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

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

*Kele Stewart**

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I. INTRODUCTION

The road from ratification to full implementation of the United Nations Convention on the Rights of the Child (“CRC”) is a challenging and uncertain path for many signatories. Trinidad and Tobago (“Trinbago”) recently passed legislation intended to implement the CRC.¹ The law, which establishes the Children’s Authority as a centralized agency to respond to child abuse, is a commendable step. Absent from the law, however, is an express policy with respect to permanency, the term used in child protection for ensuring that each child has an enduring family.² 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 uses Trinbago as an example to explore what that means for a country seeking to develop a comprehensive civil child protection system. This article argues that the CRC requires States to prioritize family integrity and that Trinbago should leverage its tradition of extended kinship care in developing its child protection system.³ The article offers a comparative analysis of established Western child protection systems to highlight the myriad ways in which a country’s philosophy about permanency impacts the structure of its child protection system. It simultaneously emphasizes the importance of

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¹ Children’s Authority Act (Act No. 64/2008) (Trin.); Children’s Community Residences, Foster Care and Nurseries Act, (Act. No. 65/2000) (Trin.); Children’s Amendment Act (Act No. 8/2003) (Trin.); Miscellaneous Provision, Children’s Authority Act (Act. No. 64/2008) (Trin.); Adoption of Children Act (Act. No. 67/2000) (Trin.).

² Lorrie L. Lutz, National Resource Center for Foster Care and Permanency Planning, *Achieving Permanency for Children in the Child Welfare System: Pioneering Possibilities Amidst Daunting Challenges* 3 (2003), available at www.hunter.cuny.edu/socwork/nrcfcpp.com; Deborah L. Sanders, *Toward Creating a Policy of Permanence for America’s Disposable Children*, 29 J. LEGIS. 51, 52 (2002).

³ Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/Res/44/25, pmlb. & art. 5 (1989).

grounding CRC principles in local culture and norms. Although situated in the Trinidad context, the framework offered for thinking about permanency has broad implications for child protection system design.

Contemporary child protection law seeks to balance protecting children from harm by caregivers against family autonomy. Governments use the coercive force of law to remove a child from the home when necessary,⁴ but they also view the family as the ideal setting for child development.⁵ 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 the least desirable option and, in many places, institutional care has been abandoned in favor of foster care and more family-like settings. Implementation of a family-focused philosophy requires every aspect of the child protection system to reinforce the goal of keeping children safely within families. This philosophy is reflected in decisions about which children are brought into the care system, what services are provided to children and families, what legal standards apply, 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 may be desirable or what pitfalls to avoid. The value of international comparisons is not to suggest that any system is superior or any practice is “best,” but to illustrate how different priorities are reflected in system design and to consider

⁴ Gary Cameron & Nancy Freymond, UNDERSTANDING INTERNATIONAL COMPARISONS OF CHILD PROTECTION, FAMILY SERVICE, AND COMMUNITY CARING SYSTEMS OF CHILD AND FAMILY WELFARE IN TOWARDS POSITIVE SYSTEMS OF CHILD AND FAMILY WELFARE 4 (Nancy Freymond & Gary Cameron eds. 2006).

⁵ Patrick Parkinson, *Child Protection, Permanency Planning and Children's Right to Family Life*, 17 INT'L J. POL'Y & FAM. 147, 149 (Aug. 2003); Kevin G. Harvey, *Diverging Child Protection Laws in the Commonwealth: A Comparison of Recent Legislation in England and New Zealand*, 4 IND. INT'L & COMP. L. REV. 103 (1993–1994).

whether a procedure or program used elsewhere might improve current practice in a specific setting.⁶ It is equally important that any lessons from other societies feasibly adapt to local institutions, culture and values. Research suggests that culture is a more powerful determinant of overall functioning of a child protection system than structure or professional social work ideology.⁷ Regardless of what the law says or how the structure is built, culture will be an important factor in the way child protection is practiced and whether it is effective. As Trinidad 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 Trinidad'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.⁸ 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.⁹ This

⁶ Gary Cameron & Nancy Freymond, *Understanding International Comparisons of Child Protection, Family Service, and Community Caring Systems of Child and Family Welfare* in TOWARDS POSITIVE SYSTEMS OF CHILD AND FAMILY WELFARE 3–4 (Nancy Freymond & Gary Cameron eds. 2006).

⁷ Rachel Hetherington, *Learning from Difference: Comparing Child Welfare Systems* in 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.” *Id.* at 36.

⁸ CHRISTINE BARROW, FAMILY IN THE CARIBBEAN: THEMES AND PERSPECTIVES 2–24 (James Curry Limited ed. 1996); 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 ed. 2012).

⁹ *Id.*

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, together with the increase in violence and other social factors that weaken traditional support systems and pose new risks for children. Notwithstanding these challenges, strong family connections and the prominence of extended family helping to socialize and care for children remain features of contemporary society and part of the collective memory.

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 inTrinbago. Part III explains that established child protection systems agree that efforts should be made to keep children safely with families, but reflect different choices about how this should be achieved. Part III also 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 by these systems¹⁰ and they are often used as sources of model programs. Part IV examines family structure and the culture of kinship care in Trinbago. Part V makes some suggestions for thinking about permanency in light of existing models and the culture of kinship care.

II. THE ROLE OF THE FAMILY AND CHILD PROTECTION IN THE CONVENTION ON THE RIGHTS OF THE CHILD

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.¹¹ The key principles recognize children as

¹⁰ Gary Cameron & Nancy Freymond, *Understanding International Comparisons of Child Protection, Family Service, and Community Caring Systems of Child and Family Welfare*, in *TOWARDS POSITIVE SYSTEMS OF CHILD AND FAMILY WELFARE 5* (Nancy Freymond & Gary Cameron eds. 2006).

¹¹ Deidre Fottrell, *One Step Forward or Two Steps Sideways?: Assessing the First Decade of the Children's Convention on the Rights of the Child*, in *REVISITING*

autonomous rights-holders, who possess the right to be heard in matters concerning them, as well as the rights to education, health care, survival, development and several participatory rights.¹² The best interests of the child must be the primary consideration in all legal, policy and practice decisions involving children,¹³ and children must be protected from abuse, exploitation and discrimination.¹⁴ Although the scope of the CRC extends beyond intervention for abuse and neglect, several of its provisions serve as guiding principles for child protection systems. These provisions recognize and support the role of parents and primary caregivers, while ensuring the protection of the state when parents fail in their responsibilities.¹⁵

The CRC recognizes the family as the fundamental unit of society and the optimal setting for development of children.¹⁶ 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,

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.¹⁷

CHILDREN'S RIGHTS: 10 YEARS OF THE UN CONVENTION ON THE RIGHTS OF THE CHILD 1-4 (Deidre Fottrell ed., 2000).

¹² *Id.*

¹³ Convention on the Rights of the Child, art. 3.

¹⁴ Jonathan Todres et al., *Overview in THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS FOR U.S. RATIFICATION* (Jonathon Todres et al. ed., Transnational Publishers, 2006).

¹⁵ Cris R. Revaz, AN INTRODUCTION TO THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD IN THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: AN ANALYSIS OF TREATY PROVISIONS AND IMPLICATIONS OF U.S. RATIFICATION 10 (Jonathon Todres et al. ed., Transnational Publishers 2006).

¹⁶ Convention on the Rights of the Child, pmbl; Geraldine Van Bueren, THE FAMILY AND THE RIGHTS OF THE CHILD IN INTERNATIONAL LAW IN THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD 67 (Martinus Nijhoff Publishers, 1994).

¹⁷ Convention on the Rights of the Child, pmbl.

Nineteen articles of the CRC expressly acknowledge the importance of parents and families in the lives of children.¹⁸ 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 best interests of the child demand a different approach.¹⁹

States must assist parents in fulfilling their child-rearing responsibilities. Accordingly, 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.²⁰ 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 that enables the family to assume its responsibilities fully within the community.²¹ 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 programs. Article 19(2) also requires programs for the prevention of child abuse and neglect. All of these provisions require a 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.”²²

¹⁸ Todres, *supra* note 14, at 20–21.

¹⁹ Fottrell, *supra* note 11, at 6.

²⁰ Convention on the Rights of the Child art. 18(2), Nov. 20, 1989, 1577 U.N.T.S. 3; Convention on the Rights of the Child art. 27(3), Nov. 20, 1989, 1577 U.N.T.S. 3.

²¹ Adele Jones & Michele Sogren, *A Study of Children’s Homes in Trinidad and Tobago*, SOCIAL WORK UNIT, UNIVERSITY OF THE WEST INDIES, April 2005.

²² JANE FORTIN, CHILDREN’S RIGHTS AND THE DEVELOPING LAW 39 (2d ed. 2003).

Not only does the CRC acknowledge the role of parents, but it 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.²³ The amendments in the second reading that include extended family and community reflect 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 childcare is regarded as a communal responsibility.²⁴ Thus, the state should respect extended family or community where local custom accord responsibilities, rights and duties to someone other than parents or legal guardians.²⁵

When parents and guardians fail in their responsibilities, the government must step in to protect children from all forms of abuse and exploitation, and provide alternative care where necessary.²⁶ States

²³ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

²⁴ Rebeca Rios-Kohn, *A Comparative Study of the Impact of the Convention on the Rights of the Child: Law Reform in Selected Common Law Countries*, in PROTECTING THE WORLD'S CHILDREN: IMPACT OF THE CONVENTION ON THE RIGHTS OF THE CHILD IN DIVERSE LEGAL SYSTEMS 2 (2007); GERALDINE VAN BUEREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD 68 (Martinus Nijhoff Publishers, 1994).

²⁵ GERALDINE VAN BUEREN, THE INTERNATIONAL LAW ON THE RIGHTS OF THE CHILD 71 (Martinus Nijhoff Publishers, 1994).

²⁶ 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, trafficking and abduction of children); Article 38 (ensure children under 15 years of age have no direct part in hostilities).

must take appropriate legislative, administrative, social and educational measures to prevent, identify and intervene when children are maltreated.²⁷ “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.”²⁸ Separating a child from his or her parents against his or her 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.²⁹

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 the child’s 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.³⁰ 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.³¹

²⁷ Convention on the Rights of the Child art. 19, Nov. 20, 1989, 1577 U.N.T.S. 3.

²⁸ Van Bueren, *supra* note 25, at 87.

²⁹ *Id.* at 80–81.

³⁰ SHARON DETRICK, THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD: A GUIDE TO THE “TRAVAUX PREPARATOIRES” 297 (1992); Van Bueren, *supra* note 26, at 94.

³¹ Convention on the Rights of the Child art. 20, Nov. 20, 1989, 1577 U.N.T.S. 3.

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,” the final version said “family environment.”³² 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.³³

The Human Rights Council of the United Nations adopted Guidelines for the Alternative Care of Children that are intended to enhance implementation of the CRC regarding children deprived of parental care.³⁴ The guidelines reinforce the idea that child protection efforts should primarily be directed to “enabling the child to remain in or return to the care of his/her parents, or when appropriate, other close family members.” and “[t]he State should ensure that families have access to forms of support in the care-giving role.” Consistent with this overarching goal, the guidelines emphasize that removal from family care is a last resort; poverty should be a signal for appropriate support, rather than the only reason for removal; and states should provide appropriate support for informal care arrangements with relatives. The guidelines include other specific suggestions directed at preventing separation, promoting family reintegration and identifying the most appropriate alternative care setting when required.

³² DETRICK, *supra* note 30, at 297.

³³ Todres, *supra* note 14, at 209.

³⁴ U.N. Human Rights Council, *Guidelines for the Alternative Care of Children*, GE.09-14213(e) 160609 (June 15, 2009).

III. 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 collectively as the “package of children’s legislation,” intended to domesticate the CRC and modernize the legal framework for child protection.³⁵ The purpose of the Children’s Authority Act—the centerpiece of this legislation—is to “promote the wellbeing 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.”³⁶ In 2008, the package was significantly amended³⁷ and certain sections were proclaimed by the President, allowing those sections to take effect.³⁸ As of publication of this article, however, 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’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.³⁹ At their urging, in 1987, the Cabinet appointed a committee to make recommendations with respect to child

³⁵ The 2000 “package of children’s legislation” consisted of: Children’s Authority Act, (Act No. 64/2008) (Trin.) ; Children’s Community Residences, Foster Care and Nurseries Act, (Act No. 65/2000) (Trin.); Children’s Amendment Act, (Act No. 8/2003) (Trin.); Miscellaneous Provision (Children) Act, (Act No. 64/2008) (Trin.); Adoption of Children Act, (Act No. 67/2000) (Trin.).

³⁶ Children’s Authority Act, (Act No. 64/2008) (Trin.).

³⁷ The 2008 package of children’s legislation consisted of: three assented acts including Children’s Authority (Amendment) Act (Act No. 14/2008) (Trin.); Children’s Community Residences, Foster Care and Nurseries (Amendment) Act (Act No. 15/2008) (Trin.); International Child Abduction Act (Act No. 8/2008) (Trin.); and four unassented bills including Family Court Bill, H.R. 25, 8th Parl. (2007) (Trin.); Status of Children (Amendment) Bill, H.R. 25, 9th Parl. (2008) (Trin.); Children Bill, H.R. 20, 9th Parl. (2008) (Trin.); Adoption of Children (Amendment) Bill, H.R. 22, 8th Parl. (2007) (Trin.).

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 (Dec. 28, 2012).

abuse and the family service delivery system.⁴⁰ The committee made wide-ranging proposals, many of which are reflected in the package of children's legislation and remain relevant today. Trinidad's ratification of the Convention on the Rights of the Child on December 5, 1991 facilitated recommended changes to the law. Because international treaties are not self-executing, the CRC requires domestic legislation for local enforceability.⁴¹ 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, current) child protection system is useful. Trinidad, a former British colony, inherited a common law legal system, UK children's legislation and a model of institutional care.⁴² The child protection legal system and the social service delivery system operate largely independent of each other. The legal framework consisted primarily of criminal penalties for crimes against children and provisions governing orphanages.⁴³ The Children Act of 1925, which has been amended several times, criminalizes cruelty to children and other offences rooted in Elizabethan poor laws.⁴⁴

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 (Dec. 28, 2012).

⁴¹ Rebeca Rios-Kahn, UNICEF, *A Comparative Study of the Impact of the Convention on the Rights of the Child: Law Reform in Selected Common Law Countries* 52 (2007).

⁴² Trinidad 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. Rose Marie Belle Antoine, *COMMONWEALTH CARIBBEAN LAW AND PRACTICE* 73–74, 83 (Routledge-Cavendish 2nd 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) *E.g.*, Supreme Court Judicature Act 1962, Ch. 4:01, § 12; *See also, e.g.*, Antoine, *COMMONWEALTH CARIBBEAN LAW AND PRACTICE* at 83.

⁴³ ZANIFA MCDOWELL, *ELEMENTS OF CHILD LAW IN THE COMMONWEALTH CARIBBEAN* 221 (Univ. of West Indies Pr ed., May 2000).

⁴⁴ Children Act of 1925, No. 4, §§ 3–9, ch. 46:01, 10–13 (Trin.). Crimes against children are also included in generally applicable laws. *See, e.g.*, The Offences Against the Person Act, Chap. 11:08.

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.⁴⁵ Second, the Children Act of 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.⁴⁶ These social workers, however, do not have the legal authority to fully investigate abuse or to remove children from their homes. 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,”⁴⁷ a provision commonly known as “beyond control,” which is thought to account for a significant percentage of children currently in care.

Sometimes, though not always, the Magistrate requests a social investigation from the court’s probation department before making one of these orders.⁴⁸ Once the Court makes a placement 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 not tied to the legal system, and is itself fragmented. The Ministry of Gender, Youth and Child Development develops wide-ranging policies and programs related to children. The main social

⁴⁵ Children Act of 1925, No. 4, § 11, ch. 46:01, 13–14 (Trin.). 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. Children Act of 1925, No. 4, § 12(1), ch. 46:01, 14–15 (Trin.).

⁴⁶ 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. Children Act of 1925, No. 4, § 15, ch. 46:01 22 (Trin.) (amended Dec. 31, 2007).

⁴⁷ Children Act of 1925, No. 4, § 44(1–4), ch. 46:01, 27–29 (Trin.).

⁴⁸ 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, *Appeal against pregnant mom’s 5-month jail term*, TRINIDAD EXPRESS NEWSPAPER, July 3, 2012, at trinidadexpress.com/news/Appeal_against_pregnant_mom_s_5-month_jail_term-161173755.html.

service agency historically responsible for child protection is the National Family Services Division, which provides social work case management, counseling and other services to families at risk.⁴⁹ 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. Non-governmental organizations play a significant role providing services to children and families.⁵⁰

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 addresses specific aspects of care and protection.⁵¹

The Act establishes the Children's Authority of Trinidad to "act as the guardian of the children of Trinidad and Tobago."⁵² 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

⁴⁹ The organization's mission is to "promote healthy family functioning through the provision of preventive, developmental and remedial programs and services." <http://mpsd.gov.tt/OurServices/NATIONALFAMILYSERVICESDIVISION.aspx>

⁵⁰ Some of these organizations include the Rape Crisis Society, Coalition against Domestic Violence, Families in Action, and ChildLine. When ChildLine was originally created it was a private organization and the State did not have a child abuse hotline. The State and ChildLine have now combined to offer a statewide hotline for child abuse. U.S. Dep't of State, Country Reports on Human Rights Practices for 2012 Trinidad and Tobago (Apr 2013) (available at <http://www.state.gov/documents/organization/204692.pdf>).

⁵¹ 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.

⁵² Children's Authority Act (Act. No. 64/2008) § 4 (Trin.).

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.⁵³ 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.⁵⁴ 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,⁵⁵ or one of twelve orders listed in section 25 of the Act addressing custody or services for children in care.⁵⁶ 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.⁵⁷

⁵³ *Id.* at § 5 (Trin.).

⁵⁴ *Id.* at § 25 (Trin.).

⁵⁵ Wardship Orders are governed by the Family Law (Guardianship of Minors, Domicile and Maintenance) Act of 1981 § 35, Act 15 of 1981.

⁵⁶ 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 Recognizance 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.

⁵⁷ 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 or 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;
- (f) is ill-treated or neglected in a manner likely to cause him suffering or injury to health;

The Children's Community Residences, Foster Homes 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.⁵⁸

The Act also 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.⁵⁹ Any new children that come to a community residence must be brought to the attention of the Authority.⁶⁰

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, education and welfare needs of children in

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- (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;
 - (k) frequents the company of any common or reputed prostitute not being the mother of the child. The Children's Authority Act, § 22.

⁵⁸ Children's Community Residences, Foster Homes and Nurseries Act §§ 3–7, 11, 17. 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.* at § 11. The Authority may inspect community residences and their residents, as well as investigate complaints about mistreatment of children.

⁵⁹ *Id.* at § 25.

⁶⁰ *Id.* at § 26.

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.⁶¹

Adoptions are currently governed by the Adoption of Children Act, which was enacted in 1946 and most recently amended in 1981.⁶² 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.⁶³ Some of the major changes to adoption law include: incorporating a best interest standard for adoptions; allowing persons outside of Trinidad 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. 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.⁶⁴ As

⁶¹ *Id.* at § 41.b.

⁶² 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.

⁶³ The Adoption of Children Act was passed and assented to in 2000 but was never proclaimed. Adoption of Children Act, No. 67 of 2000 §§ 3, 8.

⁶⁴ 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. Peggy Cooper Davis, *The Good Mother: A New Look at Psychological Parent Theory*, 22 N.Y.U. REV. L. &

detailed in Part III, established child welfare systems operate on 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 Trinbago 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.⁶⁵

SOC. CHANGE 347, 347-353 (1996). Research shows that children must have a relationship with at least one caring adult for healthy psychological development. Lorie L. Lutz, *Achieving Permanency for Children in the Child Welfare System: Pioneering Possibilities Amidst Daunting Challenges*, NAT'L RES. CTR. FOR FOSTER CARE & PERMANENCY PLANNING 3 (2003), <http://www.hunter.cuny.edu/socialwork/nrcfcpp/downloads/achieving-permanence.pdf>. Although there is policy debate and differing approaches on how best to achieve permanency, the concept that children should be in permanent setting has remained a priority in child protection. Dorothy Roberts, *The Challenge of Substance Abuse for Family Preservation Policy*, 3 J. HEALTH CARE L. & POL'Y 72, 72 (1999); Sacha Coupet, *Swimming Upstream Against the Great Adoption Tide: Making the Case for Impermanence*, 34 CAP. U. L. REV. 405, 405 (2005).

⁶⁵ Children's Authority Act § 6(2).

While these factors acknowledge the relevance of family relationships, the Act 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, in public meetings with stakeholders, has said it will adopt 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 considered for adoption, where possible. 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.

It is important, however, that this policy be transformed into sustained practice. Because it is not clearly expressed in legislation, 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 a 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. However, these and other 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.

The legislation neither provides guidance to Courts on how to assess permanency, nor establishes 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 discuss the role of family.⁶⁶ There is no corresponding duty that the Court base its decision about which orders to grant on a consideration of the child's best interests.

Reliance on the common law dictates that the court will likely base its decision on the principle that the welfare of the child is the paramount interests, a principle that has been applied locally and primarily in custody disputes between two parents.⁶⁷ However, the paramount interest determination in the child protection context is different from a child custody determination. 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, for example, if 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 does it 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 state when either of these

⁶⁶ *Id.*

⁶⁷ Rebeca Rios-Kohn, *A Comparative Study of the Impact of the Convention on the Rights of the Child: Law Reform in SELECTED COMMON LAW COUNTRIES IN PROTECTING THE WORLD'S CHILDREN* 40-41 (Unicef, Cambridge University Press ed., 2007).

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 getting them out of care and into a safe family setting .

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 as a first, not a last, resort and children stay in care for extended periods.⁶⁸ 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.⁶⁹ Magistrates have broad discretion to send children to the larger statutory children's homes.⁷⁰ Further, many children are taken to private children's homes by the police, social workers, parents or others in the community without a court order.⁷¹ Once placed there, only rarely is further court action taken 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.

⁶⁸ Patricia Lim Ah Ken, *Children Without Parental Care in the Caribbean: Systems of Protection* 17 (2007).

⁶⁹ 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 & 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).

⁷⁰ 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. *Id.* § 44(5).

⁷¹ Adele Jones & 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).

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.⁷² 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.⁷³ Less than 40 children are in the pilot foster care system.

One reason for the large number of children in institutional care is that little is done to prevent children from entering institutions or to facilitate their safe return to a family if removal is necessary.⁷⁴ To the extent there are efforts to prevent family breakdown or reunify families, it is done on an *ad hoc* basis 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."⁷⁵ 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 who may require a broad range of services to ameliorate the circumstances that put the child at risk. Examples of these services may include counseling, parenting skills, substance abuse treatment, mental health services and 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.

⁷² *Id.*

⁷³ *Id.* at 20.

⁷⁴ Ken, *supra* note 68, at 18.

⁷⁵ Charisse Clarke, *The Paradox of Children's Rights in Trinidad and Tobago*, University of the West Indies 65.

The final factor that could encourage an explosion in the number of children in care is societal expectations. The community is waiting with baited breath for the Children's Authority to become operational to save the children whose stories of abuse are carried all too frequently in the newspaper. According to one account, 38 children have been murdered in the last four years.⁷⁶ For example, in the case of Amy Annamunthodo, who was brutally killed by her stepfather after years of abuse, subsequent investigation and neighbors' accounts reveal that Amy was admitted to the hospital multiple times, referred to and even briefly removed by government social workers.⁷⁷ The community is appropriately outraged at these tragic deaths, and is justified in invoking the names of Amy and others to demand that government and society protect children. Even one child death is unacceptable. In a case such as Amy's, long-term removal from the family may be the only way to keep the child safe. The challenge is that a child protection system must be equipped to deal with not only these extreme cases, but also the many more cases that are grey and complex, and reflect poor parenting skills and judgment, neglect, mental illness or other factors.

IV. PERMANENCY IN ESTABLISHED CHILD PROTECTION SYSTEMS

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, the United Kingdom and the 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 contexts.⁷⁸ The primary focus

⁷⁶ Child abuse a symptom of other problems, Dec. 11, 2013, <http://www.trinidadexpress.com/letters/Child-abuse-a-symptom-of-other-problems-235506001.html>.

⁷⁷ Sean Douglas, *State Failed Amy*, *Newsday*, Mar. 10, 2012, <http://www.newsday.co.tt/news/0,156617.html> (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*, Mar. 4, 2012, <http://www.guardian.co.tt/columnist/2012-03-04/we-killed-amy-annamunthodo>.

⁷⁸ *Introduction and Summary of Papers to International Perspectives on Child Protection*, Part of the Scottish Executive Child Protection Review Protecting Children

is to protect children from harm in their own homes.⁷⁹ 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 legal system to confer authority.⁸⁰ Because the Trinidad legislative framework shares some of these features, as well as a common law tradition, the comparative analysis draws primarily from the United States, Canada, the UK and Australia.⁸¹

1. 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. This principle that parents have a protected interest in their children is firmly entrenched in U.S. and Canadian constitutional law.⁸² An overarching principle of the Children Act 1989

Today and Tomorrow 1, 5–6 (Malcolm Hill et al. eds.); see Cameron & Freymond, *supra* note 5, at 5.

⁷⁹Cameron & Freymond, *supra* note 4, at 5.

⁸⁰Hill, *supra* note 76, at 6; see Cameron & Freymond, *supra* note 5, at 3, 13–15.

⁸¹I acknowledge that there are limitations in looking at these models. These are high resource countries that use very interventionist models and that historically have shown insensitivity to ethnic minorities. While they are the typical resource used by Trinidad and Tobago policymakers for social policy, they should not be the only place to seek models that may translate well to the Trinidad and Tobago context. For example, in continental Western European countries, child protection is not a distinct system but embedded in broad social policies that provide social assistance and public services on a comprehensive basis. Similarly, there are innovative reintegration programs in parts of Africa and the developing world, where there are larger numbers of children in care and fewer relative resources. Elements of these systems may be compatible with the Trinidad and Tobago values and culture that I explore in this paper, but given the very different legal, social and political contexts of these countries, a detailed analysis of how they might translate to Trinidad and Tobago is beyond the scope of this paper.

⁸²*New Brunswick (Minister of Health and Community Services) v. G(J)*, [1999] 3 S.C.R. 46 (Can.) (holding that parents have a vital interest in their children protected under section 7 of the charter as an aspect of security of person).

in England is non-intervention in family life.⁸³ On the other hand is the *parens patriae* doctrine, derived from English common law, giving the state power to intervene and act as the parent for those who cannot protect themselves.⁸⁴ 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 that involuntary state care should be used as a last resort.⁸⁵ The Children Act of 1989 in England and Wales, as well as the implementing regulations and guidelines, reflects the principle of non-intervention and emphasis on working with families when child safety issues arise.⁸⁶ 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.⁸⁷ As a Canadian court noted:

⁸³ Children Act, 1989, c. 41 (Eng. & Wales); see Liz Trinder & Michael E. Lamb, *Measuring Up? The Relationship Between Correlates of Children's Adjustment and Both Family Law and Policy in England*, 65 *La. L. Rev.* 1509, 1525 (2005).

⁸⁴ George Rossman, *Parens Patriae*, 4 *OR. L. REV.* 233 (1925); George B. Curtis, *The Checkered Career of Parens Patriae: The State as Parent or Tyrant?*, 25 *DEPAUL L. REV.* 895–98 (1975–76).

⁸⁵ 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.

⁸⁶ Patrick Parkinson, *Child Protection, Permanency Planning and Children's Right to Family Life*, 17 *INT'L J. L., POL'Y & FAM.* 147, 149 (2003); Kevin G. Harvey, *Diverging Child Protection Laws in the Commonwealth: A Comparison of Recent Legislation in England and New Zealand*, 4 *IND. INT'L & COMP. L. REV.* 103, 104 (1993).

⁸⁷ Ontario's Child and Family Services Act states that: "while parents often need help in caring for their children, that help should give support to the autonomy and integrity of the family." R.S.O. 1990, c.11, Declaration of Principles; accord 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; accord 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

[T]he 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 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.⁸⁸

Permanency is one of the overarching policy goals of U.S. federal child protection policy, with family reunification being the first priority.

The legislative and policy focus on permanence was influenced by the work of child psychologists that came to prominence during the early 1970s. According to these theorists, continuity in the child's relationship with the primary caregiver is essential for normal psychological development.⁸⁹ Attachment to a permanent caregiver gives the child a sense of security and "belonging rooted in cultural norms."⁹⁰ This theory has had an enduring influence on child welfare policy and is often used to support policies that favor adoption.⁹¹ Although aspects of the "psychological parent" theory have been criticized, more recent research confirms this idea that children need a strong attachment to at least one caring adult for healthy social and emotional functioning.⁹²

There are also recent studies suggesting that the biological parent-child relationship is important in determining a child's personality, resilience and relationships, regardless of whether that child lives with that parent. Studies show that a child can have multiple attachments and that his or her sense of security comes not

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, amended by S.Q. 1984, c. 4, s. 5.

⁸⁸ *Re Brown* (1975), 9 O.R. 2d 185, 189 (Ont. Co. Ct.).

⁸⁹ Libby S. Adler, *The Meanings of Permanency: A Critical Analysis of the Adoption and Safe Families Act of 1997*, 38 HARRY. J. ON LEGIS. 1 (2001).

⁹⁰ Sacha Coupet, *Swimming Upstream Against the Great Adoption Tide: Making the Case for "Impermanence"*, 34 CAP. U. L. REV. 405, 438 (2005).

⁹¹ Eliza Patten, *The Subordination of Subsidized Guardianship in Child Welfare Proceedings*, 29 N.Y.U. REV. L. & SOC. CHANGE 237, 239 (2004).

⁹² Madelyn Freundlich et al., *The Meaning of Permanency in Child Welfare: Multiple Stakeholder Perspectives*, 28 CHILD. & YOUTH SERVICES REV. 741, 743 (2006).

from an exclusive relationship with one continuous psychological parent but from a familiar network of attachments formed with adults in the child's environment.⁹³ Meanwhile, studies from across the world show that children in long-term institutional care develop poor health and behavioral problems.⁹⁴ Even in countries that have abandoned institutions in favor of foster care, studies have found that 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 and court-mandated interventions to move children quickly to other families, primarily through adoption.⁹⁵ In the United States, federal child welfare policy began with considerable emphasis on family preservation.⁹⁶ However, concerns about the large number of children languishing in care for lengthy periods prompted significant reforms in 1997.⁹⁷ Although these reforms still prioritized keeping children at home or speedy reunification, they also adopted deadlines, court reviews, case planning and other mechanisms to find children

⁹³ Patten, *supra* note 90, at 242; Peggy Cooper Davis, *The Good Mother: A New Look at the Psychological Parent Theory*, 22 N.Y.U. REV. L. & SOC. CHANGE 347, 360–63 (1996).

⁹⁴ See, e.g., Megan R. Gunnar et al., *Behavior Problems in Postinstitutionalized Internationally Adopted Children*, 19 DEV. & PSYCHOPATHOLOGY 129, 140 (2007); Darlene A. Kertes et al., *Early Deprivation and Home Basal Cortisol Levels: A Study of Internationally Adopted Children*, 20 DEV. & PSYCHOPATHOLOGY 473, 485 (2008); Laurie C. Miller, Editorial, *Caring for Internationally Adopted Children*, 341 NEW ENG. J. MED. 1539, 1539–40 (1999).

⁹⁵ Josep Ferrer i Riba, *Principles and Prospects for a European System of Child Protection*, INDRET 1, 17 (Apr. 28, 2010), http://www.indret.com/pdf/729_en.pdf; Patrick Parkinson, *Child Protection, Permanency Planning and Children's Right to Family Life*, 17 INT'L J. POL'Y & FAM. 147, 147 (2003).

⁹⁶ Deborah L. Sanders, *Toward Creating a Policy of Permanence for America's Disposable Children: The Evolution of Federal Foster Care Funding Statutes from 1961 to Present*, 29 J. LEGIS. 51, 52 (2002); Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 94 Stat. 500 (codified as amended in scattered sections of 42 U.S.C. (1980)).

⁹⁷ Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115.

other homes if family preservation efforts failed. These reforms showed a preference for adoption over other options, causing some critics to argue that permanency had become synonymous with adoption to the detriment of children and their families.⁹⁸ This policy shift between family preservation and adoption mirrors policy debates and legislative reforms in Canada,⁹⁹ Britain,¹⁰⁰ and Australia.¹⁰¹ 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.”¹⁰² Presenting such a binary choice tends to influence politicians to pursue measures to increase adoption.

2. 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 the state should take 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.¹⁰³ There may be a high degree of coercion involved, even in voluntary cases, as

⁹⁸ Sacha Coupet, *Swimming Upstream Against the Great Adoption Tide: Making the Case for “Impermanence”*, 34 CAP. U. L. REV. 405, 443 (2005); Martin Guggenheim, *Somebody’s Children: Sustaining the Family’s Place in Child Welfare Policy*, 113 HARV. L. REV. 1716, 1717 (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.

⁹⁹ CANADIAN CHILD WELFARE LAW: CHILDREN, FAMILIES AND THE STATE 8 (Nicholas Bala et al. eds., Thompson Educational Publishing 2d ed. 2004).

¹⁰⁰ In Britain, changes in the Adoption and Children Act 2002 were intended to increase the number of children adopted out of care. [cite]. See also DEPARTMENT OF HEALTH, ADOPTION: A NEW APPROACH – A WHITE PAPER, CM 5017 (2000).

¹⁰¹ In Australia, efforts to pass legislation that would have prioritized adoption were defeated. Parkinson, *supra* note 94, at 150.

¹⁰² *Id.*

¹⁰³ CANADIAN CHILD WELFARE LAW: CHILDREN, FAMILIES AND THE STATE 12 (Nicholas Bala et al. eds., Thompson Educational Publishing 2d ed. 2004); Judith Masson, *Representation of Children in England: Protecting Children in Child Protection Proceedings*, 34 FAM. L.Q. 467, 471 (2000).

families participate to avoid court mandate. Court intervention is typically required for removal and determination of the child's placement, and may also be used to mandate services for parents and to 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, and many places require the courts to consider whether there are less intrusive options. These key concepts, which lie at the heart of intervention in the North America, United Kingdom, and Australia models, translate into many variations in law and practice.

In Canada, most jurisdictions have developed standardized approaches to the assessment of risk of abuse or neglect.¹⁰⁴ These approaches allow child protection agencies to consistently narrow the category of children whose risk of harm justifies involuntary state intervention. Each jurisdiction has a different definition for "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.¹⁰⁵ The Court, after hearing the evidence and arguments, will then make a determination on whether the child is in need of care and protection. If the court answers that question in the affirmative, it must decide 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 that is taken only if there is a substantial risk of harm that cannot be addressed without removal.¹⁰⁶ Legislation in most jurisdictions permits removal only if the child is in need of protection and there is imminent risk of

¹⁰⁴ CANADIAN CHILD WELFARE LAW: CHILDREN, FAMILIES AND THE STATE 8 (Nicholas Bala et al. eds., Thompson Educational Publishing 2d ed. 2004).

¹⁰⁵ *Id.* at 71.

¹⁰⁶ *Id.* at 46.

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.¹⁰⁷

Similarly, in the United States, each 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 to see if the standard has been met, while a court makes the final determination on whether that abuse, abandonment or neglect has been substantiated. Federal law requires every state to use reasonable efforts to prevent the removal of children from their families or reunify children with their families when removal is necessary. It is also common practice to explore whether relatives or non-relatives can care for the child before state care is used. The process in the United States is driven by due process protection for parents to a greater extent than other systems, providing additional checks against state power.¹⁰⁸

In England, legal proceedings are seen as the last resort where risks are too great or parents are unwilling to cooperate with the local authority's plan to protect the child.¹⁰⁹ 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

¹⁰⁷ 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 considering best interests, and the second that views it as part of the best interest determination. *Id.* at 93.

¹⁰⁸ Robert E. Rains, *Protecting Children—and Their Families—From Abuse: The Cleveland Crisis and England's Children Act 1989*, 23 CASE W. RES. J. INT'L L. 255, 276 (1991).

¹⁰⁹ JOAN HUNT ET AL., LAST RESORT: CHILD PROTECTION, THE COURTS AND THE 1989 CHILDREN ACT 66 (1999).

order is in the child's interests.¹¹⁰ 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.¹¹¹

The intrusiveness of state intervention is directly proportional to 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.¹¹² For an emergency protection order, allowing removal up to eight days, or an interim care and protection order, the authority must prove reasonable cause to *believe* significant harm.¹¹³ However, a final care or supervision order requires actual proof that the child is suffering or likely to suffer significant harm.¹¹⁴ 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."¹¹⁵

3. The best interest 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, and continued to evolve in the common law because the welfare of the child is of paramount concern.¹¹⁶ 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. Additionally, courts rely on a wide range of sources, including social

¹¹⁰ Children Act, 1989, c. 41, § 31(2) (Eng.).

¹¹¹ Children Act, 1989, c. 41, § 33(3) (Eng.).

¹¹² *Id.* at § 47(1)(b) (Eng.).

¹¹³ *Id.* at § 45 (Eng.).

¹¹⁴ Re B, [2008] UKHL 35, [2009] A.C. 11 (H.L.) (appeal taken from Eng.).

¹¹⁵ Children Act, 1989, c. 41, § 1(5) (Eng.).

¹¹⁶ Rios-Kohn, *supra* note 24, at 44.

workers, teachers, psychologists and other professionals. 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.

The best interest standard is often applied differently in the child welfare context than it is in the family custody 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.¹¹⁷

4. The role of family for children in state care

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 other planned permanent living arrangements. 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 pursuit of alternative permanency options. When a child enters care, custodial

¹¹⁷ NICHOLAS BALA ET AL., *CANADIAN CHILD WELFARE LAW: CHILDREN, FAMILIES AND THE STATE* 67 (Thompson Educational Publishing, 2d ed. 2004).

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 are not required to, 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.¹¹⁸ 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.¹¹⁹

In Canada there are essentially three 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 12 months. Temporary wards are placed in the care of the child protection agency, usually in a foster or group home, for a period ranging from three to 24 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 is assessment and treatment or rehabilitation of parents, but temporary wardship should not be so long as to become the status quo for the child. Some states authorize courts to impose conditions on

¹¹⁸ Children Act, 1989, c. 41, § 33(3) (Eng.).

¹¹⁹ *Id.* at § 34 (Eng.).

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, if 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.¹²⁰

5. 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 very different roles in different jurisdictions. The United States represents the highest level of court involvement. Courts must approve the case plan developed for the family and conduct 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.¹²¹ The court must then hold regular status hearings to review compliance with the case plan. The court case is closed only when the child achieves a permanency goal or when the child ages out of foster care which in practice can extend several years.

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 it can

¹²⁰ Children and Young Persons (Care and Protection) Act § 84 (Act No. 157/1998) (NSW).

¹²¹ 42 U.S.C. § 671(a)(15)(D) (2010).

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.¹²²

6. 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 tend to encourage termination of parental rights, even when no adoptive placements have been identified. The United States' 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.

V. 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 the Convention's principles are 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 effective if they are congruent with local institutions and culture. Trinbago'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 Trinbago and throughout the Caribbean, there is a historical and cultural norm of shared childrearing and socialization within

¹²² Judith Mason, *Representation of Children in England: Protecting Children in Child Protection Proceedings*, 34 FAM. L.Q. 467 (2000).

extended families.¹²³ “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”¹²⁴ 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 holders of rights and responsibilities toward children, and that extended family or even non-relatives also play an important role.¹²⁵ 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, childcare, 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.¹²⁶ 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.¹²⁷

The definition of family in Trinidad, and the Caribbean, extends beyond the nuclear family to include not only extended blood relatives, but also social networks and fictive kin.¹²⁸ Family bonds transcend national boundaries as a result of migration across the

¹²³ CHRISTINE BARROW, FAMILY IN THE CARIBBEAN: THEMES AND PERSPECTIVES 2–24 (James Curry Limited 1996); Jaipaul Roopnarine 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).

¹²⁴ CHRISTINE BARROW, FAMILY IN THE CARIBBEAN: THEMES AND PERSPECTIVES 69 (James Curry Limited 1996) (citing H. Rubenstein, *Conjugal Behaviour and Parental Role Flexibility in an Afro-Caribbean Village* 336 (1980)).

¹²⁵ 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.

¹²⁶ CHRISTINE BARROW, FAMILY IN THE CARIBBEAN: THEMES AND PERSPECTIVES 71 (James Curry Limited 1996) (citing Sally Gordon, *I Go To Tantes: The Economic Significance of Child-Shifting in Antigua, West Indies* 427 (1987)).

¹²⁷ *Id.*

¹²⁸ CHRISTINE BARROW, CARIBBEAN CHILDHOODS: OUTSIDE, ADOPTED OR LEFT BEHIND: GOOD ENOUGH PARENTING AND MORAL FAMILIES 29 (2010).

globe.¹²⁹ 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.¹³⁰ Sometimes these caregivers contribute to the support, care and socialization of the child at the same time, with different functions 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.”¹³¹

There are historical, socio-economic, and cultural reasons for Caribbean family structure. Some anthropologists argue that, for those of African descent, family structure was derived from similar institutions in Africa, while others contend family patterns did not survive slavery and instead are vestiges of plantation life.¹³² Early studies on Caribbean families identified visiting unions, child shifting and matrilocality as features of lower-class black households.¹³³ 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

¹²⁹ Christine Ho, *The Internationalization of Kinship and Feminization of Caribbean Migration: The Case of Afro-Trinidadian Immigrants in Los Angeles*, 52 HUMAN ORGANIZATION 1 (Spring 1993).

¹³⁰ Jaipaul L. Roopnarine, *Fathers in Caribbean Cultural Communities*, in FATHERS IN CULTURAL CONTEXT 203, 203 (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); ROOPNARINE ET AL., *supra* note 9, at 152 (citing a 1992 study of Trinidadian families where 16.3% of care interactions were by siblings and 17.6% were by grandparents).

¹³¹ Mary Chamberlain, *Rethinking Caribbean Families: extending the links*, in 6 No. 1 COMMUNITY, WORK & FAMILY 63, 74 (2003).

¹³² BARROW, *supra* note 8, at 3.

¹³³ Senior, WORKING MIRACLES: WOMEN’S LIVES IN THE ENGLISH SPEAKING CARIBBEAN. London: James Curry; Jaipaul L. Roopnarine, *Fathers in Caribbean Cultural Communities*, in FATHERS IN CULTURAL CONTEXT 205 (Routledge 2012).

of members.¹³⁴ The result was the reduction of the family unit to the mother and her dependent children.¹³⁵ Mothers who worked in the field could not care for their children during the day, so elderly women on the plantation provided childcare instead.

Female-centered communal childcare persisted well beyond emancipation and has been attributed in recent times to socio-economic factors.¹³⁶ 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.¹³⁷ Some scholars explain it primarily as a functional solution that allows mothers to work and financially support children in the absence of fathers.¹³⁸ 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.¹³⁹

There are mixed results in literature about how these child sharing practices have impacted the well-being of children. Some studies show positive results for children and characterize Caribbean families as “flexible, adaptive and anchored by female-centered networks.”¹⁴⁰ Others found negative psychosocial outcomes for children

¹³⁴ *Id.*

¹³⁵ 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).

¹³⁶ CHRISTINE BARROW, FAMILY IN THE CARIBBEAN: THEMES AND PERSPECTIVES 22 (James Curry Limited 1996)

¹³⁷ Jaipaul Roopnarine et al., *Parent-Child Relationships in African and Indo Caribbean Families: A Social Psychological Assessment*, in SOCIAL PSYCHOLOGICAL DYNAMICS 152 (D. Chadee & A. Kostic eds., University of West Indies Press).

¹³⁸ Rodman 183 (1971).

¹³⁹ Jaipaul L. Roopnarine, *Fathers in Caribbean Cultural Communities*, in FATHERS IN CULTURAL CONTEXT 203, 211–12 (Routledge 2012); Mindy Lazarus-Black, *My Mother Never Fathered Me: Rethinking Kinship and the Governing of Families*, 44(1) SOCIAL AND ECONOMIC STUDIES 49 (1995).

¹⁴⁰ 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

in kinship care. For example, one study found that children who transferred from one parent to the next as a result of a parent's migration suffered impaired mental health.¹⁴¹ A holistic look at the research suggests 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.¹⁴²

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.¹⁴³ East Indians arrived in Trinidad in 1845 as indentured laborers to work on plantations after slavery ended.¹⁴⁴ There is debate regarding whether East Indian family patterns survived migration, or changed largely due to economic conditions in the Caribbean.¹⁴⁵ Marriage is the historical norm among Indian families, traditionally occurring at a young age and arranged by parents of the bride and groom.¹⁴⁶ 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

behavioral difficulties in school, compared with peers whose parents had not migrated).

¹⁴¹ Adele Jones, *Children's Experience of Separation from Parents as a Result of Migration*, CARIBBEAN J. SOC. WORK 3:89–109.

¹⁴² CARIBBEAN FAMILIES: DIVERSITY AMONG ETHNIC GROUPS (Jaipaul Roopnarine and Janet Brown eds., Ablex Publishing 1997); Jaipaul L. Roopnarine, *Fathers in Caribbean Cultural Communities*, in FATHERS IN CULTURAL CONTEXT 219 (Routledge 2012).

¹⁴³ Barton M. Schwartz, *Patterns of East Indian Family Organization in Trinidad*, Caribbean Studies, Vol. 5 No. 1 (Apr. 1965) pp. 23–36; Jaipaul Roopnarine et al., *Parent-Child Relationships in African and Indo Caribbean Families: A Social Psychological Assessment*, in SOCIAL PSYCHOLOGICAL DYNAMICS 161 (D. Chadee & A. Kostic eds., University of West Indies Press).

¹⁴⁴ SCOTT B. MACDONALD, TRINIDAD AND TOBAGO: DEMOCRACY AND DEVELOPMENT IN THE CARIBBEAN 27 (Praeger 1986).

¹⁴⁵ CHRISTINE BARROW, FAMILY IN THE CARIBBEAN: THEMES AND PERSPECTIVES 340 (James Curry Limited 1996).

¹⁴⁶ CHRISTINE BARROW, 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).

roof.”¹⁴⁷ Harsh plantation life, initial scarcity of women and lack of legal recognition of Hindu and Muslim marriages destabilized traditional extended family norms.¹⁴⁸ These were, however, reconstructed over time as gender ratios improved and Indian marriages were legally recognized.¹⁴⁹

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.¹⁵⁰ Married couples may live and pool resources with three generations in the patrilocal residence before establishing a nuclear home.¹⁵¹ When sons move out of the paternal household, they often move into “houses built immediately next door to, or on the same property as, the father’s house.” These neighboring “households of kin continue to interact as ‘joint’ families, sharing larders, debts, childrearing, recreational, social and ritual activities.”¹⁵² This pattern of functional extendedness exists even when married couples live further away.¹⁵³

Although there are many reasons for Caribbean family structure, kinship care can be properly understood as a cultural norm in Trinbago, and not merely the result of economic forces.¹⁵⁴ “Indeed,

¹⁴⁷ CHRISTINE BARROW, *FAMILY IN THE CARIBBEAN: THEMES AND PERSPECTIVES* 341 (James Curry Limited 1996).

¹⁴⁸ JAIPAUL L. ROOPNARINE, *FATHERS IN CARIBBEAN CULTURAL COMMUNITIES IN FATHERS IN CULTURAL CONTEXT* 206 (Routledge 2012)

¹⁴⁹ BARTON M. SCHWARTZ, *PATTERNS OF EAST INDIAN FAMILY ORGANIZATION IN TRINIDAD*, 5(1) *CARIBBEAN STUDIES* 23, 28–29 (Apr. 1965). CHRISTINE BARROW, *FAMILY IN THE CARIBBEAN: THEMES AND PERSPECTIVES* 348 (James Curry Limited 1996).

¹⁵⁰ JAIPAUL L. ROOPNARINE, *FATHERS IN CARIBBEAN CULTURAL COMMUNITIES IN FATHERS IN CULTURAL CONTEXT* 209–10 (Routledge 2012)

¹⁵¹ JAIPAUL ROOPNARINE ET AL., *PARENT-CHILD RELATIONSHIPS IN AFRICAN AND INDO CARIBBEAN FAMILIES: A SOCIAL PSYCHOLOGICAL ASSESSMENT IN SOCIAL PSYCHOLOGICAL DYNAMICS* 159 (D. Chadee & A. Kostic eds., University of West Indies Press).

¹⁵² CHRISTINE BARROW, *FAMILY IN THE CARIBBEAN: THEMES AND PERSPECTIVES* 349 (James Curry Limited 1996), quoting Vertovek 106 (1992).

¹⁵³ JAIPAUL ROOPNARINE ET AL., *PARENT-CHILD RELATIONSHIPS IN AFRICAN AND INDO CARIBBEAN FAMILIES: A SOCIAL PSYCHOLOGICAL ASSESSMENT IN SOCIAL PSYCHOLOGICAL DYNAMICS* 159 (D. Chadee & A. Kostic eds., University of West Indies Press).

¹⁵⁴ CHRISTINE BARROW, *CARIBBEAN CHILDHOODS: OUTSIDE, ADOPTED OR LEFT BEHIND: GOOD ENOUGH PARENTING AND MORAL FAMILIES* 97

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.¹⁵⁵ Grandparents play an important role in raising grandchildren not only when parents are absent but, “in many families regardless of economic circumstance, and regardless of the generation or period.”¹⁵⁶ This role encompasses a broader cultural acceptance of childcare as a family, even a neighborhood responsibility.¹⁵⁷ 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.¹⁵⁸ Conversely, children feel a strong emotional connection to family and a sense of responsibility to the elders who contributed to their care.¹⁵⁹

It is important to place this cultural norm within a realistic contemporary context. The tradition of communal and kinship caregiving is eroding.¹⁶⁰ The most recent available data for Trinbago shows that the majority of households were nuclear households headed by a husband and wife, one-fifth of households were extended family formations, and roughly 10% were single mother households.¹⁶¹ 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. Moreover, female labor force participation has increased, due in part to higher educational attainment among women.¹⁶² With more women in the work force, there are fewer female

¹⁵⁵ MARY CHAMBERLAIN, *RETHINKING CARIBBEAN FAMILIES: EXTENDING THE LINKS*, (6)(1) *COMMUNITY, WORK & FAMILY* 63, 68 (2003).

¹⁵⁶ *Id.* at 65.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *CARIBBEAN FAMILIES: DIVERSITY AMONG ETHNIC GROUPS* (Jaipaul Roonerine and Janet Brown eds., Ablex Publishing 1997)

¹⁶¹ Dr. Godfrey St. Bernard, *United Nations Division of Social Policy and Development, MAJOR TRENDS AFFECTING FAMILIES IN CENTRAL AMERICA AND THE CARIBBEAN* 11–12 (May 23, 2003).

¹⁶² *Id.* at 9.

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 with roots in other countries.¹⁶³

At the same time, there are a number of social problems that undermine a families' capacity to serve as a safety net for children. There is a growing prevalence of crime and violence; attributed primarily to educational attrition, unemployment, and drug abuse. Community institutions are under pressure, to address these broader problems, making it difficult for them to assume additional responsibilities towards children. Also, children in certain communities are at unprecedented risks of violence, involvement in crime, and trauma from loss and violence in their community. These risks present very real questions about whether children can safely remain within the community. All of these factors suggest that extended families should not be romanticized as protectors of abused children, but rather strengthened and relied upon them as a resource when they have the capacity to assume that role.

VI. TOWARDS A TRINBAGO PERMANENCY POLICY

A. *Galvanize and Strengthen the Village*

Trinbago can leverage its rich tradition of kinship and communal caregiving so that relatives and others in the child's community may care for vulnerable children. This tradition of kinship care already works as a safety net for vulnerable children. For the 1,000 children in institutional care, countless others are diverted from institutions through intervention by family and neighbors. In one recent example, a mother burned an eight-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

¹⁶³ *Id.*

mother was sentenced to three years in prison.¹⁶⁴ The mother's remaining three children are cared for by relatives.¹⁶⁵ 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 20 years reflects, in part, the community's response in the absence of government action. Often children's homes are 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."¹⁶⁶ 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 encouraging the community to step in to care for children, thereby preventing children from entering the system.¹⁶⁷ There is global consensus that children do better in a family setting. Numerous studies document that children raised in institutional settings generally have poor outcomes. For that reason, most developed countries have deinstitutionalized formal care systems 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 fail to provide many children in these systems with markedly better outcomes than had they stayed with their families. For example, studies show that children raised in foster care are disproportionately likely to experience poor education, homelessness, incarceration and unemployment especially when there are frequent changes in placement and a lack of

¹⁶⁴ Carolyn Kissoon, *Mom charged in tawah burning*, TRINIDAD EXPRESS NEWSPAPER, June 22, 2012, at www.trinidadexpress.com/news/Mom_charged_in_tawah_burning-160096255.html

¹⁶⁵ Inniss Francis, *Mother of 4 jailed*, Trinidad Express Newspaper, June 25, 2012, at trinidadexpress.com/news/Mother_of_4_jailed-160324255.html

¹⁶⁶ ADELE JONES & MICHELE SOGREN, A STUDY OF CHILDREN'S HOMES IN TRINIDAD AND TOBAGO 2 (April 2005).

¹⁶⁷ U.N. Council on Human Rights GE.09-14213(e) 160609 ¶ 31–37.

appropriate services.¹⁶⁸ 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. First, 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 improve their well being. Although Trinidad is considered a relatively high-income economy, fueled by oil and natural gas resources,¹⁶⁹ with wide access to social services, the government has traditionally allocated few resources to those services. Existing children's homes are at their maximum capacity, or lack resources to take in more children. There are few services for children with mental illness, long delays accessing the limited services available for sexual abuse victims, and few government-run programs providing parenting skills, substance abuse treatment, 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 are currently not enough social workers, 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 investing resources in strengthening families' and communities' ability to act as a safety net for other children.

¹⁶⁸ Pew Commission on Children in Foster Care, *Fostering the Future: Safety, Permanency and Well-Being for Children in Foster Care* (2004); Daniel L. Hatcher, *Forgotten Fathers*, 93 B.U. L. REV. 897, 900 (2013).

¹⁶⁹ Trinidad and Tobago is considered a High Income Economy by the World Bank and ranked 62nd worldwide on the United Nations Human Development Index for 2011 which is considered "high." Sustainability and Equity: A Better Future for All, UNDP Human Development Report 2011, available at <http://hdrstats.undp.org/en/countries/profiles/TTO.html>; World Bank ().

To further the goal of strengthening families, resources should be allocated for social programs that eradicate poverty, substance abuse, and violence, as well as programs to build employment and parenting skills.¹⁷⁰ The broader welfare context influences the capacity of the child protection system to respond to the needs of children's families.¹⁷¹ 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."¹⁷² Domestic violence support should operate to ensure that non-abusive parents have the ability to safely care for the child. In addressing these problems, it is important that government collaborate with and support the NGO community while simultaneously leaving them to their work. These NGOs are often embedded within the community and, as such, may have more credibility, and are likely to remain in the community well past government initiatives. If programs are created by local community members, there is a greater likelihood of community buy-in and success. There should also be public outreach to remind society of the tradition of kinship care and to 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 enroll the child in school, provide medical care or do other things for the child, 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.

¹⁷⁰ CHARISSE CLARKE, *THE PARADOX OF CHILDREN'S RIGHTS IN TRINIDAD AND TOBAGO* 180 (poverty alleviation is needed before children's rights can be recognized); U.N. Council on Human Rights GE.09-14213(e) 160609 ¶ 31-37.

¹⁷¹ *International Perspectives on Child Protection* 15 (Malcolm Hill et al. eds. Mar. 20, 2002)

¹⁷² K. Browne & G. Mulheir, *De Institutionalising and transforming children's services: a guide to good practice*, European Union (2006).

Some studies indicate that some children raised by relatives suffer psychological consequences.¹⁷³ 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 for a healthy and productive life. The reverence for extended family bonds in Trinidad 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. 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.¹⁷⁴

B. Limit State Intervention to Situations Involving a High Risk of Harm

If there is a significant effort to strengthen families, some 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 risk of serious harm. Children who are vulnerable, but do not rise to the level of serious harm, can get 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 interdisciplinary approach. Children at high risk of harm should be identified and receive prompt attention. The Children’s Authority must have adequate resources including research-based 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 United States, Canada, and the United

¹⁷³ Adele Jones, *Children’s Experience of Separation from Parents as a Result of Migration*, CARIBBEAN J. SOC. WORK 3:89–109.

¹⁷⁴ CHRISTINE BARROW, CARIBBEAN CHILDHOODS: 107.

Kingdom offer many research-based risk-assessment procedures as potential models to be borrowed and adapted to local norms.¹⁷⁵ For example, the Framework for Assessment was developed by the Department of Health to assess children who may be defined as being in need under the United Kingdom Children Act of 1989.¹⁷⁶ It emphasizes taking into account the child's surroundings, her cultural context, her family and life experiences, as well as her developmental state, family strengths, and the need for social support or specialist intervention.¹⁷⁷ There is also a need for research to develop locally appropriate risk-assessment tools within Trinidad.

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."¹⁷⁸ 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.¹⁷⁹ 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.¹⁸⁰ This is consistent with laws in the United Kingdom where an order placing the child under the care or

¹⁷⁵ Gary Cameron & Nancy Freymond, UNDERSTANDING INTERNATIONAL COMPARISONS OF CHILD PROTECTION, FAMILY SERVICE, AND COMMUNITY CARING SYSTEMS OF CHILD AND FAMILY WELFARE IN TOWARDS POSITIVE SYSTEMS OF CHILD AND FAMILY WELFARE 23 (Nancy Freymond & Gary Cameron eds. 2006).

¹⁷⁶ *Id.* at 65.

¹⁷⁷ *Id.* at 64.

¹⁷⁸ Children's Authority Act § 5(e).

¹⁷⁹ Children's Authority Act § 22(1), (1)(A)

¹⁸⁰ PATRICIA LIM AH KEN, CHILDREN WITHOUT PARENTAL CARE IN THE CARIBBEAN: SYSTEMS OF PROTECTION 27 (2007).

supervision of the local child protection authority can be done only upon a showing of "significant harm."¹⁸¹

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. Courts in Trinidad and Tobago already adopt the common law legal standard that the welfare of the child is paramount in cases involving children. Courts should be guided by this standard, but must understand that in the context of child protection, the evaluation of the child's best interests should be guided primarily by weighing safety against family autonomy.

Ultimately, legislation should be amended to clarify the permanency policy, and narrow the bases for taking children into care (i.e., amending 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 examined. In the meantime, the 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,¹⁸² Children's Authority should develop a policy framework and standards that make individualized assessments about the appropriate intervention for children entering care.

¹⁸¹ UK Children Act 1989 § 31(2).

¹⁸² 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).

C. 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. Ideally, this may include keeping the child with the parents under government supervision, but it is not clear that this would be feasible in light of current resources. Another option would be 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 the culture and tradition of Trinbago, 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, even others who do not have a personal relationship with the child may be appropriate caregivers. The key is whether there is sufficient connection between the caregiver and the child's family that the caregiver 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 speculation. For as many anec-

dotes that there are about families hiding sexual abuse, there are also 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.¹⁸³ 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.

D. Attempt to Reunify Families When Children Must Enter Care

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 his or her 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 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 Trinbago model of extended family and fictive kin.

Trinidad and Tobago's tradition of communal care provides both an impetus and an opportunity to develop creative approaches to family reintegration that diverge from those found in the United Kingdom and North American models. Those systems emphasize separating the interests of children from those of their parents, and rarely give extended relatives a primary place in child protection proceedings. An alternate approach situates the child within the

¹⁸³ CHRISTINE BARROW, CARIBBEAN CHILDHOODS: OUTSIDE, ADOPTED OR LEFT BEHIND: GOOD ENOUGH PARENTING AND MORAL FAMILIES 115.

family.¹⁸⁴ It is possible to adopt a child-centered approach that gives children the means to influence decisions that impact them, while at the same time viewing the family as a whole.

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 versions of family conferences have been utilized in different jurisdictions. For example, family group counseling was given a central place in both child protection and juvenile justice in New Zealand. The legislation was influenced by the 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.¹⁸⁵ 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 in decision-making concerning the child. The aim is for the family and child protection agency to reach an agreement about a case plan for the child. If they are able to reach an 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 are still an integral part of the child's life. There should be more programs to assist families, including programs concerning substance abuse, housing, prisoner re-entry, parenting skills, teenage 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. The 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 while they may need to be more intensive

¹⁸⁴ Report of the Scottish Executive Child Protection Review, *Protecting Children Today and Tomorrow*, International Perspectives on Child Protection (March 20, 2002).

¹⁸⁵ Patrick Parkinson, *Child Protection, Permanency Planning and Children's Right to Family Life*, 17 INT'L J. POL'Y & FAMILY 147, 150 (Aug. 2003)

immediately following a crisis, they can taper off eventually. Such services also provide 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. In the United States model, for example, there are extensive judicial reviews after a care plan is developed. Given scarce judicial resources, it may not be prudent for Trinidad and Tobago to adopt such an approach. Nevertheless, thought should be given to creative alternative options. For example, a multi-disciplinary panel, or trained volunteers from the community, could review case plans of children in care. Court intervention might be sought only if necessary to effectuate an action in the plan, or when there is a disagreement between the Children's Authority and the review panel.

*E. 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 the United States law and policy. In the United States, 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."¹⁸⁶ 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 is current practice in Trinbago. 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, Trinbago does not have to buy into the

¹⁸⁶ R. P. Barth, *Child Welfare Services in the United States and Sweden: Different Assumption, Laws and Outcomes*, 1 SCAND. J. SOC. WELFARE 36, 39 (1992)

rhetoric of permanency as mutually exclusive “poles on an ideological spectrum” between adoption and family reunification.¹⁸⁷ “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.

VII. CONCLUSION

The Convention on the Rights of the Child recognizes that children thrive when raised in a nurturing family environment. This ideal is supported by evidence detailing the poor outcomes suffered by children in institutional and other forms of state care. Yet the goal of keeping children with their families is challenging to implement in the child protection context. The counter-veiling goal of keeping children safe might lead to an emphasis on permanently removing children from their homes.

Reflecting on the Trinbago experience, this article makes three contributions on how to strike an appropriate balance. The first is that if there is a family reunification policy, it should guide every aspect of child protection system design. Second, as the CRC states, families should be afforded appropriate assistance and services to help them meet their child-rearing responsibilities. Third is that extended family can be a potential resource that should actively be pursued and empowered to help protect children.

¹⁸⁷ Patrick Parkinson, *Child Protection, Permanency Planning and Children’s Right to Family Life*, 17 INT’L J. POL’Y & FAM. 147, 147 (Aug. 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).