger (2005) (study finding that children in Jamaica whose parents had migrated did not show poorer psychological functioning, lower academic performance or have any more behavioral difficulties in school, compared with peers whose parents had not migrated).
135 CITE
occurred at a young age and was arranged by parents of the bride and groom.\textsuperscript{137} Along with marriage, “the tie between father and son constitute the core of family relations that extend to encompass a ‘joint’ family, a corporate structure which includes the wives and children of the sons, all living under the same roof.”\textsuperscript{138} Harsh plantation life, initial scarcity of women and lack of legal recognition of Hindu and Muslim marriages destabilized traditional extended family norms.\textsuperscript{139} These were, however, reconstructed over time as gender ratios improved and Indian marriages were legally recognized.\textsuperscript{140}

Although there is now a preference for the Western ideal of the nuclear family form, close and interdependent extended families are still at the heart of Indian culture.\textsuperscript{141} Married couples may live and pool resources with three generations in the patrilocal residence before establishing a nuclear home.\textsuperscript{142} When sons do “move out of the paternal household, they do so quite often into houses built immediately next door to, or on the same property as, the father’s house . . . contiguous households of kin continue to interact as ‘joint’ families, sharing larders, debts, childraising, recreational, social and

\begin{footnotes}
\item[137] Christine Barrow, \textit{Family in the Caribbean: Themes and Perspectives} 341 (James Curry Limited 1996) citing Robert Bell, Marriage and Family Differences Among Lower Class Negro and East Indian Women in Trinidad (1970).
\item[138] Christine Barrow, \textit{Family in the Caribbean: Themes and Perspectives} 341 (James Curry Limited 1996).
\item[139] Jaipaul L. Roopnarine, \textit{Fathers in Caribbean Cultural Communities} in \textit{Fathers in Cultural Context} 206 (Routledge 2012)
\end{footnotes}
ritual activities.”  This pattern of functional extendedness exists even when married couples live further away.  

Although there are many reasons for Caribbean family structure, kinship care can be properly understood as a cultural norm in Trinidad and Tobago, and not merely the result of economic forces. “Indeed, as recent revisionist studies have shown, such patterns can also be discerned among middle-class Caribbean families and among Caribbean migrant communities abroad, suggesting that culture may be a more enduring ingredient in family formation than (unstable) economic constraints.” “The role and importance of grandparents in contributing to the upbringing of grandchildren is not solely dependent on an absent parent but is evident, to a greater or lesser degree, in many families regardless of economic circumstance, and regardless of the generation or period.” This role encompasses a broader cultural acceptance of childcare as a family, even a neighborhood responsibility. It also is more multi-faceted than merely providing financial and practical child care support, but these kin play a role in linking family members and retaining kinship networks, providing continuity through generations, and socializing children. Conversely, children feel a strong emotional


145 Christine Barrow, Caribbean Childhoods: Outside, Adopted or Left Behind: Good Enough Parenting and Moral Families 97
connection to family and sense of responsibility to the elders who contributed to their care.  

The tradition of communal and kinship caregiving is eroding. The most recent available data for Trinidad and Tobago shows the majority of households with nuclear households headed by a husband and wife, one-fifth of households were extended family formations and over 10% were single mother households. Although the make-up of a “household” does not necessarily indicate the composition of the “family,” the prominence of nuclear households may suggest diminished opportunities for extended families to cooperate in child care activities. Female labor force participation has increased, due in part to higher educational attainment among women. With more women in the work force, there are fewer female relatives available to provide substitute care. Even when there are available caregivers, they may not be able to financially provide for the child or may not want to assume the role. Through the process of globalization, and the influence of media and television from the North Atlantic, traditional cultural norms are being subsumed by cultural symbols and values that have their roots in other countries.

At the same time, there are a number of social problems that undermine families’ ability to care for children. There is a growing prevalence of crime and violence, attributed primarily to educational attrition, unemployment and drug abuse. The community may be under such pressure that it is difficult to take on additional


151 CARIBBEAN FAMILIES: DIVERSITY AMONG ETHNIC GROUPS (Jaipaul Rooneree and Janet Brown eds., Ablex Publishing 1997)


responsibilities. Also children in certain communities may be at risk of physical danger, being caught up in criminal activity, and suffering trauma from the loss and violence in their community. There is also an increasing incidence of teenage pregnancy. All of these suggest that we should not romanticize extended family as protectors of abused children, but rather strengthen families and rely on them as a resource when they have the capacity to assume that role.

V. Towards a Trinidad and Tobago Permanency Policy

1. Galvanize and Strengthen the Village

Trinidad and Tobago can leverage its rich tradition of kinship and communal caregiving to create an informal system where relatives and those in the community care for vulnerable children. In the past, when parents were unable to care for children due to migration, poverty, death, incarceration, illness or other circumstances, relatives or fictive kin stepped in, either as short-term support or for the entire childhood.\textsuperscript{155} Even when parents were present, children were often raised within networks of extended relatives, with childrearing responsibilities allocated among multiple caregivers including parents. Family plays an important role in society and the notion of who constitutes family extends beyond the traditional nuclear family, resulting in strong connections to a broad network of blood and fictive relatives based both in Trinbago and abroad.\textsuperscript{156} Although there is now a preference for nuclear family households, these strong family bonds and the prominence of grandparents, aunties and others helping to socialize and care for children, remains a feature of contemporary society.

This tradition of kinship care already works as a safety net for vulnerable children. For the one thousand children in institutional care, countless others are diverted from institutions through intervention by family and neighbors. In one recent example, a mother burned an 8-year old child’s hand on a hot tawah (a flat skillet used to make roti). The media reported that the child’s relatives informed the father, who did not live in the same home, and who sought medical care and assumed custody of the child when the

\textsuperscript{155} Christine Barrow, Caribbean Childhoods: Outside, Adopted or Left Behind: Good Enough Parenting and Moral Families, 1, 97
\textsuperscript{156} Christine Barrow, Caribbean Childhoods: Outside, Adopted or Left Behind: Good Enough Parenting . . . 29
mother was sentenced to three years in prison.\textsuperscript{157} The mother’s other three children are being cared for by relatives.\textsuperscript{158} Social workers, police officers, and community-based service providers anecdotally report that this happens often. In fact, the emergence of small children’s homes over the past twenty years reflects, in part, this community response in the absence of government action. Often children’s homes established because a benevolent resident takes in two children, “then three more move in and before long a house for a family of six has been ‘adapted’ to care for thirty or more.\textsuperscript{159} These homes, and the other individuals who voluntarily step in to protect children, often do so with limited resources and under challenging circumstances.

As Trinbago works diligently to build a formal child protection system, stakeholders should invest as much effort in preventing children from entering that system. The global consensus is that children do better in a family setting. Numerous studies around the world have documented that children raised in institutional settings generally have poor outcomes. For that reason, most developed countries have deinstitutionalized in favor of foster homes where a limited number of children are placed with a family and the state subsidizes their care. While foster care is better than institutions, it should still be used only after family alternatives have been explored. While there is much to learn from the research, policies and programs in developed foster care systems, many would argue that these systems are broken. Studies show that children raised in foster care also have poor outcomes, especially when there are frequent changes in placement and lack of appropriate services. The first priority, therefore, should be to keep children within their families and communities.

There are also pragmatic reasons to divert children from the formal care system. As a practical matter, there are insufficient resources to remove large numbers of children from their homes, and to provide them with the services and quality of care needed to

\textsuperscript{158} Inniss Francis, Mother of 4 jailed, Trinidad Express Newspaper, June 25, 2012, at thrintradexpress.com/news/Mother_of_4_jailed-160324255.html
\textsuperscript{159} Adele Jones and Michele Sogren, \textit{A Study of Children’s Homes in Trinidad and Tobago} 2 (April 2005).
improve their well-being. Although Trinbago is considered a relatively high income economy, fueled by oil and natural gas resources, with wide access to social services, the government has traditionally allocated few resources to social services. Existing children’s homes are at their maximum capacity, or lack resources to take in more children. The current social service delivery system is overburdened and fragmented. There are no services for children with serious mental illness, long delays accessing the limited services available for sexual abuse victims, and few government-run programs providing parenting skills and other services. Because the services required to assist families and children are provided by different government agencies, there are bureaucratic hurdles to receiving services. There currently are not enough social worker, psychologists, psychiatrists and other trained professionals to meet existing needs, much less the needs of an expanded system. Another reality of the local environment is that any structure that relies solely on government action will be subject to the standstill that occurs every time there is a change in administration and a reconsideration of government programs and policies. In thinking about how to allocate scarce resources, it makes sense to improve the quality of care provided to those children in the most harmful situations for whom there may be no better option than state care, while at the same time invest resources in strengthening families and communities ability to act as a safety net for children.

To further the latter goal, resources should be allocated for social programs that eradicate poverty, substance abuse and violence, as well as those that build employment and parenting skills. Studies in other countries find that countries that spend less on public health and social services are more likely to have higher numbers of institutionalized children. Domestic violence support should operate to ensure that

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161 Charisse Clarke, The Paradox of Children’s Rights in Trinidad and Tobago 180 (poverty alleviation is needed before children’s rights can be recognized).

non-abusing parents have the ability to safely care for the child. In addressing these problems, it is important to collaborate with and support the NGO community, but at the same time leave them to their work. It is important that programs be designed by community members so that there is buy-in and a greater likelihood of effectiveness. Frontline workers in community organizations may have more credibility, and are likely to remain in the community well past government initiatives. This puts communities in a better position to care for children. There should also be public outreach to remind society of the tradition of kinship care, and encourage individuals to accept responsibility to intervene to protect children.

The legal system can support private decisions about how to care for vulnerable children by facilitating efforts to formalize relationships without necessarily diverting families into the formal child protection system. In many situations, parents may still be around and can continue to take actions that require parental consent. However, when the substitute caregiver needs legal authority to allow them to enroll the child in school, provide medical care or do other things for the child, the guardianship and other existing laws can be used.

In advocating a resurrection of kinship and communal caregiving traditions, I do not want to romanticize this idea of the perfect great aunt stepping in to rescue children. Families are not perfect, and we can all attest to the dysfunctions that plagued our own families. Studies indicate that some children raised by relatives suffer psychological consequences. And there are certain communities that have been so eroded by violence and chronic unemployment that they have little ability to protect children from daily trauma. Nonetheless, I remain convinced that, other than in the most serious cases, children should be raised in their own “good enough” families unless the government can guarantee them a better chance in life. The reverence for extended family bonds in Trinbago culture affords a unique opportunity to define family broadly enough to allow children to stay within their natural community without necessarily staying with a neglectful parent. And Caribbean studies show that children raised by
relatives are no worse off than other children provided there is stability and they are made to feel like part of the family.\footnote{Christine Barrow, Caribbean Childhoods: 107.}

\section*{2. Limit State Intervention To Situations Involving a High Risk of Harm}

If there is significant effort to strengthen families, many vulnerable children can be served through prevention and community-based efforts. The Children’s Authority should take children into state care only when there is a risk of serious harm. Children who are vulnerable, but do not rise to the level of serious harm, can get some in-home social work services or be referred to other government programs or to community organizations for services. The goal is to provide families with needed support, but keep children out of the formal care system unless there is no other way to keep them safe.

To do this effectively, there should be appropriate reporting mechanisms, investigations and risk-assessment measures using an inter-disciplinary approach. Children at high risk of harm should be identified and receive prompt attention. The Children’s Authority must be adequately resourced with research-cased assessment tools, trained social workers, and the support necessary to be able to follow through effectively in more egregious cases. The child protection systems in the US, Canada and UK offer many research-based risk-assessment procedures as potential models to be borrowed and adapted.\footnote{Gary Cameron and Nancy Freymond, \textit{Understanding International Comparisons of Child Protection, Family Service, and Community Caring Systems of Child and Family Welfare} in \textit{TOWARDS POSITIVE SYSTEMS OF CHILD AND FAMILY WELFARE} 23 (Nancy Freymond and Gary Cameron eds. 2006).} For example, the Framework for Assessment developed by the Department of Health to assess children who may be defined as being in need under the UK \textit{Children Act of 1989}.\footnote{Gary Cameron and Nancy Freymond, \textit{Understanding International Comparisons of Child Protection, Family Service, and Community Caring Systems of Child and Family Welfare} in \textit{TOWARDS POSITIVE SYSTEMS OF CHILD AND FAMILY WELFARE} 65 (Nancy Freymond and Gary Cameron eds. 2006).} It emphasizes taking into account the child’s surroundings, her cultural context, family and life experiences, as well as the child’s developmental state, family
strengths and the need for social support or specialist intervention. There is also a need for research within Trinidad and Tobago to develop locally appropriate risk-assessment tools.

Courts should adopt a legal standard that allows removal only in situations of significant harm. Although this standard is not explicit in the current legislation, it can be inferred by reading the Children’s Authority Act as a whole. Section 5 of the Act, which outlines the Authority’s general functions and duties, provides that the Children’s Authority may, “upon investigation, remove a child from his home where it is shown that the child is in imminent danger.” Under Section 22, the Children’s Authority may receive into its care any “child in need of care and protection,” as that term is defined in the legislation, and must immediately seek an appropriate court order. The Judge has the discretion to issue a number of orders listed in the Act ranging from an order placing the child in the care of the Authority to a recognizance order directing the parents to exercise proper care and guardianship. These provisions should be read to require a showing of imminent harm as a precondition to actual removal from the home. This is consistent with law in the UK where an order placing the child under the care or supervision of the local child protection authority can be done only upon a showing of “significant harm.”

The Children’s Authority Act states that the Children’s Authority must act in the child’s best interests, but does not impose a corresponding duty on the courts to decide an appropriate order based on the child’s best interests. Trinidad and Tobago courts already adopt the legal standard inherited from the common law that the “welfare of the child is paramount” in cases involving children. Courts should also be guided by a best interest standard, but must understand that in the child protection context, this

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167 Children’s Authority Act § 5(e).
168 Children’s Authority Act § 22(1), (1)(A)
170 UK Children Act 1989 § 31(2).
standard should be guided primarily by weighing safety against family autonomy. The law in UK incorporates such a standard.

Ultimately, legislation should be amended to clarify the permanency policy and narrow the bases for taking children into care (i.e., the definition of children in need of care and protection). The provisions allowing children to be placed in state care for being “beyond control” should be revisited and possibly changed. In the meantime, Children’s Authority should deal with this category of children through programs aimed at helping families deal with teenagers, rather than by putting children in orphanages. However, because of how slowly the legislative process moves, Children’s Authority should develop a policy framework and standards that limit the children entering care.

3. When Intervention Is Necessary Keep Children Safely with Family as the First Option

When intervention is necessary, the first option should be to keep the child within the family. This may include keeping the child with the parents under supervision or placing the child in the care of a relative. If it is not safe to do so, and the child must be placed in care, then every effort should be made to reunify the child with family as quickly as possible. In keeping with Trinbago culture and tradition, the definition of family should be expansive. Caribbean families typically include an expansive network of blood relatives and fictive kin. As the Children’s Authority considers who should care for the child, it should consider anyone who has sufficient connection to be considered family. Ideally it would be someone with whom the child already has a bond. However,

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171 One commentator noted “Legal reform processes are extremely lengthy which can signify a lack of interest, understanding, ownership and commitment on the part of policymakers.” Patricia Lim Ah Ken, *Children Without Parental Care in the Caribbean: Systems of Protection* 27 (2007). The first draft of the Children’s Authority Act was introduced in [YEAR], yet the bill passed Parliament in 2000, and was only partially proclaimed 8 years later after amendment. The bill has not yet been fully proclaimed. One commentator accounts for this feature of child protection legislation throughout the Caribbean as follows: when it comes to actual implementation of legislation, inadequate pre-planning has often led to slow adoption of regulations, insufficient and short term allocation of resources, practitioners who have not been adequately trained on the provision of the new legislation and a general lack of resources and planning for new administrative structures. Patricia Lim Ah Ken, *Children Without Parental Care in the Caribbean: Systems of Protection* 27 (2007).
even others who do not have a personal relationship with the child may be appropriate caregivers. The key is whether there is sufficient connection the person and the child’s family that the person feels a natural sense of responsibility for the child. If this person becomes a long-term caregiver for the child, then some indication that the person is committed to providing long-term, stable care is also important.

Efforts should be made to find family members who are not immediately available. For example, even though one parent may have been the child’s primary caregiver, a relative on the other side of the family may be willing to take the child. If it becomes clear that the child will need longer-term care, then relatives abroad should be pursued. Children should participate in identifying caregivers. Even young children can share valuable information about who are important people in their lives. Relatives can be provided financial support if they meet certain criteria and need assistance to care for the child.

Some child protection stakeholders expressed concern that kinship caregivers may protect and enable abusers, particularly in situations of incest or sexual abuse. It is certainly important not to place a child in a situation where he or she will be subject to harm. However, it is also important to make decisions based on data and individual assessments, rather than speculations. For as many anecdotes that there are about families hiding sexual abuse, there are anecdotes where children are shielded from abusive relatives even when the family refuses to publicly report the abuser. More importantly, there is a lack of data on the link between family and residential patterns and the incidence of both physical and sexual abuse. Further research is needed to understand the circumstances under which incest occurs and the factors that may cause other family members to either report the abuse or protect the child. Decisions about placing a child with particular relatives should also be based on an individual assessment of whether that family can provide adequate care, including the family’s capacity to protect the child from further abuse.

4. Attempt to Reunify Families When Children Must Enter Care

172 Christine Barrow, CARIBBEAN CHILDHOODS: OUTSIDE, ADOPTED OR LEFT BEHIND: GOOD ENOUGH PARENTING AND MORAL FAMILIES 115.
When children must be placed in community homes for their safety, every effort should be made to reunify them with family. To be effective, there must be an assessment of each child and its family’s strengths and abilities. The purpose of the assessment is to identify the reasons the child came into care and to identify the services necessary for the child and family to be successfully reunited. The goal should be to address the problems that brought the child into care, not a generalized effort to “fix” the family. The children’s Authority must be sufficiently funded and staffed with a cadre of trained social workers to be able to handle this responsibility. In the event reunification with the previous caregivers is impossible, reunification with other family members should be pursued. Again the definition of family should be consistent with the Trinidad and Tobago model of family.

Family mediation and family conferencing that includes not only parents, but extended family and other community-based support, should be used to help make decisions about what should be done to protect and care for the child. Some version of family conferences have been utilized in different jurisdictions. Family Group Counseling was given a central place in both child protection and juvenile justice in New Zealand. The legislation was influence by demands of the Maori community for a system that was more sensitive to their values, in particular the importance of the extended family and tribal group in dealing with family problems. In New Zealand, the family group conference is a necessary precursor to any action to protect the child. A conference is organized with members of the extended family and others who may have relevant input into decision-making concerning the child. The aim is for the family and child protection agency to reach agreement about a case plan for the child or children. If they are able to reach agreement, then this takes effect as an order of the court.

For the entire time that a child is in care, there should be an approach that the family and community is still an integral part of the child’s life. This idea is consistent with the approach in some European countries where child protection is embedded in the family services system. There should be more programs to assist families including substance abuse, housing, prisoner re-entry, parenting skills, teenage

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parents, and sexual abuse. These programs should be community-based and should take innovative approaches. For example, “parenting” could be taught in the home by elders in the community who model parenting practices. Families of children in care could be mentored by other families within the same community. Provision of intensive in-home services provides opportunities to promote parenting skills in the situations in which they are most needed. These services will prevent many children from coming into care and, may need to be more intensive immediately following a crisis but can taper off eventually. It also provides a resource and relationship that family can rely on when later crises occur.

There should be some mechanism for accountability to ensure that efforts at reunification are being made. The Children’s Authority Act does not contemplate a role for the courts after a care order is granted. Given scarce judicial resources, this may ultimately be ok. However, thought should be given to creative alternative options. For example, a multi-disciplinary panel, or a volunteers from the community who are trained, could review case plans of children in care. Only when there is a disagreement between the Children’s Authority and the review panel, court intervention might be sought.

5. Facilitate Family Connections, Guardianships and Adoptions when in the Child’s Best Interests

Children should remain connected to their natural family and community even when long-term care is in their best interests. This would be in sharp contrast to the assumptions in US law and policy. In the US, the underlying assumption is that connection with family should be promoted in support of family reunification efforts, but once reunification becomes unlikely, “visiting may be helpful but not necessary to meet the child’s needs.” Moreover, termination of parental rights is pursued in the interest of adoption even when an adoptive family has not yet been identified. Parental rights should be severed only when adoption is in the child’s best interests and imminent.

Adoptions should be utilized more frequently than current practice in Trinidad and Tobago. Children in care should be assessed to determine whether adoption is in their best interests. The law should be amended to increase the pool of adoptive

parents. In assessing options for children, international adoptions by relatives abroad should be explored.

At the same time, Trinidad and Tobago does not have to buy into the rhetoric of permanency as a mutually exclusive “poles on an ideological spectrum” between adoption and family reunification.\textsuperscript{175} “It is possible to design a system in which every effort is made to keep children with families, and to restore them after removal, but in which permanency planning has an important role for those children who are unlikely ever to be able to return home.” Formal adoption has never played a major role in the culture. Rather, informal kinship care has allowed others to parent children, without severing ties to parents or distorting a child’s relationship with the members of their family. Adoption should therefore be used when appropriate, and should not be pursued in situations where guardianship or other arrangements may better serve the child’s interests.

\textsuperscript{175} Patrick Parkinson, \textit{Child Protection, Permanency Planning and Children’s Right to Family Life}, 17 INT’L JOURNAL OF POLICY AND FAMILY 147, 147 (August 2003) (analyzing a government proposal in New South Wales, Australia where a government proposal to promote adoption as the preferred option for permanency was defeated).