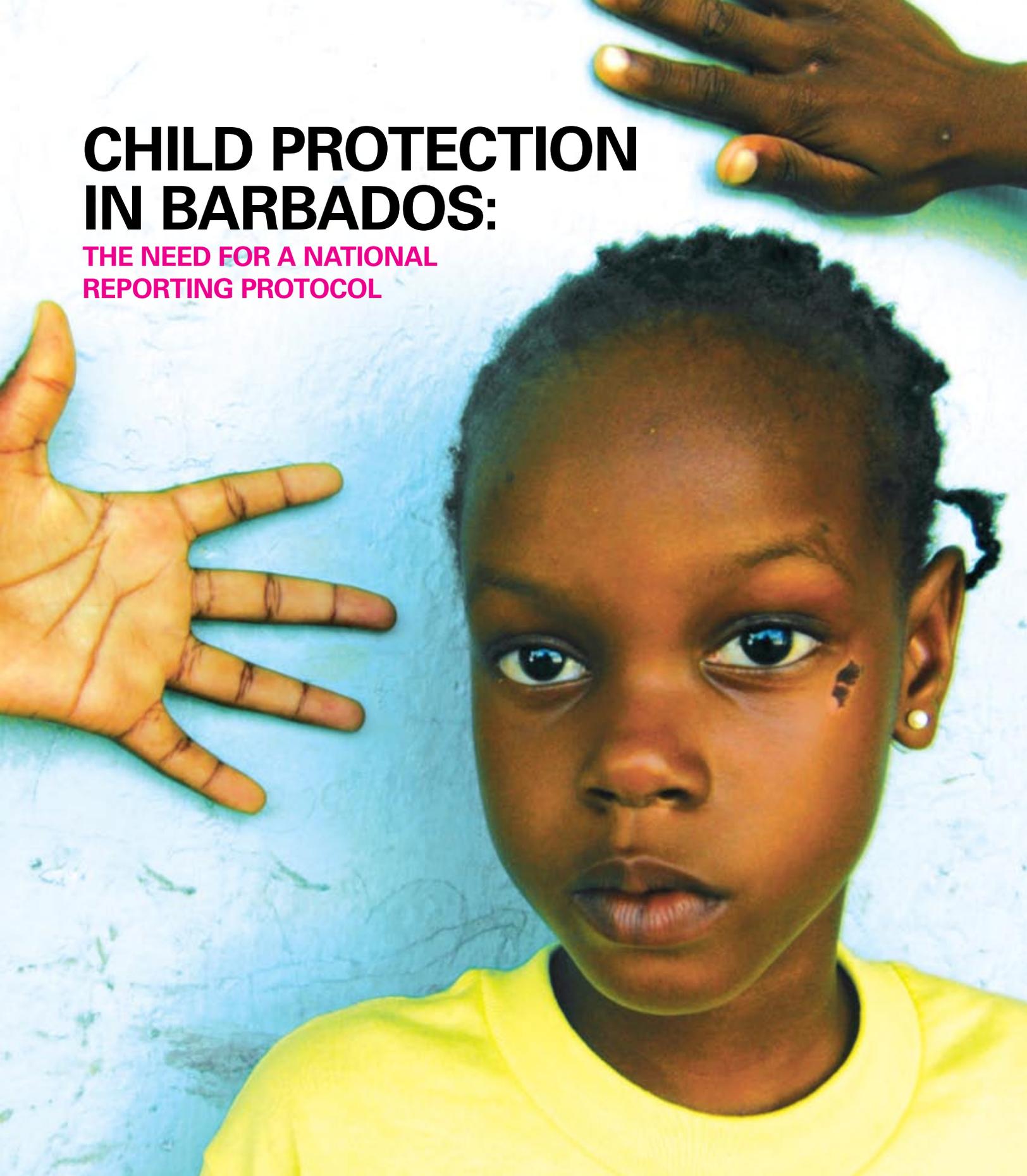


# CHILD PROTECTION IN BARBADOS:

THE NEED FOR A NATIONAL  
REPORTING PROTOCOL



For every child  
Health, Education, Equality, Protection  
ADVANCE HUMANITY

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# POLICY BRIEF: BARBADOS

## BACKGROUND

Barbados, like all of the other States in the Caribbean region has committed itself to protecting the rights of children through ratification of the Convention on the Rights of the Child (C.R.C.). Integral to this collection of rights are those geared at the protection of children who are abused, neglected or at risk of harm. There are several express Articles of the Convention that speak very specifically to the obligation of the ratifying States to ensure that children are afforded protection from all forms of abuse, and require that such measures as would be required, to facilitate the necessary support for the abused child, and for those who have care of the child.

Barbados has made some significant gains in ensuring that national laws, policies and practices conform with the spirit and intent of the Convention. Many of the positive developments have come in the form of legislative enactments or legislative reform geared at affording more care and protection provision to children at risk of harm. Despite these legislative interventions, authorities in Barbados readily acknowledge that the child protection mandate of the State still has scope for significant improvement.

Some of the areas that are reportedly in dire need of attention, is the reporting procedure along with general interagency collaboration. Barbados does not have any mandatory reporting requirements and this appears to have compromised the efforts at creating a centralized system through which all child abuse cases are handled. In fact, the Child Care Board, the agency legally vested with the child protection mandate in Barbados, has identified this issue as one of the most significant factors undermining their ability to effectively respond to child abuse in Barbados. In the absence of any written policies or protocols, consistent reporting of child abuse to the Child Care Board is left to chance. There are a few verbal protocols with some agencies, but generally reporting is discretionary and occurs on an ad hoc basis.

Acknowledgement of the present inadequacies in the national child protection system is an important first step in the right direction. However, identification of the weaknesses and the implementation of corrective measures are critical to the advancement of Barbados's commitment to making good on its national and international child protection obligations.

UNICEF's support to the government of Barbados in the creation of a child abuse protocol is geared at taking those very necessary next steps in identifying and correcting some of the inadequacies in the current systemic responses to child abuse.

Although, a child abuse protocol will not, on its own, solve all of the present challenges it is certainly an efficient means by which deficiencies in the system can be identified and corrected.

This initiative is intended to produce an end product in the form of a national protocol to guide professionals on the prevention, reporting and management of child abuse.

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## METHODOLOGY

**The primary goal of the broader research initiative is to provide technical support to the Government of Barbados to prepare a national protocol to guide professionals on the prevention, reporting and management of child abuse, under the coordination of the mandated child protection agency.**

**The expected outputs of the assignments are as follows:**

- (a) A written assessment of current processes for reporting of child abuse.
- (b) A policy brief to justify the need for a national reporting protocol.
- (c) A National Protocol for the prevention, reporting and management of child abuse.
- (d) A National Action plan for the implementation of the protocol.
- (e) The development of a training and stakeholder outreach programme to guide the effective implementation of, and adherence to the protocol and prevention action plan.

**The research methodology was qualitative in nature and drew on a number of techniques to facilitate comprehensive data collection and effective analysis. The approach included:**

- (i) A desk review of all relevant documentation, including policy documents and existing protocols in the region.
- (ii) A legislative review to ensure familiarity with the relevant legal frameworks.
- (iii) Extensive interviews with key sectors which may be entry points for children who are abused or at risk of abuse, e.g. education, health, law enforcement and social services.
- (iv) Focus groups with child protection officers, for the purpose of identifying problems and seeking instructions about the creation of the protocol.

## THE NATURE AND EXTENT OF CHILD ABUSE IN BARBADOS

An accurate determination of the exact nature and full extent of child abuse in Barbados is not realizable, and this in itself, is one of the primary reasons giving support to the creation and implementation of a protocol. The present system, or lack thereof, for reporting child abuse has meant that there is no centralized system for receiving reports of abuse and collecting data. This is a chronic problem that pervades the region and has been previously identified in several reports as one of the key factors compromising the effectiveness of the region's child protection regime. In one report, the following observation was made,

**“Poor or non-existent data collection on child abuse has hindered the ability of the respective islands to offer accurate and/or meaningful statistical feedback on the incidence and trends of child abuse. A major contributing factor to the poor data collection is the lack of any centralized, official entity that can facilitate continuous and reliable collection of information on child abuse.”<sup>1</sup>**

Another study discovered the alarming variance in child abuse statistics depending on the source of information within the respective island. That study correctly explained the disparity of the statistics as “underscoring the worrying gaps in interagency protocols for the management of child abuse of which data collection is a vital part.”<sup>2</sup>

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<sup>1</sup> O.E.C.S. Family Law Reform and Domestic Violence Project: Report on Reform to Child Protection Law in the O.E.C.S. and Turks & Caicos Islands.  
<sup>2</sup> NCH/UNICEF Study on Social Services Delivery in the O.E.C.S and Turks & Caicos Islands (2002)

The Child Care Board, as the legislated child protection agency in Barbados does collect statistical information. However, the data is reflective of only those reports brought to the attention of the agency. Given the relatively poor state of reporting by other agencies to the Department, there is no meaningful, centralized data collection and this in turn undermines any accurate assessment of the true extent of child abuse in the country.

Although the issue of reporting will be subsequently addressed, it is important to note that good reporting systems are inextricably linked to the issue of comprehensive data collection.

**Nevertheless, there have been very commendable efforts on the part of the Child Care Board to collect data based on the cases reported to that agency. These figures, as underestimated as they may be, combined with other indications, are cause for concern and clearly establish the need for urgent redress. In the period 2004 – 2005, there were 815 cases of child abuse affecting 1124 children. Whereas, for the period 2005 – 2006, there were 761 cases affecting 1076 children. The breakdown of these figures is as follows:**

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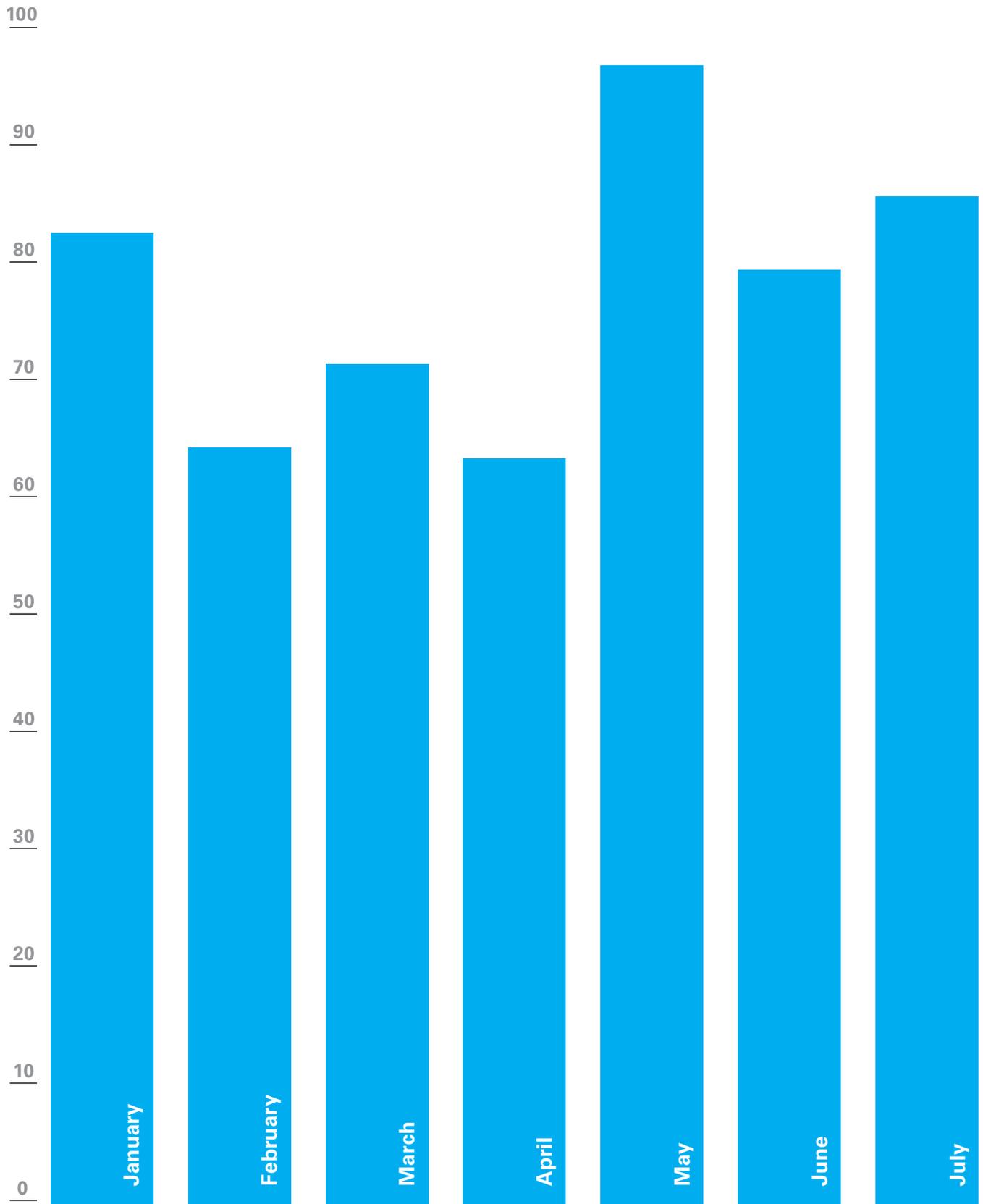
**FIGURE 1**

| Year        | Total No. of Cases | Physical Abuse | Sexual Abuse | Neglect | Emotional Abuse |
|-------------|--------------------|----------------|--------------|---------|-----------------|
| 2004 – 2005 | 815                | 226            | 178          | 338     | 65              |
| 2005 - 2006 | 761                | 207            | 201          | 298     | 55              |

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For the most current year of 2007, the department reports the figures are as follows:

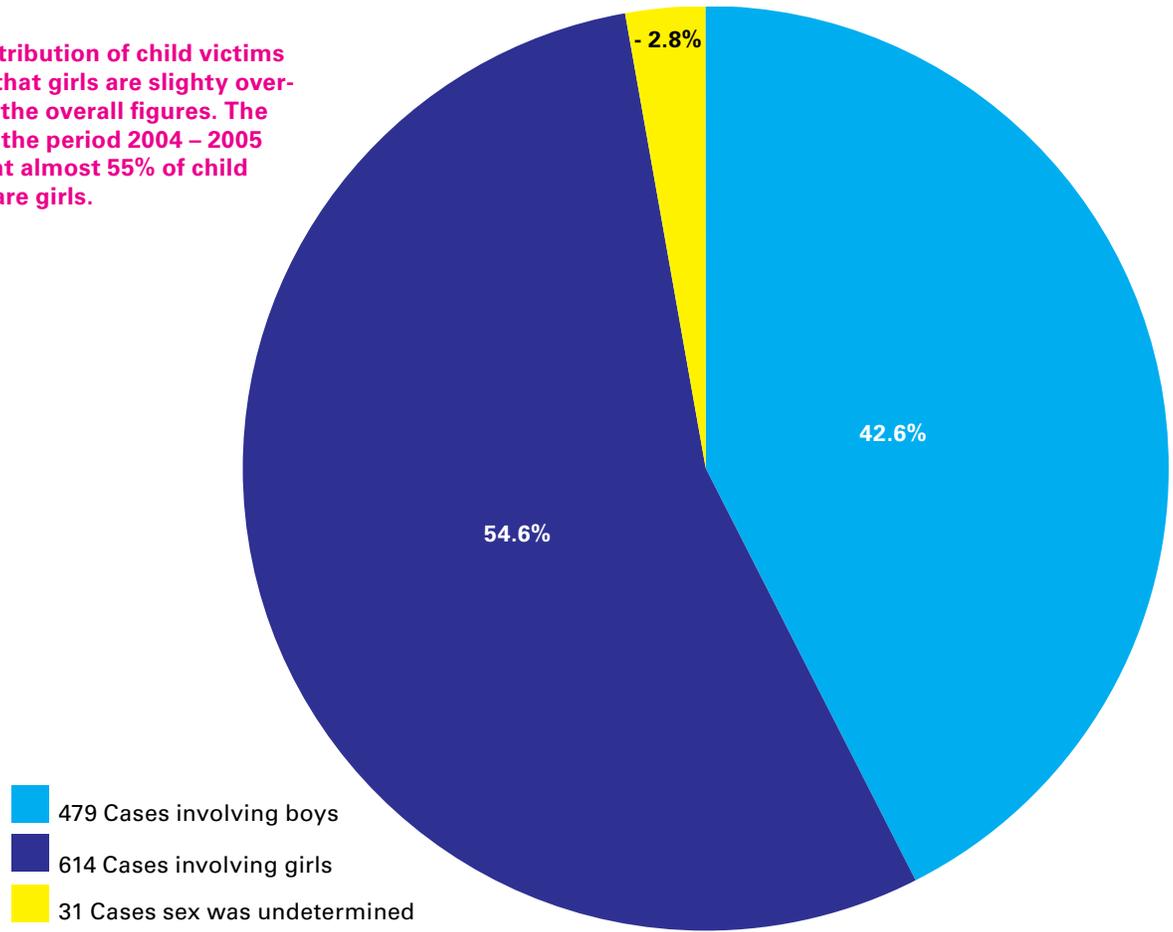
**FIGURE 2**



**Child Abuse & Intake Report for the Period April 2005 - March 2006**

The gender distribution of child victims demonstrates that girls are slightly over-represented in the overall figures. The breakdown for the period 2004 – 2005 established that almost 55% of child abuse victims are girls.

**FIGURE 3**



The number of cases reported to the police is perhaps a poor indicator of the incidence of child abuse because of the under-reporting of these cases to the law enforcement. However, the Royal Barbados Police Force in its national overview of reported crime did have some statistics on sex related crimes that helped to demonstrate the impact of this category of offence on young victims. Unfortunately, the data is not disaggregated by age and so many of the crimes would also include adult victims.

**FIGURE 4**

The Royal Police Force Crime Statistics Report Sex Related Crimes (Period January 2002 to October 2006)

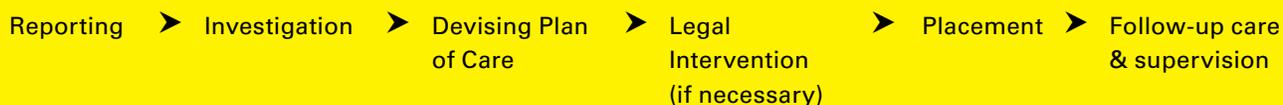
| Sex Related Crimes          | 2002 | 2003 | 2004 | 2005 | 2006 |
|-----------------------------|------|------|------|------|------|
| Rape                        | 84   | 65   | 70   | 68   | 61   |
| Assault with Intent to Rape | 3    | 5    | 4    | 3    | 1    |
| Sex with a Minor            | 38   | 51   | 31   | 20   | 24   |
| Indecent Assault            | 44   | 62   | 47   | 54   | 57   |
| Serious Indecency           | 12   | 15   | 12   | 12   | 12   |
| Other Sex Crimes            | 3    | 7    | 5    | 9    | 10   |

It is notable that sex with a minor had relatively high numbers and that indecent assault, which reportedly represents a very high percentage of child victims is also one of the more frequently reported of the sex crimes.

# IDENTIFYING THE CHALLENGES

The major challenge, directly linked to the need for a clearly defined protocol is the lack of a centralized reporting system and the broader concern of failure to report. Barbados, unlike St. Kitts/Nevis has not legislated a mandatory reporting provision and so there is no legal requirement for parents, professionals or other prescribe persons to report child abuse to the designated child protection agency. However, reporting is only one component of the overall child protection scheme and it is therefore important to identify any other challenges that may be present at other stages of the process. The child protection process may be captured as follows:

**FIGURE 5**



The child abuse protocol will need to address each stage of this process with a keen awareness of the existing challenges but nevertheless, whilst still charting the ideal course for moving towards comprehensive and effective child protection procedures

## REPORTING: MANDATORY REPORTING

The reporting phase of child abuse is perhaps the most critical feature in the overall scheme of protection measures. If matters are not brought to the attention of the appropriate authorities, then no response to the abuse can be reasonably expected. It is the triggering event of the system and can set the standard by which all of the subsequent phases of the process will be guided. In other words, a poor reporting system can negatively impact on the other aspects of the system, in the same way that a well developed reporting system can have a very positive influence on the process.

As earlier stated, Barbados has not made any legislative pronouncement on the duty to report cases and so there is no legal requirement to do so. This is a glaring gap in the systemic response to child abuse that can be so easily rectified with an amendment to the appropriate legislation.

Other countries in the region have deemed it fit to legally provide for mandatory reporting of child abuse. In St. Kitts/Nevis, for example, the Probation and Child Welfare Board Act (1994) requires doctors, nurses, child care providers, child psychologists, guidance counselors and such other persons as the Board may determine, to report to the Board all

cases and suspected cases of child abuse coming to their attention.

In Trinidad and Tobago, the Sexual Offences Amendment Act was amended to add a mandatory reporting provision that requires parents and others in authority to report the commission of a sexual offence on a minor. In the case of St. Kitts, no sanctions are mentioned, however, in relation to Trinidad, the court can impose a fine of \$15,000.00 and/or seven (7) years imprisonment.

It is important to note that the mere inclusion of a mandatory reporting clause in the law will not necessarily remedy bad reporting practices. This has been clearly demonstrated in St. Kitts/Nevis where despite the law, the state of reporting is still very unsatisfactory. Having said this, the legal recognition of mandatory reporting is a positive indicator of the State's commitment to addressing child abuse and it also affords protection to those professionals who would ordinarily have felt constrained by rules of confidentiality and other ethical principles. It is a critical stepping stone to full achievement of sound reporting practices.

## RECEIVING REPORTS OF ABUSE

A duty to report is best facilitated by one focal point which receives all reports. In fact, a system that creates a central coordinating agency for alleged child abuse cases is the only sure means by which an accurate national profile of child abuse can be ascertained. Some reports have already recommended the establishment of child protection registers and strong inter-agency protocols as strategies for the realization of this goal.<sup>3</sup>

This approach clearly anticipates that there is a fully staffed and well equipped entity to not only receive the reports, but to undertake every other aspect of the child protection process. In the Barbados context, this responsibility falls squarely on the shoulders of the Child Care Board. This therefore begs the question whether the Child Care Board, with its present configuration, is sufficiently and efficiently equipped to meet this obligation.

**The Child Care Board is a statutory corporation established by the Child Care Board Act 1969. Its mandate is received from the amended Child Care Board Act 1981 and it is empowered to:**

1. Provide and maintain child care centres for children in need of care and protection.
2. Provide counseling and other services for
  - (i) Children in need of care and protection.
  - (ii) The parents and guardians of those children.
1. Place children in foster care.
2. Register, license and regulate day care services.
3. Make grants to private institutions.

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<sup>3</sup> NHC / UNICEF Report on Social Services Delivery in the O.E.C.S and Turks and Caicos Islands (2002)

**As provided in the Board’s last published annual report<sup>4</sup> there are other Acts which make provision for the Board’s work. Among these are: the Adoption Act 1955 (amended 1981); the Prevention of Cruelty to Children Act 19 - (amended 1981) and the Domestic Violence (Protection Orders) Act 1992. As a result of this, the Board offers services in the following areas:**

- 1) Residential Care
- 2) Day Care
- 3) Foster Care
- 4) Adoption
- 5) Child Abuse/Care and Protection
- 6) Disabilities
- 7) Training

In addition, the Child Care Board is a resource for court ordered assessments and reports. Many of these court reported matters are in the area of custody/access disputes. In fact, in the 2003 – 2004 Annual Report, it was recorded that forty-seven (47) of a total of 126 court appearances by child care officers were related to custody/access disputes.

Given this very wide mandate, the Child Care Board is not exclusively a child protection agency responsible for the care and protection of abused children. It is an agency that appears to be responding to all types of child related cases, including those that go well beyond the scope of a genuine child protection case.

In light of this context, the staffing of the Child Care Board becomes a major issue in determining whether it has the human resource capacity to effectively deliver on its child protection mandate. Interviews with staff members themselves, clearly indicated that child care officers questioned the Department’s ability to adequately address the volume of child abuse cases coming to the attention of the agency.<sup>5</sup>

**The technical staff which would be directly responsible for the delivery of child care and protection services is made up of the following:**

**FIGURE 6**

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|                                     |
|-------------------------------------|
| <b>1 Director</b>                   |
| <b>1 Deputy Director</b>            |
| <b>6 Senior Child Care Officers</b> |
| <b>16 Child Care Officers</b>       |
| <b>Total: 24</b>                    |

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Of course, the Director and Deputy Director would operate at the level of managing operations; formulating policy and providing general administrative oversight. The remaining staff is divided into teams, with designated areas of work assigned to each team. The work teams include adoption/foster care; residential programme; intake and the child abuse programmes. The present system reportedly allocates four (4) persons to intake and four (4) persons to the child abuse programme. However, the

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<sup>4</sup> See Economic Commission for Latin America and the Caribbean, Shaping the Future of Social Protection: Access, Financing and Solidarity, 2006, for an in depth discussion of these issues.

<sup>5</sup> Taken from the organizational Chart of the Child Care Board

intake workers are not only receiving reports, they are also responsible for dealing with custody access cases, behavioural problems and care and control cases. The child abuse team of four (4), who theoretically should be doing exclusively child abuse investigations are required to fill the void in the intake system. These numbers do not reflect absences due to study leave, maternity leave or any other legitimate absences from the workplace. The net result of the review of the staffing at the Board, clearly demonstrated that the staff are stretched to their limit and that the effective handling of not only child abuse reports, but also the subsequent steps in the child protection process, is potentially compromised by inadequate numbers of officers.

Mandatory reporting will, by its very nature, open the floodgates and put significant pressure on the existing system to respond in a timely and efficient manner to all reported cases of child abuse. Consequently, considerable thought will have to be given to either restricting the mandate of the Child Care Board to child protection in its narrower sense, (meaning child abuse cases) or increasing human resources to accommodate a well equipped child abuse unit within the current framework of a broad-based child service agency.

The traditional and more internationally followed approach has been to create child protection agencies that respond exclusively to cases where children are in harm or at significant risk of harm. This is the model for example, in both the United States and Canada. The establishment of a broader based agency that provides a number of services to children is perhaps a good concept, but it does require the requisite resources to match the wide latitude of service delivery.

## THE PRESENT STATE OF AFFAIRS

Interviews with key sectors, including law enforcement, education and health, reinforced the view that although there is some recognition of the central role played by the Child Care Board, reporting to that agency is discretionary and occurs on an ad hoc basis.

Some of the sectors appear to be better at reporting than others. For example, there appears to be a very good working relationship between the Queen Elizabeth Hospital and the Child Care Board, where as a result of an unwritten protocol, all cases of child abuse admitted to the hospital are reported by the Social Service Department to the Child Care Board.

However, this healthy arrangement is not happening across all the sectors and interviews disclosed that in the education system for example, the effectiveness in reporting of child abuse largely depends on the attitude of the individual school principal. There are some schools that routinely report child abuse cases to the Child Care Board and others who will not even permit child care officers onto the school premises. Even at the level of the Ministry of Education, there was the expressed view that the Child Care Board was often “overwhelmed” and that reports were not always responded to efficiently. This was offered as part of the explanation for the failure of schools to report all cases of child abuse to the Child Care Board.

Police referrals were also viewed as inconsistent and again, the level of reporting to the Child Care Board varied from police station to police station. The Victim Support Officer based at the Central Police Station was however cited as one consistent source of reports.

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Generally, it would be safe to say that the reporting systems are not operating at an optimum rate. Even in those situations where there is a good line of communication, there are no written protocols to institutionalize the arrangement, thereby leaving it vulnerable to collapse upon change of those in decision making roles.

Clearly, any attempt at implementing and enforcing a system of mandatory reporting will need to move beyond the Child Care Board to a full blown, state driven initiative that pulls in all the relevant government ministries and other state entities.

## INVESTIGATION

Investigation of child abuse is a necessary follow on from a report being made. A report simply alerts the authorities to the possibility of abuse, but it is only after a thorough investigation that this possibility can be confirmed or dismissed. Investigations can and should be conducted at both the level of the police (a criminal investigation) and the child protection agency (a civil child protection investigation). The decision by the police not to pursue a criminal investigation, does not necessarily mean that there are no protection concerns deserving of a protection investigation. This is important to note because the threshold of proof in the criminal context is higher than the civil context. Investigations of child abuse will usually involve several steps, including interviews of the victim; interviews with the alleged offender; interviews with family members, teachers and other relevant information sources, as well as medical examinations.

Interviewing is a skill and the skillfulness of an interviewer is truly tested in the handling of cases involving child victims, given the youthfulness, immaturity and peculiar vulnerabilities of children. The use of age appropriate interviews techniques and tools are often central to child abuse protocols and this may in turn trigger the need for specialized training.

## INTERVIEWS

The protocol will address the who, what, where and when of interviewing. It would be geared at providing some guidance on the interviewing phase so as to eliminate duplicity of interviews and gaps in the collection of critical information.

At present, there are limited guidelines, informing the interviewing of victims. The Department of Social Services at the Queen Elizabeth Hospital (Q.E.H.) does have some dated guidelines.<sup>6</sup> The Child Care Board also has some guidelines in its Child Abuse Management Manual.<sup>7</sup> The police officers, doctors, teachers and others who regularly come into contact with children have little guidance of “child-friendly” interviewing strategies. In fact, one police doctor commented frankly on the lack of training afforded to the doctors, who in their capacity as police doctors routinely interview and examine child victims of sexual and physical abuse.

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<sup>6</sup> Multidisciplinary Guideline on the Management of Child Abuse. (Department of Social Services, Queen Elizabeth Hospital, May 1993.)

<sup>7</sup> Child Abuse Management Manual (for the Child Care Board). Prepared by J. Crawford.

## MEDICAL EXAMINATIONS

Despite the country's level of development, doctors in Barbados appear to be working with a surprisingly low level of forensic aids to assist in confirming an allegation of child abuse. Interviews confirmed that rape kits are not available and that doctors rely on swab tests.

The Director of Emergency Services at the Q.E.H. recalled that there was a short period when rape kits were available but that this was discontinued. He also commented on the need for training in the proper use of rape kits.

There are currently four (4) police doctors on the island. They are responsible for providing the medical evidence for the purpose of prosecuting cases of physical and sexual abuse. They are expected to conduct an interview and a physical examination. The interview is usually conducted in the presence of an adult family member and the police. Ordinarily, the interview is quite short because the police have usually already interviewed the child before the medical examination. The police doctors who were interviewed, made it quite clear that whereas physical abuse is easier to corroborate with medical evidence, sexual abuse is very difficult. On most occasions, the doctors can confirm that there has been sexual intercourse, if that has occurred, but the findings are usually quite limited.

Interestingly, the police doctors are not specially trained to perform this service and they are given no guidance on the protocols that are to be followed. There is no established protocol for example, on the issue of pregnancy testing or administering of emergency contraception.

Another significant gap in the system appears to be the follow-up with child victims. Testing for S.T.Ds and H.I.V. usually require a follow-up test. Even pregnancy testing needs to be followed-up because an accurate determination of pregnancy cannot be made immediately after sexual contact.

The Q.E.H. does have an internal protocol in place for the treatment of child abuse cases. The protocol, established in 2004 addresses physical abuse, sexual abuse and neglect. It requires full examination of the child and detailed record keeping. It requires initial testing and follow-up testing for H.I.V. and it expressly provides for the use of Postinon, commonly referred to as the "morning after pill". Unfortunately, the Hospital reported that despite providing for follow-up, it does not always happen and that they rely on the Child Care Board to make sure that the victim returns for subsequent testing.

The Paediatric Department oversees the protocol and tries to ensure that all cases of abuse are actually admitted to the paediatric ward. This period of admission also allows for monitoring of the child's progress, and according to the Head of Paediatrics, also sends a strong message to the child that they are the victim and it was not their fault. Psychological and psychiatric services are also available.

Unfortunately, the internal protocols at the Q.E.H. are not widely known even within the medical sector itself. The police doctors and the Polyclinic personnel were not aware of these policies.

There is obvious scope for better regulation of medical interventions in child abuse cases.

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# DEVisING A PLAN OF CARE AND LEGAL INTERVENTIONS

After an investigation is carried out, the relevant authorities must then decide on a course of action. This action plan can either involve closing the case for lack of evidence that the child is in need of protection or moving forward because grounds have been established for further intervention. Once the intention to move forward with the matter has been formulated, it becomes necessary to devise a plan of care.

This plan may require the removal of the child to a place of safety, whether as a ward of a state or with an alternative placement in the community. It may also be possible to have the child remain in the family setting, subject to some form of supervision. Whatever the plan, it is conventional practice that this plan of care is discussed and presented in written form so that there is a clear sense of direction on the matter. It is not uncommon for case conferences to be held with a view to formulating a written plan of care.<sup>8</sup> Unfortunately, this is not sufficiently pursued in Barbados or most of the countries in the region.

Upon formulation of a plan for moving the case forward, there is usually the need for subsequent legal interventions to occur.

A review of the circumstances in Barbados, strongly indicated that the legal responses to child abuse, particularly child sexual abuse were in urgent need of attention.

An assessment of the legal responses is sub-divided into the two (2) categories of criminal justice responses and civil responses.

## CRIMINAL JUSTICE RESPONSES

The substantive criminal law that is applied in child abuse cases, especially in the area of sexual abuse is less problematic in Barbados than in most countries across the region. Unlike most of the O.E.C.S. States, Barbados underwent legal reform to its sexual offences legislation and other aspects of its criminal law regime. These reform efforts have gone a long way in improving the status of the law in relation to the prosecution of child abuse. This assessment of the criminal law does not necessarily translate into justice for child victims, because there are still several procedural flaws that compromise the overall criminal justice responses to child abuse. One jurist, writing on the plight of the “little ones” in Barbados made the comment that,

**“... while the criminal remedies for dealing with child abuse exist, there are many intrinsic difficulties with the criminal justice system which militate against prosecution.”<sup>9</sup>**

**The Protection of Children Act and the Sexual Offences Act (1992) have gained significant ground in protecting children under 18 years from all forms of sexual abuse and from involvement in pornography. The Protection of Children Act is one of the only pieces of legislation in the region that directly confronts the issue of child pornography, whereas the Sexual Offences Act (1992) has taken some very progressive steps in strengthening the**

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<sup>8</sup> In the Canadian context, for example, the Children’s Aid Society is required to present the written plan of care in its package of documents that is to be submitted to the Court in child protection proceedings.

<sup>9</sup> Justice Jacqueline Cornelius, “Protection the Little Ones: The Rights of Children in Barbados. (Paper presented at the 2006 Elsie Payne Lecture.)

**safety net for child victims. Some of these positive developments are as follows:**

**(i) The removal of the honest belief defense for sexual intercourse with a minor**

It is no longer the case, as exists in most O.E.C.S. States, that an adult male can rely on the defense that he honestly and reasonably believed that the complainant was over the age of sixteen (16). This was an obvious loophole in the law, which is relied upon quite frequently in some jurisdictions. However, Barbados does make leeway for those situations where there is proximity in age between the defendant and the complainant. In so doing, the law provides that anyone under the age of twenty-four (24), who has not been previously charged with the same or a similar offense, can rely on the honest belief defense. This is evidently geared at recognizing that the defendant who is close in age to the complainant, may through his own immaturity and inexperience exercise poor judgment.

**(ii) Broadened definitions of rape**

In many jurisdictions sexual intercourse is a required element of many of the sexual offences, including rape. Sexual intercourse is limited to vaginal penetration by a penis, and would therefore exclude equally traumatic and invasive acts. However, Barbados has rectified this situation and pursuant to S. 3 (6) of the Sexual Offences Act (1992), rape has been expanded to also include penetration of the mouth or anus; as well as the use of foreign objects being manipulated into the vagina or anus.

**(iii) Removing Gender Bias**

All of the provisions under the Sexual Offences Act are now gender neutral, and will therefore equally apply to offences committed against boys.

**These developments are definitely a step in the right direction and should be acknowledged as such. However, these gains in the substantive law can easily be rendered meaningless if there are still some intrinsic difficulties with the criminal justice system and its responsiveness to young victims. The three (3) main features of the system which negatively affect the efficient prosecution of children are:**

- (i) The reluctance on the part of parents and guardians to proceed to prosecution.
- (ii) Inordinate delays in the prosecution of cases.
- (iii) The lack of child friendly court procedures

## **RELUCTANCE ON THE PART OF PARENTS/ GUARDIANS TO PROSECUTE**

A consistent theme that weaved its way throughout all of the interviews was the role of parents/guardians in preventing cases of child abuse from reaching their logical conclusion in the legal process. Compelling anecdotes of bribes being passed, or children being disbelieved by their parents, were frequently cited by interviewees as the reality for child victims in Barbados.

This disregard by parents for the justice system may in part be informed by the perception that the system is ineffective and cannot be relied upon for fair or meaningful dispensation of justice. Whereas, little can be done to change the attitude of selfish parents who attribute little significance to the pain and suffering of their children, a lot can be done to change the

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effectiveness of justice responses, so as to bolster public confidence in the system. Parents and guardians must be held accountable for ensuring that they safeguard the legal rights of their dependant children; but the State is ultimately responsible for protecting those rights where parents fail to do so. It is therefore incumbent upon the State to put the necessary laws and policies in place that require cases of child abuse to be prosecuted, even in those circumstances where parents are reluctant to proceed.

The routine withdrawal of child abuses as a result of victim and/or parental reluctance is a present state of affairs that needs to be carefully examined. Perhaps, a policy of mandatory prosecution of these types of cases should be duly considered.

## **INORDINATE DELAY IN PROSECUTION**

Perhaps the most significant impediment to the delivery of justice of children is the extended delays in the prosecution of abuse cases.

**In one particular case, which was brought to the attention of the Chief Justice, the case was started on July 26th 1999 and as of September 14th 2001, the case was still incomplete. There were eight (8) adjournments on this matter. The victim in this case was six (6) years old.**

**In another case, a girl aged fourteen (14) was allegedly raped by her biological father. Two years after the commission of the offence, not one word of evidence had been heard. In this case, the father was ultimately murdered in a drug related matter in 2007. At the time of his murder, the Preliminary Inquiry into the sexual molestation of his daughter had not yet started.**

Again, anecdote after anecdote was provided by interviewees, some of which powerfully underscored the blatant failure of the system to adequately address the care and protection of children. One child's rights lawyer and advocate reported that cases are frequently in the system for three (3) to four (4) years after an unreasonable number of adjournments.

Interviews with the Director of Public Prosecutions (D.P.P.) confirmed that delay was also viewed as a concern for this office. They spoke of the back log of cases that create a burden for the mere two (2) courts that are presently operational. The D.P.P.'S office looks forward to the anticipated judicial complex that will have three (3) courts.

Nevertheless, the office conceded that there is no existing policy that allows for the prioritization of cases involving child victims. Currently, only those cases with persons in remand are given priority in the sequencing of matters to be heard at the High Court Criminal assizes.

Delay can seriously compromise any case, but it is widely accepted that the damage it can cause to cases involving young victims is even greater. In the case of children, it is fairly safe to say that justice delayed is justice denied.

## THE LACK OF CHILD FRIENDLY COURT PROCEDURES

Although Barbados has made some progress in several aspects of the substantive law, there are some procedural points that still present a challenge for child victims.

Under the Sexual Offences Act, S. 28 it expressly states the no corroboration is required for a conviction, but the judge must still issue a warning that it would be unsafe to convict in its absence. The one exception to this rule is the evidence offered by a minor of “tender years” who is offered as a witness and does not understand the nature of an oath. In such a case, the evidence can be admitted if it is established that the child at least understood the duty of speaking the truth. This is qualified however by the need for the evidence to be corroborated. Children who are unable to give sworn evidence are therefore being held to a different and much higher standard. This begs the question of the justification for imposing on children the adult standard of sworn evidence, is it really necessary?

Secondly, there is little to no accommodation made in the physical layout of the court for child victims. Children are required, like all other victims to face their abusers. The use of screens and/or video links is still not possible and some have argued that this could potentially violate the right of the accused to face his or her accuser.<sup>10</sup> It is important to note that, these accommodations have been made in several foreign jurisdictions.

One of the more damaging features of the system, however, is the requirement of a preliminary inquiry which often requires that the child victim will have to give oral evidence on two (2) separate occasions. Internationally, this is regarded as a serious problem and ranks high in the list of concerns about the criminal justice system. In one Australian Study, the requirement to give evidence at committal proceedings was expressly pinpointed as a barrier to justice for child witnesses.<sup>11</sup>

The mandatory use of paper committals in cases including vulnerable witnesses is one possible solution to this problem, thereby removing the need for oral evidence at a preliminary inquiry.

## CIVIL RESPONSES

The O.E.C.S. Family Law Reform project has recommended that the region move towards the creation of specially created Child Protections Acts that allow for the removal, care and supervision of children who are at risk of harm. This reform initiative recognized that the legal responses to child abuse could not start and end with criminal sanctions being imposed on the perpetrator.<sup>12</sup> It underscored the importance of laws that have a strong protective thrust, and focus on the protection of the victim from harm. This perspective shifts the focus from the offender to the child victim and from accountability and punishment to victim safety, protection and rehabilitation.

In a paper presented by one of the island’s High Court judges, there was recognition of the need for the civil law responses in Barbados to be strengthened. Her Lordship, Justice Jacqueline Cornelius made the following statement.

**“Given the inherent difficulties of the criminal law system in remedying child abuse, the civil law, with its**

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<sup>10</sup> A. Whiltam and H. Ehrat, Child Witnesses in the Criminal Justice System – The Issue of Vulnerability. (Paper presented at a Conference by the Australian Institute of Criminology. (May 2003)

<sup>11</sup> Protecting the Little Ones: The Rights of Children in Barbados, (Ibid at p. 91)

<sup>12</sup> Report on reform to Child Protection Law in the O.E.C.S. and Turks and Caicos Islands: Family Law Reform and Domestic Violence Project

**differing and less vigorous standard of proof should be strengthened and the relevant social agencies reformed to deal more completely with child abuse. The law is extensive, but scattered.”<sup>13</sup>**

The observation that the law in Barbados relating to child protection is scattered is extremely accurate, and demands not only the creation of a comprehensive Child Protection Act, but perhaps the eventual creation of a Children’s Act that pulls together all aspects of the law relating to children.<sup>14</sup>

The combined use of the Prevention of Cruelty to Children’s Act; the Child Care Board Act and the Judicature Acts permits the Child Care Board to remove a child from an abusive home environment and pursue an order for Wardship. Under the wardship of the Court the child can then be placed in foster care, institutional care or be returned to the family home with custody remaining with the Court. Court wardship is a sufficiently broad concept that allows for the court to attach flexible terms to the Wardship Order.

Despite the fact that the removal and placement of a child who is at risk of abuse can ultimately be effected through the combined effect of several pieces of legislation, this is far from an ideal situation and should not be regarded as a viable alternative to a comprehensive Child Protection Act. This patchworking of legislation was not designed with a view to promoting meaningful child protection objectives. One author’s criticism of the Juvenile Acts in the Region would equally apply to the approach taken in Barbados. In her critique of the region’s child protection legislative frameworks, she said,

**“The child protection component of the Juvenile Acts are a clear “after-thought” and were not designed with a view to promoting meaningful child protection objectives. The legislation does not even offer a helpful definition of child abuse and it offers little to nothing in terms of the process that should be implemented in the prevention, detection, treatment, rehabilitation and follow-up of child abuse cases.”<sup>15</sup>**

In the absence of a specially created Child Protection Act, designed to specifically address child abuse, there will be unnecessary gaps in the legal response to child abuse which cannot be addressed in the fragmented approach that currently applies to Barbados. Even the issue of accessibility to the law is compromised, because the research revealed that there are only a few lawyers in the country that understand the complex process involved in bringing child protection application to the Court. The Child Care Board presently utilizes the services of only one lawyer, who has been able to specialize in this area and make sense of a very cumbersome body of law.

Fortunately, court intervention is not often sought by the Child Care Board because the agency relies very heavily on Voluntary Care Agreements to legitimize the process of bringing a child into the care of the State. These Agreements are usually in written form once the child is going to be removed from the community. In these cases, the parents or guardians sign a form consenting to the child being placed in the care and control of the Child Care Board.

This practice of routinely pursuing voluntary agreements, as opposed to commencing a legal process does have its advantages, but should be applied with caution. Issues of ensuring informed consent; addressing breaches of Agreements and facilitation of a review process are all important and would need to be addressed.

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<sup>13</sup> J. Cornelius, “Protecting the Little Ones: The Rights of Children in Barbados.” (Ibid at p. 9)

<sup>14</sup> This has been within the Region and Belize presently has a Children’s Act which embodies a section on Child Protection.

<sup>15</sup> Report on Reform to Child Protection Law in the O.E.C.S. and Turks and Caicos Islands. Ibid.

Similar to other jurisdictions with Domestic Violence Acts, Barbados has not utilized this avenue for the benefit of abused children. A protection order under these Acts is advantageous because, unlike the other legislative frameworks, it permits the removal of the perpetrator from the home rather than the removal of the child victim to a place of safety. This approach prevents any disruption or anxiety that the child may experience as a result of being uprooted from both home and community. Unfortunately, this legislation is perceived as operating for the sole benefit of adult women who are in abusive relationships.

The importance of the law to guaranteeing the safety and security of children cannot be overstated. It is a powerful tool for safeguarding children's rights and ensuring accountability. The Child Abuse protocol must ensure that due process is always followed and that child protection matters should not in any way be capricious or arbitrary. Legal principles and process should be adhered to at all times.

## **PLACEMENT AND FOLLOW-UP CARE**

The protocol would need to establish guidelines for the placement of children into alternative care environments, whether foster care or institutional care.

As previously indicated, the removal and placement of children must be done pursuant to a legal process. Where voluntary care agreements are utilized, it is important to establish that parents fully understood the nature of the Agreement and have agreed to surrender care and control of their child(ren) to the State.

The Child Care Board operates nine (9) Children's Homes in five (5) locations across the island. For the year 2003 – 2004, the number of children in residential care fluctuated between 116 and 127 children.<sup>16</sup>

The Agency has been calling for a therapeutic facility to address the needs of emotionally disturbed children as well as those who have conduct disorders. The annual report also identified a dire need for suitable resources to assist with the placement of older children and individuals with "special needs" in the community.<sup>17</sup>

Foster care is also a feature of the system in Barbados for placing children who are in need of care and protection. In 2003 – 2004, twenty-five (25) children were placed in foster care. There are presently forty-eight (48) children placed in forty-five (45) foster homes across the island.

The Department has two (2) teams that specifically address Foster Care/Adoption and residential care, comprising of a total of seven (7) officers and two (2) co-ordinators.

The Child Care Board Act expressly stipulates that the Board is not only responsible for placement of children in "child care centres" or "foster homes" but must also provide counseling and other services for children and their families. Rehabilitative measures are therefore an integral feature of the child protection system and the protocol should address the importance of these interventions. It is not expected that children who are made wards of the State will have that status on an indefinite basis. Family and community reunification is the ultimate objective and the psycho-social or other services needed to achieve this objective are crucial to the child protection process. Barbados has been able to put some

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<sup>16</sup> Child Care Board Annual Report (2003 – 2004 at p. 48.)

<sup>17</sup> Ibid at p. 50.

measures in place to address the rehabilitative needs of children and their families. One such programme is the Sexual Assault Survivor Support Group which offers group counseling to young victims of sexual abuse. Preventative interventions are also offered and the Children's Safety Programme is a useful strategy for teaching primary school children about keeping themselves safe from sexual and physical abuse.

Effective delivery of the placement and follow-up phase of the system will require adequate staffing and the configuration of staff duties must reflect the importance of this phase of the process.

# THE DEVELOPMENT OF A CHILD ABUSE PROTOCOL

The identification of challenges is a crucial step in the development of a child abuse protocol. Without a keen awareness of the substantive and procedural deficiencies in the system, it would be difficult to create an instrument that is geared towards enhancing the overall responses to child abuse. Having pinpointed the gaps in the delivery of child protection services, it is hopeful that a protocol will help to guide the interdisciplinary responses to child abuse and facilitate the standardization of practices. A protocol will not, on its own, bring an end to child abuse. However, if effectively implemented with other types of interventions, a protocol can go a long way in strengthening the safety net for abused children.

## WHAT IS A PROTOCOL?

A protocol is a set of policies, procedures and agreements to be followed in child abuse cases. It is also a collaborative tool to ensure that agencies are working together without duplicating or overlapping tasks. A protocol can be as simple or complex as you want to make it.

### Why have a Child Abuse Protocol?

**(Taken from the Tribal Law and Policy Institute's Guide for the Development of Child Abuse Protocol.)**

- To establish standards for points of contact, methods of contact and purpose of contact between relevant agencies.
- To strengthen and clarify relationships between child abuse response agencies.
- To define professional roles and responsibilities.
- To improve the credibility and accountability of the agencies involved.
- To reduce trauma to children by improving interagency coordination.
- To inform and educate the community about how reports of abuse are handled.
- To ensure consistency in the way that cases are handled.

### How will having a Protocol improve Child Abuse Responses?

- By defining the purpose and scope of the interagency co-ordination and collaboration.
- By describing the roles and responsibilities of different professionals.
- By defining the steps that must be completed at each stage.
- By defining the time frames for completion of each step.
- By having concrete and practical procedures for handling special issues that may arise.
- By protecting agencies from allegations of favoritism or politics in their handling of cases.
- By informing the community of what they can expect to happen when alleged abuse is reported.

## ELEMENTS OF A CHILD ABUSE PROTOCOL

An interagency protocol provides a step by step process for how cases will be handled when there is an allegation of child abuse. It is a reference tool and should be clear and easily accessible.

**As previously stated, a protocol can range from a very short and simple document outlining only the basic requirements, to a very detailed and sophisticated document. The nature of the document should however be balanced against the principle of accessibility, which would require that the end product be relatively brief and user friendly.**

**The basic elements of a protocol should include:**

- Philosophy or Mission Statement
- Definitions
- Child Protection Procedures (Reporting, investigation, plans of care and placement.)
- Roles and Responsibilities
- Time frames
- Special Procedures
- Review Processes and Revisions to the Protocol

## CONCLUDING REMARKS

A child abuse protocol is not the magical wand through which the plight of abused children will be suddenly remedied. The creation of an effective child protection system calls for a number of responses, including appropriate legislation, effective social services delivery; trained personnel and the political will to effect positive change.

Nevertheless, a protocol can go a long way, when combined with other essential ingredients, to enhancing child protection procedures. Barbados already has some of the legislative frameworks in place, albeit with some deficiencies, but there is no supporting protocol to assist with the actual implementation of the law.

The creation and implementation of a child abuse protocol is certainly a step in the right direction, that if combined with all the other necessary components, will make a meaningful contribution to the enhancement of the child protection system in Barbados.





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