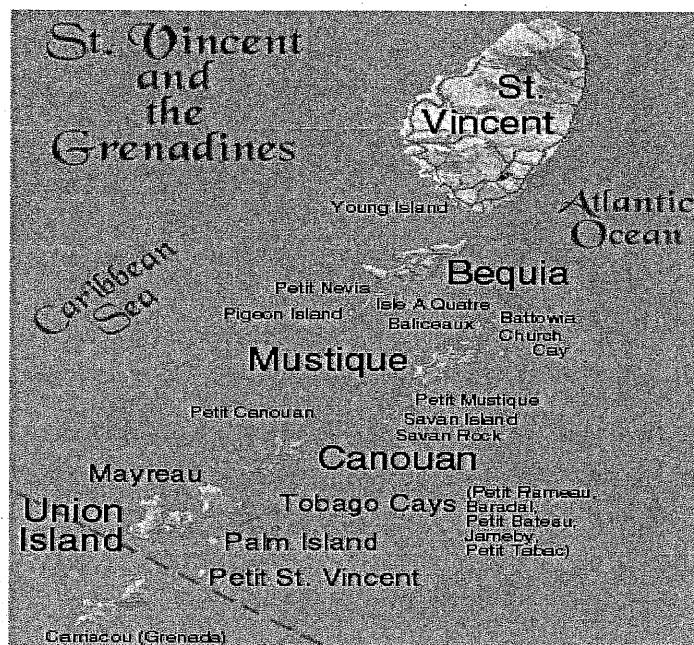


# THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD



## THE SECOND AND THIRD PERIODIC REPORT (CONSOLIDATED) FOR THE STATE OF SAINT VINCENT AND THE GRENADINES

Government of Saint Vincent and the Grenadines





## ***ACKNOWLEDGEMENT***

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## 1. INTRODUCTION

1. The state of Saint Vincent and the Grenadines having had its Initial report considered by the Committee on the rights of the Child (the Committee) in May 2002 presents this document which is a consolidation of the Second and Third Periodic Reports on the Convention on the Rights of the Child (the Convention). This document is submitted pursuant to Article 44, paragraph 1 (b) of the Convention.

2. This report is overdue. In this regard the State party expresses its regrets to the Committee and pledges its commitment to present future reports within the required time limits.

3. This document is formatted in accordance with the general guidelines adopted by the Committee at its 343<sup>rd</sup> meeting on the 11<sup>th</sup> day of October 1996. The contents reflect the articles of the Convention that the Committee require State parties to report upon so that it can assess the progress of the implementation of the Convention within the territory of the State party.

4. This Report informs as to the additional measures including legislation and policy that the Government of Saint Vincent and the Grenadines has implemented since the consideration of its initial report by the Committee the Concluding Observations of the Committee have been taken into consideration by the State party to guide its implementation of the articles of the Convention.

5. The initial report covered the period from ratification of the Convention up to 1999. This Second report considering that it is overdue will cover the period 2000 to 2010. This period extends beyond the usual 5 year period required by Article 44 of the Convention for the submission of reports to the Committee. The State Party considers that the extended period would render the Committee with updated data and information as to the implementation of the Convention.

6. The responsibility for the preparation of reports to the Committee rests

with the Ministry of National Mobilisation, Social Development, NGO Relations, Family, Gender Affairs and Persons with Disabilities of the Government of Saint Vincent and the Grenadines (The Ministry of National Mobilisation). This Report has been prepared through consultation. Where found to be necessary references have been made to data in the Initial report. Comments and comparisons have also been made with respect to the situation then and now. This may provide a useful guide as to the measures that have been taken towards the implementation of the provisions of the Convention.

7. Several NGO'S and governmental organizations were met with and interviewed during the preparation process. Statistical data and other information were made available. It was observed that some NGO'S and even governmental organizations do not keep statistical records as a matter of course. A Questionnaire was prepared to assist with the gathering of information for the Report in some instances.

8. A first draft of the report was submitted and discussed with interest groups including NGO'S and children within the State party for analysis, comment and recommendation. The updated and finalized report will now be submitted to Cabinet for approval before submission to the United Nations.

9. The general approach in the report is to refer to the legislation and policy governing the subject area covered by the article under review. Then the relevant information and data concerning the same is incorporated. This is then followed by comments and observations.

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## 2. GENERAL MEASURES OF IMPLEMENTATION

(Articles 4, 42 and 44(6))

10. The Ministry of National Mobilisation is the Ministry of the Government in the State of Saint Vincent and the Grenadines that has responsibility in the State for the implementation of the Convention. This is quite fitting as it has the mandate for most child based agencies and concerns.

11. The provisions of the Convention are not automatically incorporated into the municipal law of the State. In order for it to become Law the Convention must first be passed through the House of Assembly as a Bill and then become enacted as an Act of Parliament. This has not occurred. An individual therefore cannot rely on the provisions of the Convention as they exist in any proceedings before any Court of Law tribunal or body mandated with the implementation of law in the State of Saint Vincent and the Grenadines. Many of the provisions of the Convention are however encapsulated in the provisions of legal provisions in the State and the Ministries of Government with the responsibility for matters relating to Children have sought to implement the provisions of the Convention through distinct enactments.

12. Since the consideration of the Initial Report of the State there has been no major legislative intervention in relation to issues covered by the Convention. There were amendments made to a number of existing legislation and the Education Act was revised. There is presently a model for family law legislation for OECS including the statutes that deals specifically with the issue of child care and protection. Recently The Children (Care and Adoption) Act 2010 passed through all of its readings in the House of Assembly and is awaiting proclamation to become law. There is now a new Status of Children Act 2011 which replaces the 1979 Status of Children Act.

13. The Ministry of National Mobilisation has been active in the area of policy. It has established a National Child Rights Committee which has a principal objective of implementing the provisions of the Convention. This Committee is comprised of a number of stakeholders and has representation from both Governmental and Non-Governmental Organisations particularly those that are involved in matters concerning children. The Committee meets on a regular basis and discusses general issues of child rights and measures for making the provisions of the Convention more effective within the State. The local Committee has the mandate of the Government of the State and through the Ministry of National Mobilisation it can lobby the Government and make recommendations for the implementation of appropriate legislation and policy. Key ministries of government are represented on the local Committee including the Office of the Attorney General through whose office bills for the consideration of Parliament must pass.

14. The local Committee is in communication with regional and international bodies that operate in the field of Child Rights such as UNICEF, CCSI, OECS and Child Fund International. Through such bodies it is able to secure funding and consider model legislation that it can recommend to Parliament for enactment as law within the State.

15. The Family Affairs Division of the Ministry of National Mobilisation has responsibility for matters concerning the family which includes matters relating to the children of the Family. Much of the groundwork of the Ministry as it relates to the day to day handling of matters relating to children is handled by this division. Through it a number of counsellors and social workers are made available to other government and non-government based institutions including the court and health services. In this regard it seeks to ensure that the interests and rights of the child are represented and made the paramount consideration at all times and especially at critical times.

16. The Government of Saint Vincent and the Grenadines has not ratified any of the existing Optional Protocols to the Convention. It did not register any reservations with respect to the Convention. It is however

expected to put all measures in place for the full implementation of the Principal Convention within the State.

17. The Laws of Saint Vincent and the Grenadines have been revised as of the 1<sup>st</sup> January 2009. By this process the laws of the state have been examined revised and bounded into 15 volumes which are almost double the previous 8 volumes under the 1990 revision.

18. The National Committee on the Rights of the Child (NCRC) through its membership is well placed to ensure that the provisions of the Convention is widely known and distributed to the populace of the State. As indicated before its membership comprises a cross section of the various agencies and bodies that are active in matters concerning children within the state. Through these agencies being both Governmental and Non-Governmental the Convention has received wide circulation and mention within the state.

19. The local Committee has maintained the celebration of May as the month of the Child. During this month every year the Convention becomes the subject of discussion in the print and electronic media. Rallies are organized nation-wide and amongst schools. Organisations such as the Saint Vincent and the Grenadines Human Rights Association, Saint Vincent and the Grenadines Save the Children Fund and others become actively involved in promoting awareness to the public on the Rights of the Child. Throughout the year however the advocacy of child rights as enshrined in the Convention is maintained by the Ministry of National Mobilisation and the various NGO's concerned with children.

20. Recently the local Committee has developed a programme to promote awareness on the subject of child abuse within the state. It has accordingly developed a Child Abuse Protocol which in essence identifies the factors and indicators of abuse and provides procedures for reporting and responding to reports of child abuse. The Ministry of National Mobilisation has continued to designate the month of April in each year as Child Abuse Prevention Month. In this month the provisions of the Convention are again made the topic of national discussion in the print and electronic media. This is Co-ordinated by the Family Affairs Division of the Ministry.

21. In relation to the requirements of Article 44(6) of the Convention the various organizations that exist within the state involved in matters concerning the welfare of the child participated in the finalizing of the report which was circulated in draft. Many of these organisations are represented on the NCRC. The NCRC discussed the draft report amongst their membership and returned comments and observations to the local Committee in Plenary.

22. Upon Approval by The Cabinet of the State the report will be publicly distributed and circulated as an official document of the State. Reproduction and circulation of the report will rest with the local Child Rights Committee whose broad based membership is well placed to assist in this regard.



### 3. DEFINITION OF THE CHILD

#### (Article 1)

23. The Age of Majority Act Chapter 226 of the Laws of Saint Vincent and the Grenadines defines 18 as the age of Majority as is required under Article 1 of the Convention. The Law of Minors Act Chapter 232 describes a minor as a person under the age of 18. The Law of Minors Act and the Age of Majority Acts are relatively new legislation in Saint Vincent and the Grenadines. They were passed in Parliament in 1989 and 1987 respectively.

24. Other older legislation however contains different definitions which are described as being for the purpose of the particular legislation. An example is Juveniles Act Chapter 231 which was passed in 1952. This Act describes a child as a person under 14 years of age. The new Child care and Adoption Bill (part of the OECS model Family Legislation) which has been passed but not yet brought into effect defines child as a person under 18 years of age. This is in keeping with the provision of the Convention.

25. There have not been any legislative changes apart from that proposed in the model legislation with respect to this Article since the consideration of the initial report of the State by the Committee. The age limits contained therein including the age of Criminal responsibility, the ages of consent, the legal minimum age for employment including Hazardous employment and the minimum age for consumption of alcohol and other substances. The minimum age for marriage remain the same under the law of Saint Vincent and the Grenadines as is identified in that report. An exception is that the age of sexual consent is in fact fifteen years (15) instead of thirteen (13) years as is stated in the initial report.

26. The Marriage Act Chapter 236 of the laws of the state continues to retain the discriminatory disparity in the minimum age of marriage for boys and girls. This is apparently based upon the traditional concept that girls mature at a faster rate than boys during the teenage years.

27. There is a strong need for harmonization of the law dealing with definitions of the child. This will ensure that there is uniformity of definition in like areas. It is however recognized that legislation such as the Immunisation of Children Act Chapter 289, and the Recruiting of Workers Act Chapter 213 and other related legislation conveniently define a child for their purpose. The definitions are not meant to apply for general purposes. They are restricted to the utility of the legislation in which they exist. The Marriage Act Chapter 236 has been on the statute books of Saint Vincent and the Grenadines since the year 1926 which was a year of law revision in the state. Although it has had numerous amendments throughout the years it still contains provisions that reflect the thinking at the time of its passage.

28. It is still the Law of Saint Vincent and the Grenadines that a child between 16 and 18 years of age can be sent to prison. This may even be applied in the case of first time offenders convicted of illegal possession offences, theft and related offences and sexual offences. In such instances the court will inquire whether the child is still a Juvenile. If the answer is in the negative then the court could proceed to sentence the child as if the child is an adult of course taking into consideration the issue of youth.

29. Imprisonment of children between the ages of 16 and 18 is perfectly legal in Saint Vincent and the Grenadines but the situation becomes complicated for the simple reason that there is no separate juvenile correctional facility in the State at present. These incarcerated children therefore are confined in the regular correctional facilities in the state which are the male prisons in *Kingstown* and *Belle Isle* and the female Prison at *Fort Charlotte*. There is unrestricted intermingling with the older more hardened prisoners which often impacts negatively on the life of the child.

30. The Government of Saint Vincent and the Grenadines has a new modern male prison facility at *Belle Isle* in the North West of the State. This facility is expected to include separate compartments for child prisoners

between the ages of 16 and 18 years. In this way it is expected that the issue of the intermingling of the older more hardened prisoners and children prisoners will cease. In cases where children are incarcerated the expectation is that the prison experience of that child would be positive rather than negative. The Belle Isle facility is presently being phased into operation.

31. It is to be noted that the former prison facility in Kingstown experienced the same problems that prisons in most developing countries generally face. These problems include limited staff, inadequate or improper administrative structure, overcrowding and improper intermingling of prisoners amongst other things.

32. On the 27<sup>th</sup> day of September 1999 a single man commission in the person of Sir George Frederick Smith K.A., Q.C. was appointed by the State to conduct an inquiry into violent disturbances occurring at the male prison in Kingstown between the 28<sup>th</sup> of July and the 8<sup>th</sup> day of August 1999. On the completion of its work the Commission made a number of recommendations. The Commissioner noted in particular that the prison is badly sited and was built in 1872 to house 72 prisoners. It is practically located in the heart of Kingstown between Pauls Avenue and Mc Kies Hill two areas that have evolved significantly since 1872.

33. Following the Commission's report the Government of the State opted for location to the Belle Isle site and constructed a modern facility. This facility has adopted the recommendations of the report of the Commission. Some of the recommendations in that report that mirror the terms of the Convention are:

- (a) Recommendation 3 - That the new facility be designed to house female prisoners, convicted prisoners, prisoners on remand, criminally insane and young first offenders.
- (b) Recommendation 11 - That a suitable facility be built as Attendance Centres or places found where young offenders under twenty one (21) years of age may be required to attend and be given, under supervision, appropriate training, occupation or instruction in pursuance of orders made by the High Court or Magistrates Court under the provisions of a New Penal System Reform Act.
- (c) Recommendation 45 - That as far as possible remand prisoners should be separated from convicted prisoners
- (d) Recommendation 54 - That prisoners should be treated in a humane and civil manner and respected as persons.

34. The selected recommendations above demonstrate the situation that existed at the prisons at the time of the Commission. There has been some improvement to date but basic problems such as the continued incarceration (whether as remands or convicts) of children between 16 and 18 and their incorporation into the general prison population continues as a matter of course. The new prison facility is expected to bring this situation to a permanent end.

35. The Convention is well known to members of the judiciary. There however continues to be the situation of children between 16 and 18 being committed to prison by courts. This may well be because the courts find themselves with no alternative especially where serious offences requiring incarceration are committed by such persons. This is a situation that the Convention discourages especially where there is unrestricted contact with the regular adult prisoners. The Convention will be better implemented in this regard with the existence of the new prison facility.

36. It is significant to note that the Attendance Centres at recommendation 11 above appears similar to

approved schools under the Juveniles Act. The Children Care and Adoption Bill having been passed it is just a matter of time before that Bill becomes law thereby replacing the Juveniles Act.

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#### 4. GENERAL PRINCIPLES

(Articles 2, 3, 6 and 12)

37. The provisions covered by this chapter deal with matters concerning measures existing within the State for protecting the child from discrimination, the promotion of the child's best interests as the paramount consideration in all matters affecting the child, recognition of the child's right to life survival and development and the respect of the child's views and opinions in all matters affecting the child.

38. The Initial Report of the State dealt with the constitutional and legislative measures that apply in this area. There have been no constitutional or legislative amendments affecting the general provisions identified in the Initial Report. In those circumstances this Report will concentrate on recent developments and legislative pronouncements.

##### **Protection from Non-Discrimination**

39. The Constitution of Saint Vincent and the Grenadines came into effect on the 27<sup>th</sup> day of October 1979 the day that the State obtained its independence from Great Britain. This was a time that the world was undergoing change and turmoil. The Cold War was in existence and as a new nation the State wished to demonstrate to the world that it stood for those ideals and freedoms that were accepted by right thinking individuals and nations. Hence, the state continued the trend of incorporating a Fundamental Rights Section in its Constitution. This followed the trend of other Commonwealth Caribbean nations that became independent of Great Britain at about the same time.

40. The Fundamental Rights section of the Constitution is a reflection of the basic principles emerging from the Universal Declaration of Human Rights which came into effect following the realisation by nations of the world that humanity suffered during the war years and that human rights were generally ignored.

41. The anti discrimination provision contained in Section 13 of the Constitution is perhaps one of the most often referred to provisions of the Constitution. Quite often individuals complain of discrimination in the ordinary course being meted out by the State, corporations or individuals. The constitution however protects limited categories from discrimination. In Section 13 these are referred to as sex, race, place of origin, political opinions, colour or creed.

42. In reviewing Section 13 it is very important to examine the exceptions contained at Subsection 4 (c). This provides the following:

13 (4) (c) Subsection (1) of this Section shall apply to any law so far as the law makes provision for -

(a) .....

(b) .....

(c) for the application, in the case of persons of any such description as is mentioned in subsection (3) of this section (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law of persons of that description.

(d) .....

43. Upon reading this subsection one immediately realises that the Marriage Act referred to earlier as being discriminatory with respect to the minimum age for marriage being different for boys as opposed to girls is not protected from discrimination under the Constitution. Although it is clear that ordinarily this would be sex discrimination as is recognized by the constitution the constitution stipulates that in matters relating to marriage there is no discrimination as recognized by the law.

44. Another area where the issue of discrimination came up for mention is in relation to the devolution of property upon death. The legislation under discussion was the **Status of Children Act Chapter 243** of the Laws of Saint Vincent and the Grenadines. The discussion arose in the case of **Mc Kenzie v. Sampson Civil Appeal No. 12 of 2003** (Saint Vincent and the Grenadines). In that case the applicant applied to the High Court of Saint Vincent and the Grenadines for a declaration that he is the child of Elisha Sampson deceased and as such entitled to share in his estate.

The Court found that under Section 10 of the Status of Children Act there were two declarations that the applicant must obtain. The first is a declaration of paternity described as a declaration simpliciter. This was not enough in and of itself since he needed another declaration entitling him to share in his father's estate. In short being declared a child is not enough to entitle a person to share in the estate of his father. The legislation requires the applicant to satisfy various elements of proof if he is to succeed to his father's estate.

45. The judgment of the court was delivered by Justice Saunders. In coming to its conclusion the Court found itself having to define the word discrimination as it appeared in Section 13 of the Constitution. The Court sought assistance in this regard from the Guyanese case of **Nielson v. Baker (1982) 32 WIR 254**. In that case Justice Crane in interpreting a similar provision in the Guyana Constitution similar to Section 13 of the Vincentian Constitution adopted a narrow legalistic meaning restricting the meaning of Discrimination to the categories identified in the section only. Justice Saunders followed the reasoning of Justice Crane in adopting a narrow definition of the meaning of discrimination.

46. Justice Saunders having adopted a narrow definition went on to find that the Status of Children Act was not discriminatory but his comments on the issue suggest that he felt constraint by the meaning that he adopted and subsection 4 (c) in coming to that conclusion. His comments at page 8 paragraph 17 of the Act reads as follows:

*“It follows that the Act does indeed permit the making of two separate declarations in circumstances where an alleged father is deceased and an applicant wishes to succeed to the estate of the deceased. The Law could, in such circumstances sanction the existence of two classes of children born out of wedlock, namely those who could inherit from their father and those who could not, it is paradoxical given that the professed aim of the Act is to remove the legal disabilities suffered by children whose parents are not married to each other.”*

47. The court then concluded that the Act itself is not discriminatory. This appears initially to be quite an amazing conclusion. The court appeared to be constrained by the provisions of section 13 of the Constitution and the narrow definition adopted by Justice Crane in Nielson V. Baker. The court simply interpreted the law as it stood. Despite this it is important to note the following observations of Justice of Appeal Saunders as he then was at paragraph 20 of the judgment:

*“The double standards in the Act, regarding paternity applications where the father is deceased and succession rights are at stake, are disquieting. One may say, in fairness to the legislators, that the further declaration at section 10 speaks to, is aimed at ensuring that spurious claims are not made, or if made do not succeed, against the estate of a deceased person and that, for this reason, Parliament has provided that an applicant should provide very cogent proof of paternity before being allowed to claim against the estate of the deceased.”*

48. Although not discriminatory within the meaning of the Constitution the Act has succeeded in creating a double standard as it relates to children seeking to claim an entitlement to the estate of their deceased fathers. It is not difficult to obtain a declaration of paternity but certain types of evidence must be provided in order for the child to claim an entitlement to the father's estate. There thus remain two classes of children born out of Wedlock in the State those who can and those who cannot succeed to their father's estate.

49. Justice of Appeal Saunders then went on to consider the effect of the legislation in a society such as Saint Vincent and the Grenadines. At paragraph 20 of the judgment he made the following comments:

*"One has to bear in mind that, in practice the prevailing levels of literacy and an oral tradition in Caribbean societies and in light of the relative lack of attention to form paid by large sections of society, few applicants for an order under section 10(2) might be in a position to provide the types of evidence*

*specified in section 8. This is what makes the standard of proof required for a section 10(2) declaration so troubling. Many applicants for such a declaration would be seeking to persuade a court to grant the declaration on the basis of some evidence that is other, though not less convincing, than the types of evidence specified in section 8. Section 7(1) b permits this. In fact, it was this other type of evidence that held sway in **Re Cato**.*

50. In concluding his judgment Justice Saunders made the following pronouncement on the issues discussed at paragraph 24:

*"..... Section 10 do enable the court to make two distinct declarations. I would prefer not to speak of two declarations of paternity but rather a declaration of paternity and a further declaration related to succession of property. I further agree with the trial judge that **Re Cato** was rightly decided. I would strongly suggest however that Parliament may wish to consider whether the standard and types of proof specified in section 8 are not, in the context of current realities, unreasonably high.*

51. Looking at the situation pragmatically the first impression is that once the relationship of father and child is established that in itself should put an end to the matter as the question of succession should naturally follow. When it is sought to establish a different standard for succession Parliament created a situation of duality whenever the issue of posthumous paternity arises. This is the disquiet in the legislation that Justice of Appeal Saunders as he then was referred to. Perhaps, the best approach is to remove the duality in the law and provide for one declaration albeit of a higher standard in the case of posthumous applications for a declaration of paternity.

52. The situation has been addressed in the new **Status of Children Act 2011**. The application is now for a declaration of parentage instead of paternity and by section 10 (4) of that Act the declaration is conclusive.

53. While the Constitution protects certain categories of discrimination there are many other areas that are not constitutionally protected especially as it relates to the child or the child's parents. Discrimination on the basis of language, property, disability and education are not expressly protected by the Constitution or other legislation. It may be argued as it often is that the Constitution dealt with the areas in which discrimination is known to be most common. The Constitution also guarantees four important freedoms that may be read as a corollary to the anti-discrimination provision. These are protection of freedom of conscience, protection of freedom of expression, protection of freedom of assembly and association and the protection of freedom of movement.

54. There is no equal opportunity legislation in Saint Vincent and the Grenadines. It is usually through such legislation that the non-constitutional issues of discrimination are addressed. The only language spoken in the state is English. Despite this there is a strong vernacular, which has its basis as the English Language and which is spoken by all classes of the society. There is thus no room for discrimination on the basis of language and no recorded instance of such. Within the workplace, educational institutions and sometimes the household formal English is often encouraged.

55. There is no legislation or policy of the State or its institutions that encourage discriminatory treatment as it relates to children legally present within the state whether of national or non-national origin. Ethnicity and social origin are issues that rarely arise to the detriment of the child. Health care and education are available within the state to all children and there has been no known instance of discrimination in these areas.

56. A new **Education Act No. 34 of 2006** came into force within the state on the 27<sup>th</sup> day of December 2006. It repealed the 1992 Act and sought to comprehensively provide for education within the State. Educational facilities within the State are provided mainly for children below the age of majority. There is no full time university within the State although there is a distance learning facility of the University of the West Indies.

57. Section 27 of the Act specifically provides for non-discrimination. The section provides as follows:

27 (1) Subject to this Act, a person who is eligible for admission to an educational institution or school as a student shall not be refused admission on any discriminatory ground relating to that student or a parent of that student.

(2) A person who or a body which refuses to admit any student to an educational institution or a school, or expels any student from an educational institution or a school on any discriminatory ground relating to the student or a parent of the student commits an offence and is liable on summary conviction to a fine of two thousand dollars.

(3) In this section, "discriminatory ground" means a ground based on religion, race, place of origin, political opinion, colour, creed, social status, physical handicap and in the case of mixed gender schools, sex.

58. The new Act has thus directly addressed the issue of discrimination and has included categories of discrimination not found in the constitution. The area of physical disability is an important area of inclusion. Although prior to the legislation coming into effect children with physical disability were enrolled in schools with children without such disability there was no legislative protection. The current protection has bridged a gap in the previous legislation and addressed an issue raised in the Convention.

59. As it relates to constitutional discrimination section 16 of the constitution provides for enforcement as follows:

16 (1) If any person alleges that any provisions of Sections 2 to 15 inclusive of the constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction-

- (a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; and
- (b) to determine any question arising in the case of any person which is referred to in pursuance of subsection 3 of this section

And may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of section 2 to 15 (inclusive) of this constitution:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under the law.

60. The ministries and organisations of the State are cognizant of the anti-discrimination provisions of the Constitution and strive to manage their operations in such a manner that these provisions are not contravened. The anti-discrimination provisions of the Constitution have rarely been tested before the courts of the state and this is perhaps a testimony to the equal treatment by state organs of all members of the public including children.

61. The State through the Ministry of National Mobilisation has made special effort to provide for the welfare of children with disability. There is accordingly no law or policy that discriminates against this class of children. In this regard the Ministry has worked closely with the **National Society of persons with disAbility** in addressing issues concerning disabled children within the state. This organization is an NGO. The society has been in existence for 21 years and according to its constitution its executive must be comprised of 66% of persons with disability. The society report to the Ministry of National Mobilisation and through this Ministry receives a subvention from the state.

62. Through the National Society of Persons with Disability the welfare and interests of persons with disability are monitored, promoted and protected. It is very sensitive to any suggestion of discriminatory treatment and is able to deal with any such situation using its strong relationship with the Ministry of National Mobilisation. The work of this organization has had far reaching results and persons with disability are generally accepted as important and valuable contributors to national economy and welfare.

63. As it relates to births the **Status of Children Act 2011** which was previously referred to alleviate many of the difficulties and discriminations previously associated with out of wedlock birth. This legislation replaces an Act which was on the statute books for more than 28 years. It provides a mechanism for declarations of parentage in relation to children however born. That Act made the **Legitimation Act Chapter 233** obsolete. The Legitimation Act was passed in 1930 to assist children born out of wedlock to acquire the status of legitimacy where their parents subsequently become married. Prior to the passage of its predecessor the Status of Children Act 1979 children born out of wedlock could not claim to their parents estate where there were children born in wedlock. Thus the concept of Bastardisation became a real issue in the law.

64. The Status of Children Act removed the distinction between children born in and out of wedlock. A child for all intent and purposes remains simply a child for the purposes of the Act. Some of the old skeletons survived under the 1979 Status of Children Act as was seen in the earlier discussion of the McKenzie case. The New Status of Children Act 2011 however has seen that the legislation moved away from that apparently subtly discriminatory system.

65. The law of the State prohibits children under the age of 18 from owning property except upon trust in which event they would have a beneficial interest in the same. The law makes provision for the appointment of trust corporations and public trustees in particular circumstances. Such legislation will be more closely examined later in the report. There is no legislative or policy discrimination in relation to the ownership of property by children. In relation to the 1979 Status of Children Act however, it is important to note that the Act has application from the year 1980 and does not affect situations prior to this. It means therefore that estates that devolved prior to 1980 would be subject to the old inside and outside of wedlock discriminations. The situation with respect to posthumous declarations of paternity has already been discussed and it should be noted that this type of application is very popular in the State. It often happens that in the event that there is no objection to the application, which is required by practice to be published in the local media, the applicant usually proceed to claim to the estate of the deceased father without difficulty. Where there is objection however the applicant must prove that he is entitled to share in the estate of the deceased. The 2011 Status of Children Act has changed the situation so that once a declaration is obtained the entitlement becomes automatic there is now no need to prove a further entitlement to share. In fact a newly declared child could trace property distributed to previously established children in order to obtain a legal entitlement under the laws of intestacy.

### **The Best Interests of the Child (Article 3)**

66. The principle that the best interest of the child is paramount in matters concerning the interests and welfare of children has not found expression in the Constitution of Saint Vincent and the Grenadines. There is however a number of other legislation concerning children in which the concept of the best interests of the child has found expression. Some of these are as follows:

#### **(1) The Adoption Act Cap 225 at section 16 provides;**

16.(1) The Court before making an adoption order, shall be satisfied -

(a) .....

(b) that the order, if made, will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child; and

(c) .....

#### **(2) The Juveniles Act Cap 231 at section 4 provides;**

4. Every court, in dealing with a juvenile who is brought before it as being in need of care and protection or as an offender or otherwise, shall have regard to the welfare of the juvenile and shall, if it deems it necessary, take steps for removing the juvenile from undesirable surroundings.

#### **(3) The Law of Minors Act Cap 232 at section 5 provides;**

5. Where in any proceedings before the court -

(a) the custody or upbringing of a minor; or

(b) the administration of any property belonging to or held in trust for a minor or the application of the income thereof,



Is in question, the court, in deciding that question, shall regard the welfare of the minor as the first and paramount consideration, and shall not take into consideration whether from any other point of view the claim of the father, in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father.

**(4) The Matrimonial Causes Act Cap 239 provides at section 64;**

64. (1) The court shall not make absolute a decree of divorce or of nullity of marriage, or grant a decree of judicial separation, unless the court, by order, has declared that it is satisfied -

(a) .....

(b) that the only children who are or may be children of the family to whom this section applies are the children named in the order and that -

(i) arrangements for the welfare of every child so named have been made and are satisfactory or are the best that can be devised in the circumstances; or

(ii) .....

(c) .....

**(5) The Domestic Violence (Summary Proceedings) Act No. 13 of 1995 provides at section 7(3) b as follows:**

7 (3) The court may make an occupation order under Subsection (2) only if the court is satisfied that such an order -

(a) .....

(b) is in the best interest of a child.

67. It seems that the legislature prefer to make use of the term 'welfare of the child' in the legislation but this term can be used interchangeably with best interest as in seen in some cases.

68. The Family Court which came into existence by virtue of the Family Court Act No: 53 of 1992 deals with the majority of matters and issues relating to children in the state. The court is established as a court of record by virtue of section 3 of the Act but it deals with mainly matters that are summary. The court rarely produces written decisions and for this reason there is no reported decision in which the term best interest of the child or the welfare of the child has been discussed, described or specifically referred to. In practice however that court and all other courts within the state apply the best interest principle whenever a child or the interests of a child arises for consideration. The best interest principle is well recognized and is applied by all state administrative and legislative bodies and other agencies. The Adoption Board is headed by the president of the Family Court and in dealing with matters concerning the adoption of children it ensures that it is informed by relevant reports that would assist it in determining what is in the best interest of the child. It is of interest to note that the Family Court has its own in-house team of counsellors and probation officers to whom the court can immediately refer matters or call upon for assistance if the situation so warrants. The principle of the best interest of the child has thus received full recognition in the state.

69. In relation to family life the application of the best interest principle is the responsibility of the parents and it becomes a question of parenting whether or not the principle has received application. It remains a principle of law within the state that the child remains a ward of the court in all circumstances. The state can thus intervene through the court to protect the interests of a child.

### Care and Protection of the Child

70. The Family Services Division of the Ministry of National Mobilisation deals primarily with matters concerning the structure of the family within the state. Special attention is paid to the role and treatment of the child within the family structure. This division of the Ministry pays particular attention to issues such as child abuse, neglect and abandonment. It recently commissioned the preparation of a Child Abuse Protocol to assist in reporting and dealing with the incidence of child abuse, neglect and abandonment within the state.

71. The Ministry of National Mobilisation also provides assistance to indigent children through the Family Affairs Division of the Ministry. Towards this end provision is made for the basic needs of the child including food, clothing and shelter and this may extend to the provision of assistance with education and financial assistance where the situation so warrants.

72. Legislation within the State deals with the issue of the care and protection of the children of the state. The principal legislation that focuses on this area are the **Juveniles Act Cap 232**, **The Law of Minors Act Cap 232**, **The Maintenance Act Cap 234**, **The Family Court Act No: 53 of 1992** and **The Domestic Violence (Summary Proceedings) Act No: 13 of 1995**.

73. The Juveniles Act is the oldest of the legislation mentioned having first entered into force in 1952 when the state was still a British Colony. This Legislation expressly states that it is for the care and protection of juveniles, the trial and treatment of Juvenile offenders, the establishment of juvenile courts and approved schools and other related matters. The legislation only applies to children under the age of 16 years. Thus it has no application to children between the ages of 16 and 18. The Act further provides at section 3 that a child under the age of 8 years cannot be criminally responsible.

74. Part II of the legislation deals specifically with the protection of the minor child from cruelty and exposure to moral and physical danger. The six sections of this part of the Act addresses the issue of cruelty to Juveniles at Section 8, the procurement of the Juvenile child for the purposes of begging at Section 9, the empowerment of the court at Section 10 to issue a warrant authorizing a police officer to search for and remove a juvenile reportedly being assaulted, ill-treated or neglected, the vesting of police officers and authorized persons who are to be determined by the court having regard to the peculiarities of the particular case with the power to bring a Juvenile in need of care and protection before the court at Section 11, the statement of the powers of the court in relation to juveniles at Section 12 and the statement of the manner in which a juvenile court may dispose of the juvenile brought before it in relation to a criminal offence at Section 13.

75. The Law of Minors Act deals with the question of guardianship, custody and maintenance of the minor child at Part I. A minor is described as a person under the age of eighteen years in the interpretation section of the Act. Sections 8 and 9 of the Act vest the High Court with the power to appoint, remove or replace guardians. Sections 15 and 16 of the Act then empower the court to make custody and maintenance orders in relation to a minor child. Part II of the Act then protects the minor child from liability in contract and the making of marriage settlements.

76. The Maintenance Act is a very important piece of legislation as far as the care and protection of the minor child is concerned. The Act is of fairly recent vintage having entered into force in the year 1989 which was about the time of law revision in the state. The 31 Sections of the Act deals with the issue of maintenance

generally. The issue of child maintenance is dealt with extensively throughout the Act. The Act deals with the procedure for the conduct of applications for maintenance orders and the procedure for the enforcement of such orders when granted amongst other things. This piece of legislation is used extensively and has been very effective in the making of financial provision for children in appropriate cases.

77. The Family Court Act is probably the most important piece of legislation as it relates to the care and protection of children in the state. The Act was passed and entered into force in the year 1992. It is an Act establishing a Family Court as a court of record. The provisions of the Act are administrative but its importance lies in the fact that at Section 4 the court is given sole jurisdiction to deal with matters provided for in legislation such as The Education Act, Employment of Children Act, The Juveniles Act, The Law of Minors Act, The Maintenance Act, The Adoption Act and other legislation that relate to children and the family. Section 6 (2) provides that the sittings of the court shall be in camera. The Act achieves even greater importance from the fact that it provides for the administration of a broad cross section of legislation under the jurisdiction of the Family Court thus making it easier to monitor matters relating to children and the family within the state.

78. The Domestic Violence (Summary Proceedings) Act is exclusively administered by the Family Court. The primary purpose of this legislation is to protect children and other persons from the incidence of domestic violence. In relation to children, it augments and strengthens the provisions protecting the juvenile from cruelty, neglect and abandonment found in the Juveniles Act. It describes a child as a person under the age of eighteen years as stipulated by the convention and empowers the court to make a number of orders for the care and protection of the child. These orders include a protection order restraining the respondent from doing anything to prejudice the physical and emotional well-being of a child, an occupation order compelling the respondent to refrain from evicting the child from premises in the exclusive control or possession of the respondent with power to exclude the respondent from such premises or limit him to certain parts thereof and a tenancy order compelling the respondent to pay or continue to pay the rent for rented accommodations in which the child resides with power to exclude or restrict the respondent to certain parts of such premises.

**The Right to Life Survival and Development (Article 6)**

79. The Constitution of the State expressly protects the individual's right to life in the Fundamental Rights section. However the state can execute a sentence of death where such a sentence has been passed by a court in respect of any criminal offence. There is further exception to the right to life protection were death is caused through the use of legal and justifiable force or as the result of an act of war.

80. The Criminal Code at Section 24 has sought to prohibit the imposition of the sentence of death against a person under the age of sixteen years or against a woman in certain circumstances. The relevant provisions are the following:

24. (1) .....

(2) Sentence of death shall not be pronounced or recorded against a person convicted of an offence if it appears to the court that at the time when the offence was committed he was under the age of sixteen years, but in lieu thereof the court shall sentence him to be detained in Her Majesty's pleasure, and, if so sentenced, he shall be liable to be detained in such place and under such conditions as the Governor General may direct and whilst so detained he shall be deemed to be in lawful custody.

(3) Where a woman convicted of an offence punishable with death is found, from a report by the Chief Medical Officer, to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of a sentence of death. If such pregnancy is not found until after

sentence of death has been passed, the court shall recall the woman before it and substitute for the sentence of death a sentence of imprisonment for life.

- (4) When a person has been sentenced to death, or to be detained during Her Majesty's pleasure under subsection (2) or to imprisonment for life under subsection (3), the presiding judge shall forward to the Governor-General a copy of the notes of evidence taken at the trial together with a report in writing signed by him containing any recommendation or observation on the case as he may think fit to make.

- (5) .....

81. It is clear from the above provisions that for the purpose of a sentence of death the law has implemented protection for persons under the age of sixteen years of age described as Juveniles under the Juveniles Act and to pregnant women. Children sixteen years old and over can be the subject of a sentence of death from a court of law since such protection does not extend to them. The Criminal Code was enacted before the ratification of the Convention on the Rights of the Child. This probably explains why it is legal within the state to execute a child aged sixteen years of age. This seems to be an area in which legislative reform is needed so that the law can be brought into conformity with the Convention. The life of the child *en ventre sa mere* is recognized by the legislation and protected from the imposition of a sentence of death.

82. The Criminal Code has further sought to protect the life of children *en ventre sa mere* and of tender and youthful age in a number of provisions. Chapter IX of the Code deals specifically with abortion and matters connected therewith. Section 149 (1) criminalizes abortion. Subsection 2 of that section deems an abortion legal in certain circumstances including situations where the continuation pregnancy involves risk to the life of the pregnant woman or injury to her physical or mental health or of any existing children of her family greater than if the pregnancy was terminated or that there is a substantial risk in that if the child were born it would suffer from physical or mental abnormality as to be seriously handicapped. The law not only affords protection to the pregnant mother but also protects the child from the sufferings of an abnormal handicapped life.

83. The law has gone even further to permit abortions in circumstances where the woman is a victim of rape or incest at subsection 4 of section 149 of the Code. The law however prohibits a woman from administering anything to herself or using force or means of any kind with intent to procure her own abortion at section 150.

84. The special offence of infanticide is dealt with at section 164 of the Criminal Code. This offence is special because it can only be committed by a mother who has given birth to a child and in situations where certain events or circumstances operate on her mind. The section sets out the ingredients of the offence as follows:

- 164.(1) Where a woman by any wilful act or omission causes the death of her child, being a child under the age of twelve months, but at the time of the act or omission the balance of her mind was disturbed by reason of her not having fully recovered from the effect of giving birth to the child or by reason of the effect of lactation consequent upon the birth of the child, then notwithstanding that the circumstance was such that but for this section the offence would have amounted to murder, she is guilty of infanticide and may be dealt with and punished as if she had been guilty of manslaughter.

85. The Criminal Code provides for the time at which it is considered that a child is capable of being killed at section 170. The provision states the following:

170. A child becomes capable of being killed when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, and whether the navel string is severed or not.

86. This is followed by a prohibition with respect to the killing of an unborn child at section 171 which provides as follows:

171. Any person who, when a woman is about to be delivered of a child, prevents the child from being born alive by any act or omission of such a nature that, if the child had been born alive and then died he would be deemed to have unlawfully killed the child is guilty of an offence and liable to imprisonment for life.

This provision is meant to close the gap between abortion and infanticide and deals with the situation where the child is about to be born and is prevented from being born alive by the intervener.

87. In terms of the child's right to survival and development. It must be noted that the Constitution of Saint Vincent makes no specific provision in this regard. Legislation in the state though not specifically dealing with the issue of rights has dealt with the subject of the child's right to survival and development. The Criminal Code at Section 197 and 198 deals with the failure to provide for a child and with child abandonment in the following ways:

197. Any person who, being charged with the duty of providing for another the necessaries of life, without lawful excuse fails to do so, whereby the life of that other person is, or is likely to be, endangered, or his health is, or is likely to be seriously or permanently injured, is guilty of an offence and is liable to imprisonment for five years.
198. Any person who unlawfully abandons or exposes any child under the age of two whereby the life of such child is endangered, or the health of such child is, or is likely to be seriously or permanently injured, is guilty of an offence and liable to imprisonment for five years.

88. The Juveniles Act as indicated earlier provides for the prevention of cruelty and protects the juvenile from exposure to moral and physical danger. This part of the legislation chiefly empowers the court to deal with situations where the juvenile has been or is being treated with cruelty. Section 8 specifically mentions assault, ill-treatment, neglect and abandonment as acts of ill-treatment. It is important to mention Section 8.(2) (a) of the Act which contains the following important provision:

8. (2) For the purposes of this section -

- (a) Any parent or other person legally liable to maintain a juvenile shall be deemed to have neglected him in a manner likely to cause injury to his health if, being able to do so, such parent or other person fails to provide adequate food, clothing, rest, medical aid or lodging for him;

89. The Law of Minors Act and the Maintenance Act referred to earlier both deals with the issue of child maintenance. The Law of Minors Act deals with the question of the welfare, custody and guardianship of the child. The court may make an order with respect to custody or maintenance on the application of the mother or father of the child or other person interested in the welfare or well-being of the child. That Act as indicated before also protects the child from the effect of certain contracts and marriage settlements particularly where such arrangements may negatively impact the child as he develops from childhood into adulthood. The Maintenance Act is primarily concerned with the making of financial provision for the child. The Act makes it the duty of every man and woman to provide reasonable maintenance for his or her child under the age of sixteen years. Additionally, a lawfully appointed guardian, any person charged with the relief of destitute persons, any person having actual custody of the child and the child himself if over the age of fourteen years may apply for maintenance under section 5 of the Act.

90. The Domestic Violence (Summary proceedings Act) contains provisions for the survival and development of the child. The Act protects the child from domestic violence and threats of domestic violence and empowers the court to order that the child remain in certain premises for such period as the court considers expedient without the consent of a parent or guardian owner of such premises and in the case of a tenancy at the cost of the parent or guardian of the child.

### **Respect for the Views of the Child (Article 12)**

91. The law of the state recognizes that in matters relating to children due consideration must be given to the wishes of the child. Section 16 of the Adoption Act which was referred to earlier provides that before making an adoption order the court must be satisfied that the order, if made, will be for the welfare of the child, due consideration being given to the wishes of the child having regard to his age and understanding.

92. Section 4 of the age of Majority Act deals with the question of the consent of a child sixteen years of age and over to medical treatment. The Section provides as follows:

- 4
- (1) The consent of a minor who has attained the age of sixteen years to any surgical, medical or dental treatment which, in the absence of consent will constitute a trespass to his person, shall be as effective as it would be if he were of full age; and where a minor has by virtue of this section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his parent or guardian.
  - (2) In this section "surgical, medical and dental treatment includes any procedure undertaken for the purpose of diagnosis, and this section applies to any procedure (including, in particular the administration of anaesthetic) which is ancillary to any treatment as it applies to that treatment.
  - (3) Nothing in this section shall be construed as making ineffective any consent which would have been effective if this section had not been enacted.

93. The Law of Minors Act at Section 12 (1) requires the court to have regard to the welfare of the minor when dealing with applications for custody and access orders but it is the conduct and wishes of the father and mother that the court considers. There is no express reference to the wishes of the child although when considering the concept of the welfare of the child one would expect that the court will interpret this to include the views of the child in appropriate circumstances. This is what actually occurs in practice when such matters are dealt with by the court. This is made clearer at section 31 of the Act which makes specific mention of consultation of the wishes of the minor in matters involving in Sections 27, 28, 29 and 30 of the Act. These sections deal with cases where the court issues a warrant for the production of a child if the court is of the opinion that the child's parent (s) has abandoned or deserted the child or conducted him or herself in such a manner that the court finds it necessary to intervene or where a parent or guardian makes an application to the court for the issue of such a warrant.

94. Section 31 of the Act provides as follows:

31. Nothing in Sections 27, 28, 29 and 30 shall interfere with or affect the power of the court to consult the wishes of the minor in considering what order ought to be made or diminish the right which any minor possess to the exercise of its own free choice.

It is thus recognized in the legislation that as a matter of principle and practice the court would consult the child in matters involving the welfare of that child it being recognized in the legislation as a specific responsibility of the court in appropriate circumstances. Presently the Family court has exclusive jurisdiction in matters involving the child except where such matters are otherwise exclusively within the jurisdiction of the High Court such as indictable criminal matters, divorces and matrimonial causes, and applications for injunctions.

## 5. CIVIL RIGHTS AND FREEDOMS

(Arts. 7, 8, 13-17 and 37(a))

### (a) Name and Nationality (Article 7)

95. The laws of Saint Vincent and the Grenadines recognize the right of a child to be registered upon birth in the state. This is specifically provided for in the Registration of Births and Deaths Act Chapter 242 of the Laws of Saint Vincent and the Grenadines. Part II of the Act deals with registration of Births and in particular Section 17 places a positive duty on the parents of the child to ensure that the child's birth is registered. That section provides as follows:

- 17 (1) In the case of every child born alive in Saint Vincent and the Grenadines, it shall be the duty of the father and mother of the child and, in default of the father and mother, of the occupier of the house or place in which, to his knowledge, the child is born to, and of each person present at the birth, and of the person having charge of the child, to give to the registrar, within fourteen days after such birth, information of the particulars required to be registered concerning such birth and indicated in Form 1 of the First Schedule.
- (2) In relation to any child, "father means a person who is married to the mother of the child at the time of the conception or at any time thereafter, but before the child's birth.

96. The law recognizes the situation where there may be an out of wedlock birth in which case no duty is placed on the putative father. The majority of births within the state are out of wedlock but the putative father may be a person present at the time of the birth or the occupier of a house or place where the birth took place. He may thus be a person to whom the provision applies.

97. The Act at section 18 goes on to provide for situations where there is failure to register the birth within fourteen days of the date of birth. In such a case the registrar is empowered by the Act to issue notice in writing to the parents or other persons with responsibility to register the birth to attend before the registrar and provide particulars pertaining to the birth.

98. The Act at Sections 19 and 20 deals with situations where a new born child is found exposed. The sections provide as follows:

19. In case any living new-born child is found exposed, it shall be the duty of any person finding such child, and of any person in whose charge such child may be placed to, to give, to the best of his knowledge and belief, to the registrar, forthwith, such information of the particulars required to be registered concerning the birth of such child as the informant possesses.
- 20 (1) When the birth of a child shall happen in any public institution, the occupier thereof shall be liable in the first instance, and notwithstanding the liability of the father and mother of such child, to report and give particulars of such birth to the registrar.
- (2) In the event of the default on the part of any such occupier (being a public officer) being discovered after he has ceased to hold office in any such public institution, then, and in such case, proceedings under this Act in respect of such default may be commenced and prosecuted against his successor, after seven days notice in writing has been given to such successor to have such birth registered according to the law and he has failed to do so.

99. The law places a duty on the registrar to register the birth of a child upon the necessary information and particulars being presented to him. This is provided for in section 21 of the Act as follows:

21. It shall be the duty of the registrar to inform himself carefully of every birth which happens in his district, and, upon receiving personally from the informant at any time within three months from the date of the birth of any child, information of the particulars required to be registered concerning the birth of such child, forthwith in the prescribed form and manner to register the birth and the said particulars (if not previously registered) without fee or reward from the informant, except that, if in pursuance to a written requisition, he registers the same at the residence of the person making such requisition, or at the house in which the birth took place (which he is hereby empowered to do) he shall, unless the birth took place in a public institution, be entitled to the appointed fee.

100. Section 22 of the Act includes special provisions in cases where the birth is registered three months after the birth of the child. The section provides:

- 22 (1) After the expiration of three months next after the birth of any child, a registrar shall not register such birth, except as in this section provided; that is to say, in case the birth of any child has not been registered in accordance with this Act, the registrar may, after three and not later than twelve months next after the birth, by notice in writing, require any of the persons required by this Act to give information concerning the birth to attend personally at the registrar's office within such time (not less than seven days after the receipt of the notice, and not more than twelve months after the date of the birth) as may be specified in the notice, and make before him a declaration in writing (which he is hereby authorized to take) of the particulars required to be registered concerning the birth, according to the best of the declarant's knowledge and belief; and upon any of the said persons appearing before a registrar, whether in pursuance of requisition or not, and making such a declaration as aforesaid and giving information concerning the birth, the registrar shall then register the birth according to the information contained in such declaration.
- (2) After the expiration of twelve months next after the birth of any child, that birth shall not be registered except with the written authority of the registrar general for registering the same, and except in accordance with the prescribed rules and upon payment of the appointed fee, and the fact of such authority having been given shall be entered in the register.
- (3) Any person who registers, or causes to be registered the birth of any child in contravention of this subsection shall be guilty of an offence and liable to a fine of two hundred and fifty dollars.

101. The Act therefore provides for the registrar to be proactive in registering the birth of a child born within the state. He can requisition the attendance of a person whom he believes has knowledge of an unregistered birth within the state. In addition it must be noted that there is a cut off point at twelve months for the registration of the birth of a child. This is made even clearer at Section 23 which provides the following:

- 23 (1) Save as in Section 22 provided, after the expiration of twelve months following the birth of such child, it shall not be lawful for any registrar to register the birth of such child, and no register of births shall be admissible in evidence to prove the birth of any child where it appears that twelve months had intervened between the day of the birth and the day of the registration of the birth of such child, both days inclusive, and that no such authority from the Registrar General, as is by section 22 required, was given.



Provided that an entry in the Supplementary Register of Births shall be admissible in evidence to prove the birth of the child and other particulars of the person and shall be as valid and effective as if it were an entry in the principal register of births.

102. The legislature in its wisdom has recognized that despite the extensive provisions contained in the Act for registration of births and the implementation of the cut off period of one year from the date of birth for registration of such birth cases do arise where the birth is not registered until after a year of the date of the birth of the child. By section 24 of the Act therefore provision is made for a supplementary register of births. Some of the provisions of that section are as follows:

24. (1) The Governor-General may, at any time, by order, provide that anyone born in Saint Vincent and the Grenadines whose name was omitted to be registered may be registered in a supplementary register of births which the registrar maintains for this purpose.
- (2) The supplementary register of births shall contain such particulars as are contained in the register of births and such other particulars as the Governor-General may specify.
- (3) Upon publication of the order made by the Governor-General under subsection (1), any person born in Saint Vincent and the Grenadines -
  - (a) whose birth does not appear to have been entered in the register of births;
  - (b) whose birth has been entered in the register of births but the name or any other relevant particular is missing;
  - (c) whose birth and particulars have been entered in the register of births erroneously or in an incorrect manner; or
  - (d) whose particulars such as name, as are entered in the register of births has undergone change,

may make an application for registration in the supplementary register of births, to the registrar at Kingstown in such form and accompanied by such documents and along with such fee as the Governor-General may specify.

- (4) Where an application is received for entry in the supplementary register of births, the registrar may, if satisfied of the truth of the statements made in the application, make an entry in the register and for the purpose he may make such inquiry as he may deem fit.
- (5) .....
- (6) .....

103. Sections 28(1) and 29 deals with circumstances in which the father's particulars may be entered on the birth certificate of an out of wedlock child.

28(1) Subject to subsections (2) and (3) where the parents of a child are not married to each other at the time of the child's birth and were not married to each other at the time of the child's conception, the registrar shall not enter in the registration form and the counterfoil the name of, nor any particulars relating to, any person as the father of the child except where -

- (a) the mother and the person acknowledging himself to be the father jointly request at the time of the registration that such an entry be made, and both the mother and that person together sign the form and the counterfoil:  
Provided that, if the mother is dead or cannot be found, it shall be sufficient if the request is made by the father alone, and the signature of any other person required to give information as to the birth may be accepted in place of the mother's signature;
- (b) the registrar is furnished with a declaration in the prescribed form signed by the mother of the child and by the person acknowledging himself to be the father of such child, if executed by each of those persons in the presence of a notary public, justice of the peace, registrar of the courts, registered medical practitioner, marriage officer, midwife or head of any public educational institution; or
- (c) the mother or the person acknowledging himself to be the father, attends personally before the registrar and requests the registrar, in writing, to enter the name of the person alleged or acknowledging himself to be the father and presents a declaration from the other of the two parents signed in accordance with paragraph (b) and the request and the declaration are to the same effect.

104. Section 29 of the Act provides:

29. Where the birth of any child whose parents were not married to each other is registered pursuant to section 20 (which relates to birth in a public institution or a private hospital) the name of, or any other particulars relating to, the father shall not be entered in the register unless the Registrar General is satisfied that -

- (a) the parents of the child were married to each other, either at the time of the conception or after his conception and before his birth; or
- (b) a declaration of paternity in respect of the child has been made by a court, or the father has been made a guardian of the child under any law relating to guardianship, or both the mother and the person acknowledging himself to be the father of the child consent to the entry:

Provided that, in the case last mentioned, if the mother is dead or cannot be found, the consent of the father alone shall be sufficient.

105. By section 30(1) of the Act the Registrar General is empowered to issue a birth certificate to any person on the payment of the prescribed fee and upon the furnishing of the prescribed particulars. The certificate shall be in the prescribed form and shall be computed from the records and the registers kept in the custody of the Register General.

106. Form 1 of the First Schedule to the Act provides the form in which birth certificates shall be issued. The certificate has been amended from its previous format and the particulars are now presented in the following way:

Registration District	Volume Year	Page Number	Entry Number
<b>CHILD</b>			
1. Date of Birth	2. Place of Birth		
3. Name and Surname	4. Sex		
<b>FATHER</b>			
5. Name and Surname			
6. Occupation			
<b>MOTHER</b>			
7. Name and Surname			
8. Maiden Name			
9. Occupation	10. Age of Mother		11. Order of Birth
<b>INFORMANT</b>			
12. Name and Residence of Informant			
13. Date Registered		14. Signature of Registrar	
15. Name if added after birth			
<b>16 Remarks</b>			

107. The Status of Children Act at section 6 presumes paternity for a child born during marriage in the following terms:

- 6.(1) A child born to a woman during her marriage, or within ten months after the marriage has been dissolved by death or otherwise shall, in the absence of evidence to the contrary, be presumed to be the child of its mother and her husband or former husband as the case may be.
- (2) Subsection (1) shall not apply to a case where during the whole of the period within which the child must have been conceived the mother and her husband were living apart under an agreement for separation, or under a decree or order of separation, or a decree nisi of divorce made by a competent court or authority in Saint Vincent and the Grenadines or elsewhere.
- (3) Subsection (1) shall not apply to a case where a child is born within the period specified in that subsection if the woman was married again before the birth of the child, and in every such case the question as to who is the father of the child shall be determined on a balance of probabilities.

108. The Legitimation Act was important prior to the passage of the Status of Children Act to safeguard the intestacy rights of a child born out of wedlock but whose parents subsequently became married. The Status of Children Act removed the distinctions between legitimate and illegitimate children. A child however can use that Act instead of the Status of Children Act to establish his paternity in the event of the subsequent marriage of his parents.

109. In relation to the child's right to know and as far as possible be cared for by one's parents The Law of Minors Act is a good starting point. Section 4 of that Act provides for the equality of parental rights in relation to the custody or upbringing of the child. The rights and authority of the mother and father is stated to be equal and exercisable one without the other. Section 5 of the Act which was previously mentioned will have application here as well. The legislation is concerned with disputes between parents and guardians in relation to the care and upbringing of the child. The underlying theme however is the relationship between parents and child and parents in relation to the child. That Act places a positive duty on the parents of the child to maintain the child and provides for the enforcement of maintenance orders.

110. In addition, section 3(1) of the Status of Children Act provides the following:

3(1) Save as is provided in subsection 4 of this section and in sections 4 and 7, for all purposes of the Law in force in Saint Vincent and the Grenadines, the relationship between every person and his mother and father shall be determined irrespective of whether the father and mother are or have been married to each other, and all other relationships shall be determined accordingly.

111. In relation to nationality Chapter VII of the Constitution deals with the subject of citizenship. Section 90 of the Constitution declares the citizenship of persons who were born prior to the 27<sup>th</sup> day of October 1979 (the date of independence from Britain and the entering into force of the Constitution). Thus, a person born in Saint Vincent and the Grenadines prior to that date became a citizen, so too a person naturalized or registered in Saint Vincent and the Grenadines under the British Nationality Act 1948. Further the Constitution permit's a person born outside the state to become a citizen on the basis of his parents' citizenship in the state or on the basis of marriage to a citizen.

112. Section 91 declares that a person born in Saint Vincent and the Grenadines after the commencement of the constitution shall become a citizen save in the case of a diplomat or foreign envoy and the case of where the father is a citizen of a country at war with Saint Vincent and the Grenadines and the birth occurs in a place within the state under the occupation of that country. A person shall also become a citizen if born outside of Saint Vincent and the Grenadines where his father or mother is a citizen otherwise. The Constitution further provides at Section 93 for circumstances in which a person may be registered as a citizen.

113. The Constitution at section 93 (2) (d) deals with stepchildren and adopted children as follows:

93.(2) The following persons shall be entitled, upon making application, to be registered as citizens -

- (a) .....
- (b) .....
- (c) .....

(d) any person under the age of twenty one years who is the stepchild or child adopted in a manner recognized by the law of a citizen or is the child, stepchild or child so adopted of a person who is or would but for his death have been entitled to be registered as a citizen under subsection (1) of this section:

Provided that if it is so provided by parliament an application under this subsection may, in such circumstances as may be prescribed by parliament in the interests of defence, public safety or public order, be refused by the Minister responsible for the matter in any case in which he is satisfied that there are reasonable grounds for refusing the application.

(e) .....

(f) .....

114. After the state became independent the legislature of the state passed the Saint Vincent and the Grenadines Citizenship Act in the year 1984. That Act deals specifically with citizenship on adoption at section 5.

5. Where under the law in force in Saint Vincent and the Grenadines relating to the adoption of children, an adoption order is made by a competent court in respect of a minor who is not a citizen of Saint Vincent and the Grenadines, then, if the adopter or, in the case of a joint adoption, either adopter is a citizen of Saint Vincent and the Grenadines the minor shall become a citizen of Saint Vincent and the Grenadines from the date of the order.

115. Section 8 of the Act gives the minister responsible for matters relating to citizenship wide discretion to register a minor as a citizen of the state.

8. The minister may, in his discretion in such special circumstances as he thinks fit, cause any minor to be registered as a citizen of Saint Vincent and the Grenadines.

116. The law further approves and permit a situation of dual nationality. Accordingly section 10 provides the following:

10. Save as is provided in section 7, nothing shall be construed so as to debar, prevent or preclude any person possessing the necessary qualifications and fulfilling the requirements of the constitution, this Act or any other law in force, from being or becoming a citizen of Saint Vincent and the Grenadines because he or she is a national of another country.

117. Under the subject of name and nationality of the child it is of interest to note section 2 (2) (b) (iv) of the Immigration Restriction Act Chapter 114 of the Laws of the State.

2 (2) For the purposes of this Act -

(a) .....

(b) a person shall be deemed to belong to Saint Vincent and the Grenadines if he -

(i) is a citizen of Saint Vincent and the Grenadines;

(ii) is a commonwealth citizen and is domiciled in Saint Vincent and the Grenadines and has been ordinarily resident there for not less than the last seven years;

(iii) is a person who has been married to a person coming within paragraph (i) or (ii); or

(iv) is under the age of eighteen and is the child stepchild or adopted child of a person coming within paragraph (i), (ii) or (iii):

Provided that in the case of a child born outside of wedlock who is neither adopted, legitimated nor a stepchild, such child shall be deemed to belong to Saint Vincent and the Grenadines only if his mother comes within such paragraphs.

118. The immigration Act is one of the older pieces of legislation in the state having come into existence since the year 1939. It therefore contains some of the old distinctions concerning children born in and out of wedlock as is seen above. Such distinctions have however been abolished by section 3(2) of the Status of Children Act.

### **(b) Preservation of identity (Article 8)**

119. As seen above the Constitution and the Citizenship Act validates the identity of the child as a Citizen of the state. With respect to the preservation of the identity of the child the registration of Births and deaths Act as seen above provides for the registration of the name and other information relating to the birth within the stipulated period after the birth of the child. It is upon such registration that the identity of the child as a citizen of the state is established. Section 10 of the Act requires the Registrar General to keep register books and forms. The section states as follows:

- 10.(1) The Registrar General shall cause to be provided, at the public expense, a sufficient number of such register books and forms as may be necessary for the proper carrying into effect of the provisions of this Act.
- (2) The register books shall be of such durable materials, and in them shall be printed upon each side of every leaf the heads of information herein required to be known and registered of births and deaths respectively; and every page of each of such books, and every place of entry therein shall be numbered progressively from the beginning with the number one; and every entry shall be divided from the following entry by a printed line.
- (3) The Registrar General shall furnish, for the use of the registrars, a sufficient number of register books of births and of register books of deaths, and of forms for certified copies thereof as may from time to time be required for the purposes of this Act.

120. The Act at section 48 makes further provision for the keeping of records of births and deaths as follows:

- 48.(1) In the months of January, April July and October in every year, on such days as may be appointed by the Registrar General, every registrar shall make and transmit to the Registrar General, on durable materials, a true copy certified under his hand according to form 8 in the First Schedule, of all the entries in the register book kept by him of births and deaths made during the quarter of the year last preceding the first day of the several respective months above mentioned.
- (2) If no birth or death shall have been registered since the transmission of the last certificate, the registrar shall certify that fact, and such certificate shall be delivered to the Registrar General as aforesaid.
- (3) The Registrar shall safely keep each of the register books until it is filled, and shall then forward it to the Registrar General to be kept in the records of the General Register Office:  
Provided that the register books may be kept in the office of the registrar instead of being forwarded to the Registrar General, if the Governor General shall so direct.

121. Sections 50 and 51 further provides:

50. The Registrar General shall, once in every year, furnish to the Governor-General a report and a general abstract of the births and deaths registered during the preceding twelve months in such form and at such date as the Governor General may prescribe.
51. If and so long as the Governor-General shall direct the register books to be kept in the offices of the district registrars, every registrar shall cause indexes of the same to be made and kept with them for reference at the times and in the manner provided in respect of the General Register Office.

122. The Act at section 58 further makes it a criminal offence for any person to wilfully destroy or injure or causes destruction or injury to any register with a maximum penalty of fifteen years imprisonment.

123. The Adoption Act at Section 27 provides for the Registrar General to maintain at his office a register to be called the Adopted Children Register, in which shall be made such entries as may be directed to be made therein by adoption orders, but no other entries. The section also requires the Registrar General to cause an index of the Adopted Children Register to be made and kept in his office and available for the search of any person. Further the Act at Subsection (7) provides as follows:

- 27(7) The Registrar General shall, in addition to the adopted Children Register and the index thereof, keep such other registers and books, and make such entries therein as may be necessary, to record and make traceable the connection between an entry in the Register of Births which has been marked "adopted" pursuant to this Act and any corresponding entry in the Adopted Children Register, but such last mentioned registers and books shall not be nor shall any index thereof be open to public inspection or search, nor, except under an order of a judge, shall the Registrar General furnish any person with any information contained in or with any copy or extract from any such registers or books.

124. Another provision which deals with the preservation of identity is found at section 29 of the Immigration Act.

29. The Chief Immigration officer may, in his discretion, authorise the issue of a certificate of identity to any person who belongs to Saint Vincent and the Grenadines and who desires to proceed there out with the intention of returning and is, for any reason, apprehensive that he will be unable to prove, on his return, that he is not a prohibited immigrant.

125. In Saint Vincent and the Grenadines in the event that the passport of any person including a child has become lost or is misplaced, the Chief Immigration Officer reserves a period of six months for the conduct of investigations, into the circumstances in which the passport became lost or misplaced. At the conclusion of the investigations directions may be given for an application to be made for a new passport. Ordinarily it requires seven working days for a new passport to be issued.

126. Upon the passport being lost it is incumbent upon the person who has lost the passport and in the case of a child his parents or guardian to provide the necessary information to the office of the Chief Immigration officer by way of an affidavit so that the investigation can commence. Identity theft is not common in the state. The investigation process however seeks to establish that there is no theft of identity or fraud.

**(c) Freedom of Expression (Article 13)**

127. The right to freedom of expression is protected by the fundamental law of the state. The right is guaranteed to all persons in the state of Saint Vincent and the Grenadines including Children and is provided for at section 10 of the Constitution as follows:

- 10(1). Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.

128. As is typical with these constitutional provisions, having guaranteed the right a number of exceptions to its general application is then set out. Thus, section 10(2) of the constitution provides:

- 10 (2). Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision
- (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;
  - (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts or regulating the technical administration of telephony, telegraphy, posts, wireless broadcasting or television; or
  - (c) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

129. The legislature has passed a number of legislation regulating the right to freedom of expression. Some of these such as the Libel and Slander Act Chapter 89 of the Laws of the state existed since 1926 long before the constitution came into force. The Criminal Code at Chapter IV criminalizes certain forms of expression. It is notable that Sections 51 to 59 of the Code deals with the offence of sedition. The Code also criminalises the possession, importation and delivery of prohibited publications. Section 94 of the code criminalizes the publication of false news likely to cause fear or alarm to the public and section 65 protects foreign princes, potentates, ambassadors and dignitaries from defamation.

130. In the year 2001 the state passed the Telecommunications Act number 1 of 2001 and a number of accompanying regulations thereby removing the previous monopoly of Cable and Wireless (West Indies) Limited in the Telecommunications sector of the national economy. This has brought competition and consequently reduced rates for services. The result is that cellular phones and internet communication became accessible at reduced rates. Apart from these licenses to operate radio and television stations became more accessible as the concept of monopoly in that industry was brought to an end. The children of the nation now have easy access to information through the internet, radio and television. Internet access and Cable Television is available nationwide. The state has made provision for computers and internet access in every school. Apart from this the state has embarked upon the program of providing laptop computers to every child of the state. This programme is currently well advanced. The environment has been such that it is now much easier for the child to express his views via the internet, the numerous radio stations now operating in the state and



television. In this regard expression has been made through programs such as the RBTT Bank Young Leaders program in which secondary schools throughout the state participate and debating and television programs.

**(d) Freedom of thought, conscience and religion (Article 14)**

131. In Saint Vincent and the Grenadines the right of all individuals in the state to freedom of thought, conscience and religion is expressly declared by the Constitution of the state. This right is provided for at section 9 of the Constitution in the following terms:

- 9.(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of conscience including freedom of thought and of religion, freedom to change his religion or belief and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.
- (2) Except with his own consent (or, if he is a person under the age of eighteen years, the consent of his guardian) a person attending any place of education, detained in any prison or corrective institution or serving in a naval, military or air force shall not be required to receive religious instruction or take part in or attend any religious ceremony or observance if that instruction ceremony or observance relates to a religion that is not his own.
- (3) Every religious community shall be entitled, at its own expense, to establish and maintain places of education and to manage any place of education which it maintains; and no such community shall be prevented from providing religious instruction for persons of that community in the course of any education provided by that community whether or not it is in receipt of a government subsidy or other form of financial assistance designed to meet in whole or in part the cost of such course of education.
- (4) A person shall not be compelled to take any oath which is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.
- (5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision which is reasonably required -
  - (a) in the interests of defence, public safety, public order, public morality or public health;
  - (b) for the purpose of protecting the rights and freedoms of other persons including the right to observe and practice any religion without the unsolicited intervention of members of any other religion; or
  - (c) for the purpose of regulating educational institutions in the interests of persons who receive or may receive instruction in them, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be justifiable in a democratic society.
- (6) references in this section to a religion shall be construed as including references to a religious denomination and cognate expressions shall be construed accordingly.

132. The right clearly is applicable to all persons including children irrespective of age and the state has recognized and implemented this right when legislating in matters relating to children.

133. The Juveniles Act at Section 21 makes provisions for the committal of a juvenile by a court to the care of a fit person.

21.(1) Where under section 12 a juvenile is brought before a juvenile court, or where a juvenile has been convicted of any offence, and the court is satisfied that it is in the best interest and welfare of the juvenile to make an order committing him to the care of a fit person and ascertains on enquiry that such a person is available and willing to undertake the care of the juvenile, the court shall have power to summon such fit person before it for the purpose of examining such fit person as to his fitness for being so appointed.

(2) A court, before making an order under this Act committing a juvenile to the care of a fit person, shall endeavour to ascertain the religious persuasion of the juvenile and shall, wherever possible, in making such order take into consideration such religious persuasion.

(3) Every order committing a juvenile to the care of a fit person shall contain a declaration -

(a) as to the age and religious persuasion (if ascertained) of the juvenile with respect to whom the order is made; and

(b) .....

(4) .....

(5) .....

134. Section 30 of the Law of Minors Act provides the court with the following powers in relation to the religious instruction of a juvenile:

30. Upon any application by a parent or guardian for the production or custody of a minor, if the High Court is of the opinion that the person ought not to have the custody of the minor and that the minor is being brought up in a different religion from that which the parent has a legal right to require that the child should be brought up, the court shall have power to make such order as it may think fit to secure that the child be brought up in the religion which the parent has a legal right to require that the minor should be brought up

135. The Education Act at section 20 confers a right upon the student to express his opinions.

20. (1) A student may express any religious, political, moral or other belief or opinion so long as the expression does not adversely affect the rights or education of other students, or the rights of other persons in the institution.

(2) .....

(3) .....

136. Section 21 of the Education Act which was referred to at paragraph 56 herein specifically protects the student against discrimination in relation to his opinions, religion, colour, race, place of origin, creed, social status, sex or physical handicap.

**(e) Freedom of Association and peaceful assembly (Article 15)**

137. Section 11 of the Constitution of Saint Vincent and the Grenadines guarantees this right to the citizens of the state. The section provides the following:

11.(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

(a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health;

(b) that is reasonably required for the purpose of protecting the rights and freedoms of others;  
or

(c) that imposes restrictions upon public officers that are reasonably required for the proper performance of their functions, and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

138. Children and young persons are free to associate and form themselves into groups and organizations in the state. The state has actually encouraged this by passing legislation in some cases. The Education Act by section 71 provides for the establishment of student councils elected from amongst the student body to represent the interests and welfare of students at public secondary schools.

139. Students are also encouraged to form themselves into new clubs interested in, education, sports, drama and other activities or become members of existing clubs or organisations. Some of the more established organisations have been made the subject of legislation. The Boy Scouts Association Act Cap. 449 of the laws of the state came into existence in the year 1950. The Act restricts the use of Boy Scout uniforms, badges, tokens or emblems by unauthorized persons and criminalizes personation of boy scouts individually or the association as a whole. The Girl Guides Association Act which is found at Chapter 452 of the laws of the state was enacted in the year 1956. Its provisions are similar to those of the Boy Scouts Act as they relate to girl guides.

**(f) Protection of Privacy (Article 16)**

140. The Constitution of Saint Vincent and the Grenadines at section 1(c) recognizes the individual's right to protection for the privacy of his home and other property as a fundamental right and freedom. Section 7 (1) of the Constitution further provides that a person shall not be subjected to the search of his person or his property or the entry by others on his premises. Subsection 2 however contains the usual exceptions in the interest of defence, public safety, public order, public morality and public health amongst other things.

141. Recently, there came into force a **Privacy Act Number 18 of 2003**. The object of the Act is stated to make provision for the collection, holding, use, correction and disclosure of personal information in a manner that recognizes the right of individuals to privacy with respect to their personal information. There is no specific reference in that Act to the right of the individual to privacy.

**(g) Access to Appropriate Information (Article 17)**

142. There is widespread enrolment of children within the state in educational institutions. This arises from the general recognition by Vincentian parents and institutions that education is a critical aspect of childhood. The role of education especially early childhood education in the life of a child is to provide the child with the essential information and preparation for transition from childhood into adulthood. Such information imparted through teaching at school also prepares the child for further education as an adult. It is recognized that the role of educating the child is not only the responsibility of the state, parents or guardians but of the entire community in which the child resides.

143. The State has implemented a number of programs using the local media in its bid to provide information to children and to generally promote an environment of learning during the period of childhood. The present liberalized telecommunications environment makes it easier for children to access information relevant to them. The Agency for Public Information, a Government agency, presents information on matters affecting the state and of interest to the public Mondays to Fridays except on public holidays on the local television station SVG TV. The program is structured well presented and achieves its objective of providing information for public consumption. From time to time the state and non-governmental organisations broadcast programs such as debating, and spelling competitions, sports programs, drama and cultural performances and other informative and educative programs.

144. There are three main Newspapers produced in the state the objective is to provide information to the public. These newspapers are generally available weekly at a small cost. One paper the Searchlight also has a mid-week publication. Apart from the local publications newspapers from other Caribbean countries such as Trinidad and Tobago and Barbados are available for purchase in the state and are easily accessible to children interested in the information they provide. The local Newspapers cover a wide variety of topics including local regional and international news, politics, sports, religion and often include an interactive learning section specifically for students and adults engaged in literacy programs.

145. The state through its various ministries often target children by presenting, hosting or promoting programs aimed at children and young persons. The Ministry of National Mobilisation celebrates the month of April as Child Abuse Awareness and Prevention month every year in which it hosts, promotes and presents radio, television and other program informing the public, especially children, about the rights of the child and the existing law dealing with child abuse, custody, neglect, maintenance and other matters pertaining to the child. This is followed by the month of May being celebrated as Child Month. During this month the Convention is widely discussed and promoted throughout the state.

146. Televisions and radios are common features in the large majority of Vincentian homes. Recently the Internet has followed. Most Vincentians have access to the internet either at home, in school, through the many internet café that have been established throughout the state. The one laptop computer per child has placed Vincentian children in the advantageous position of access to information and technology at a very early age. This is essential preparation for a technologically based future. Many children own cell phones and can access the internet through this medium. The state has fulfilled its goal of building learning resource centres in every constituency within the state. These centres are open to the public and contains reading materials for general consumption, internet and television access and include facilities for persons including children to gather for the purpose of receiving and imparting information amongst other things. The centres thus make it possible for persons across the nation including children to access relevant information and the opportunity to be informed right within their community.

147. The **Freedom of Information Act No. 27 of 2003** has as its object the provision of the right of members of the public to information in the possession of public authorities. Sections 10 and 11 of the Act Provides as follows:

10. Subject to this Act every person shall have a right of access in accordance with this Act to an official document other than an exempt document.

11. Where,

(a) a document is open to public access, as part of a public register or otherwise, in accordance with another enactment; or

(b) a document is available for purchase by the public in accordance with arrangements made by a public authority,

the access to that document shall be obtained in accordance with that enactment or arrangement, as the case may be.

148. The Act at section 13 requires a person requesting access to information of a public authority to make the request in writing. Section 14 places a duty on a public authority to assist any person making the request. This is important in the case of children and young persons who may not understand how to present a request for information to a public authority.

149. The Ministry of Education has made computers and education about computers and computer related activity is an integral part of the school environment. Children can access computers in most schools within the state particularly at the secondary and tertiary levels. The National Library service is the responsibility of the Ministry of Education. The new national library building has been completed and has now provided the Vincentian public with a state of the art library with particular emphasis placed on providing materials useful in the development of the children of the state. There are local publications in relation to children material although this is not widespread particularly because there are few publishers in the state. The Ministry of Education is seeking to encourage this activity and the **Copyright Act number 21 of 2003** is expected to encourage persons to publish and receive the benefits of their publications.

150. There is legislation in the state protecting the public especially children from material and information harmful to his or her well-being. Section 284 of the Criminal Code deals with the subject of obscene publications:

284. (1) Any person who -

- (a) for the purpose of, or by way of trade, or for the purpose of distribution or public exhibition, makes produces or has in his possession any obscene writing, drawing, print, painting, printed matter, pictures, posters, emblems, photographs, films, discs or any other obscene object tending to corrupt public morals;
- (b) for any of the above purposes imports, exports, or causes to be imported, conveyed or exported, any such matter or thing, or in any manner whatsoever puts any of the same into circulation;

- (c) carries on or takes part in any business, whether public or private, concerned with any such matters or thing, or deals in the same in any manner whatsoever, or distributes them publicly or makes a business of lending them;
  - (d) advertises or makes known by any means whatsoever, with a view to assisting circulation of or traffic in, any such matter or thing, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matter or thing can be produced either directly or indirectly; or
  - (e) publicly exhibits any indecent show or performance tending to corrupt public morals, is guilty of an offence and liable to imprisonment for nine months.
- (2) On the application of the Commissioner of Police, the court may order the destruction of any obscene matter or thing to which this section relates and which has been seized by, or otherwise come into the possession of, the police whether or not any person has been convicted under the provisions of this section in respect of such obscene matter or thing.

151. Information of an obscene or harmful nature can be accessed through the internet and cable television. These are available in homes, institutions and public service centres such as internet cafés. In the home it is the responsibility of the parents or guardians of the child to take precautions against the child accessing obscene and harmful information, publications or programs. The state also has a responsibility to regulate the activities of private businesses and public authorities involved in the provision of internet, radio, television and other services related to the provision of information to the public especially children.

**(h) The Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 37 (a))**

152. This Right is protected at section 5 of the Constitution. It states simply that no person shall be subjected to torture or to inhuman or degrading punishment or other treatment. Unlike the other fundamental rights and freedoms there is no exceptions listed under the section. There have been complaints by children within the state of being subjected to police brutality but the concept of torture is practically unheard of. There are a number of legislation within the state that permit's the corporal punishment of children up to certain ages. It must be noted that at common law it is permissible for a child to receive reasonable chastisement from his parent, guardian or other person in a position *loco parentis* to the child.

153. **The Corporal Punishment of Juveniles Act (Chapter 170)** is a short Act comprising of 10 sections. The Act permit's the court to order punishment of juveniles offenders described as persons appearing to the court to be under the age of sixteen years. It has already been seen at paragraph 79 of this report that the state can execute a child between the ages of 16 and 18 years. It was also seen that a child between the ages of 16 and 18 years can be sentenced to imprisonment as if he is an adult. The Corporal punishment of Juveniles Act provides the following at Section 3:

3. Any court before which a juvenile offender is convicted of any offence mentioned in the schedule, or of any offence under any other written law which provides for a juvenile offender to be caned, may order him to be caned in lieu of, or in addition to, dealing with him in any other manner in which the court has power to deal with him.

154. Section 5 of the Act specifies the maximum number of strokes that may be administered to the juvenile offender and requires the court to specify the number within the maximum of twelve that must be administered. Section 7 specifies that the caning shall be administered on the buttocks, with a light rod or cane of birch or tamarind or twig. Section 8 is important to the entire process it provides:

- 8.(1) No caning shall be administered unless the person to be caned shall first have been certified, after medical examination by a duly qualified medical practitioner, to be capable of sustaining its administration.
- (2) No such punishment shall be administered except in the presence of a duly qualified medical practitioner.

155. The Juveniles Act also authorises the imposition of corporal punishment upon Juveniles admitted to an approved school. The relevant provisions are contained in the Juveniles (Approved School) Rules. In those rules 25 to 28 deals with the subject of corporal punishment. These provisions are as follows:

**25. Corporal punishment.** Corporal punishment in a school shall be subject to the following conditions

- (a) it shall be inflicted only with a cane or tawse of a type to be approved by the managers;
- (b) if applied on the palm of the hand, the cane shall be used and the number of strokes shall not exceed three on each palm, but no boy over fifteen shall be so punished;
- (c) if applied on the posterior with a cane or tawse, it shall be applied over the boy's ordinary cloth trousers and the number of strokes shall not exceed six for boys under fifteen, or eight for boys of fifteen or over:  
 Provided that in exceptional cases, with the special approval of one of the managers, twelve strokes may be administered to boys of fifteen and over;
- (d) no boy with any physical or mental disability shall be so punished without the sanction of a medical practitioner;
- (e) it shall, subject to the provisions of paragraph (g), be inflicted by the matron (or, during her absence, by the officer appointed under rule 14 to exercise the duties of the matron) or by an officer of the school in the presence and under the direction of the matron;
- (f) subject to the provisions of paragraph (g), it shall not be inflicted in the presence of other boys;
- (g) for minor offences committed in the schoolroom by boys under fifteen, the principal teacher may be authorized by the managers to administer with the cane not more than two strokes on each hand. Where the principal teacher is so authorized by the managers to administer corporal punishment, he shall keep a book, to be known as the schoolroom punishment book, and he shall at once enter therein any corporal punishment inflicted by him under this paragraph.

**26. Record of Corporal punishment.**

- (1) The matron shall be responsible for the immediate recording of all corporal punishments and other such serious punishments in the punishment book which is required to be kept under rule 11, except corporal punishment inflicted by the principal teacher under rule 25 (g).
- (2) The matron shall examine the schoolroom punishment book, if any, at least once a week and shall sign it.
- (3) The punishment book (and the schoolroom punishment book, if any) shall be examined and signed by the chairman of the managers from time to time. These books shall be shown to the medical officer at least once a quarter.

27. **Unauthorised punishment by member of staff.** Except as provided by these rules, no member of the staff shall inflict any kind of punishment. A person who commits a breach of this rule shall render himself liable to instant dismissal.

28. **Juveniles not permitted to punish each other.** No juvenile shall be allowed to administer any form of punishment to any other juvenile

156. The Education Act 2006 also makes provision for corporal punishment as part of the discipline of the school. The Act specifically prohibits the imposition of degrading or injurious punishment. Sections 51 and 52 of the Act provide the following:

51.(1) Subject to section 52 such forms of punishment as are approved by the Chief Education Officer from time to time may be administered in schools as occasion arises;

(2) In the enforcement of discipline in schools degrading or injurious punishment shall not be administered.

(3) A teacher may in the presence of another teacher, detain a student after school hours after prior notification of the detention is given to the parent of the child.

52. (1) Subject to subsections (6) and (7), a principal may direct that corporal punishment may be administered as a last resort to a student -

(a) in accordance with subsection (2); and

(b) if no other punishment is considered suitable or effective in the particular case.

(2) Corporal punishment may be administered -

(a) by the principal, deputy principal, or a teacher specifically designated by the principal for the purpose;

(b) in the principal's office or other private room in the school in the presence of another teacher;

(c) using an instrument prescribed by the regulations; and

(d) in conformity with any written guidelines issued by the Chief Education Officer.

(3) Where corporal punishment is administered an entry shall be made in a punishment book which is to be kept in the school for the purpose in indicating the nature and extent of the punishment and the reasons for administering it.

(4) A person other than a parent, or a person mentioned in subsection (2) (a), who administers corporal punishment to a student on school premises commits an offence and is liable on summary conviction to a fine of one thousand dollars.

(5) A person who administers corporal punishment to a student on school premises contrary to paragraphs (b), (c), or (d) of subsection (2) commits an offence and is liable on summary conviction to a fine of two thousand dollars.



- (6) The minister may by an order published in the Gazette, suspend or abolish corporal punishment in all schools and a person who administers corporal punishment contrary to such order commits an offence and is liable on summary conviction to a fine of two thousand dollars.
- (7) An order made under subsection (6) shall be laid before the House of Assembly within three months of the date of its making and is subject to annulment by a resolution of the House of Assembly supported by the votes of a majority of the members present and voting.

157. The state has incorporated the full text of the United Nations Declaration on the Prevention of Crime and the Treatment of Offenders 1975. The Convention was incorporated into domestic Legislation by Act Number 7 of 1984 and is now found at Chapter 143 of the Laws of the State. The Convention prohibits the state or any organ of the state from subjecting any person to cruel inhuman or degrading treatment or punishment. Section 5 of the Act includes the following provisions:

5. (1) .....
- (2) .....
- (3) Where a question arises whether any act constitutes torture, inhuman or degrading treatment or punishment, the decision of the High Court shall be final and shall not be called into question.
- (4) Every violation under the order is an offence punishable with fine of one thousand dollars and imprisonment of one month.
- (5) Any person alleging that he is being subjected to torture, inhuman or degrading treatment or punishment may appeal to the High Court which may make or give directions as it thinks fit.
- (6) The Attorney General may, or on application, cause an enquiry to be held if he has reason to believe that torture as defined in Article 1 of the Schedule has been committed and give such directions thereof as he may deem fit.

158. Section 6 of the Act provides the following criminal offences in relation to torture, inhuman or degrading treatment or punishment:

6. Any person who -
- (a) contravenes Article 1;
- (b) does anything which may constitute participation in, complicity in, incitement to, or attempt to commit, torture; or
- (c) offends against Article 10, is guilty of an offence and liable to a fine of two thousand dollars and to imprisonment for two years.

159. On the 27<sup>th</sup> day of March 2002 the Eastern Caribbean Court of Appeal delivered its decision in the Case of **Kevin Lucas v. Myrtle Jack and the Attorney General of Saint Vincent and the Grenadines (Civil Appeal No.6 of 1999)**. That case was concerned with an incident where the first respondent an assistant teacher attempted to administer corporal punishment to the appellant a fourteen year old school student. Amongst other things the appellant in his claim alleged that the flogging contravened his right not to be subjected to inhuman and degrading punishment as guaranteed by section 5 of the Constitution. In the High Court the trial judge dismissed the contention that the flogging was unconstitutional and ruled in favour of the

respondents. In the Court of Appeal the appellant abandoned his contention of unconstitutionality and instead pursued an argument that the first respondent acted in breach of the relevant legislative provisions when she administered the flogging in the manner that she did.

160. In delivering its judgment the Court of Appeal noted the legislation dealing with corporal punishment existing in the state. The Court then examined the regulations which were then applicable to the 1992 Education Act, which has since been replaced by the Education Act 2006. In finding that the first respondent acted in breach of the regulations relating to corporal punishment the court stated the following at paragraphs 19 to 23 of the judgment:

“ [19] *We had no difficulty in agreeing with counsel for the appellant that the conduct of the first respondent was inconsistent with the provision of Regulation 9. In the first place the medical certificate proved that the punishment was injurious to the student. Although his skin was not broken and no blood was drawn, we considered the medical certificate to have revealed proof of injury. Additionally it was more consistent with his description of the manner in which the lashes were administered. With regard to the affront to his human dignity and to the standards of decency citizens are entitled to expect, I think it will suffice to quote the words of his mother in her affidavit. “It was distressing to me because I do not beat or ill-treat my son the way the teacher did”.*

[20] *Secondly, the procedure laid down by the regulations was not observed. There was nothing on the court record emanating from the Head Teacher to confirm that he had taken any decision to have the punishment administered or that he accepted responsibility for the action taken by the assistant teacher. The only reference to the Head Teacher’s participation was contained in the affidavit of the first respondent, and the student filed an affidavit in reply contending that her evidence was inaccurate. Even then nothing was produced from the head teacher.*

[21] *In my view the failure of the Head Teacher to give the certificate was significant. I must confess to thinking that it was not surprising that a Head Teacher would refuse to give authenticity to the conduct complained of.*

[22] *Additionally, the first respondent did not describe any other disciplinary measures employed in relation to the pupil. There was no evidence adduced to show that the Head Teacher or anyone else thought that this was a last resort. On the contrary the affidavit of the first respondent indicated that she was tired of the pupil’s behaviour and she thought he should be punished. She gave no indication that any consideration had ever been given to any other form of discipline.*

[23] *In short the rules were violated because the purported punishment was degrading and injurious, and it was not administered under the direction of and on the responsibility of the Head Teacher. The conduct of the first respondent therefore did not have the protection of Regulation 9 of S.R. & O 44 of 1959. We therefore declare her conduct to have been unlawful.*

161. Although in that case the court stopped short of finding the first respondent’s conduct to have breached section 5 of the Constitution it did find that it was degrading and injurious. The decision demonstrates that although it is still the law of the state that a student under the age of sixteen years can receive corporal punishment this must be administered strictly in accordance with the applicable legislation. As seen above what had previously been regulation 9 is now incorporated into the body of the Education Act 2006.

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## 6. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

(Arts 5, 18, 9-11, 19-21, 25-27 and 39)

### (a) Parental Guidance (Article 5)

162. The legislation existing in the state that deals with matters relating to children do not directly address the subject of the right of the parent to provide guidance to the child. The theme of parental guidance however is found underlying the existing legislation since through the legislation the state has the power to intervene and deal with situations where there is a lack of or breakdown in matters relating to parental care and guidance. The Ministry of National Mobilisation through the Family Services Division has a policy of keeping the Vincentian Family strong and stable with the objective of a stronger more prosperous nation. The state recognizes the right of the parent to provide guidance and instruction to the child as the child develops and towards this end the state's policy is to not intervene except where situations of crisis such as abuse, neglect, abandonment and conflict with the law occur.

163. The Family services Division assists parents in the provision of appropriate guidance and assistance to the child conducive to the child's welfare. A parent can visit the Family Services Division to access a number of services including counselling, consultation on issues relating to parenting and assistance and guidance in situations of crisis or conflict.

164. The state through its other ministries provides assistance and guidance to the parent in matters relating to parenting. The Ministry of Health and the Environment continues to assist young mothers, and NGO groups and organisations with programs pertaining to early childhood, parenting and family life.

165. It is important to recognise that there is a diversity of family structures within the state. There is a large number of single parent and extended families. The migration of parents to foreign countries to seek a better life for their themselves and their children often results in families being headed by siblings or some other member of the extended family.

166. More recent legislation such as the Education Act 2006 makes provision for the wishes of the parent to be considered whenever matters pertaining to the education of the child are being dealt with at the ministerial level. The Act provides the following at Section 26:

26. The Minister shall, in the exercise of the functions conferred under this Act, have regard to the general principle that, so far as is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure, the wishes of the parents formally conveyed to the Minister shall be considered in the education of students.

167. Another interesting feature of the Education Act 2006 is the formal inclusion of provisions for the formation of Parent Teacher Associations at section 24. Through such associations the views and wishes of the parent can be incorporated at the school decision making level. Section 24 provides:

24.(1) Parents and teachers may, in accordance with the regulations, form an association, to be known as a Parent Teachers Association.

(2) The Minister may encourage and assist in the formation of -

(a) Parent Teacher Associations; and

(b) A National Council of Parent Teacher Associations.

- (3) Parent Teacher Associations may be established in public, private or assisted private schools.
- (4) The purpose of a Parent Teacher Association shall be the promotion of the interests of the school by bringing parents, the members of the community, students and teachers in closer co-operation.
- (5) Parent Teacher Associations may, subject to this Act and regulations, make rules for the conduct of their business.
- (6) On the formation of a Parent Teacher Association and in every subsequent election of a new executive body, the Parent Teacher Association shall send the names of the members of the executive to the Chief Education Officer.

168. A number of Non-Governmental organisations also include parenting in their programmes of activities. Marion House over the years has continued with its Young Parent Empowerment Program in which it teaches the young parent the basics of parenting. This program continues to be well attended and enrollees often include persons recommended from governmental organisations such as the Ministry of Health and the Family Services Division of the Ministry of National Mobilisation.

169. The Saint Vincent and the Grenadines Save the Children Fund (VINSAVE) is one of the oldest organisations in Saint Vincent and the Grenadines that deals with matters concerning children. The organization was first established in 1963. From its inception the organization taught mothers how to look after children properly and how to prepare nutritious meals amongst other things. Presently, VINSAVE has three broad programme areas which are:

- (1) Child Development and Child Development Training.
- (2) Community Development.
- (3) Parenting Programmes and Youth Development.

170. Parenting programmes are usually conducted with parents and community members at Parent Teacher Meetings in schools throughout the state and students in the Child Development Course. The organization offers three courses throughout the year. A one year programme commencing from January and two six month programmes commencing January to June and from June to December. The training is for persons interested in working with children. Vinsave is supported directly by the state which provides an annual subvention of \$25,000 and a pre-school subvention of \$2000 monthly.

171. The court has the power in relation to children, parents or any other party appearing before the Family Court in connection with any matter under the Domestic Violence (Summary Proceedings) Act under section 22 of the Act to order the parties or any of them to attend counselling sessions. The section provides as follows:

- 22.(1) The court may, on making an order under this Act, order either or both parties to participate in counselling of such a nature and for such period as the court may specify.
- (2) A party who refuses or neglects to attend such counselling may be summoned to re-appear before the court and may in the absence of reasonable excuse be fined a sum not exceeding five hundred dollars.

172. Usually, in recognition of the right of parents to provide guidance and instructions in the development of their children the state plays the role of observer and would only intervene in situations where crisis or conflict becomes apparent. In such situations facilities exist within the state to assist parents having difficulties associated with parenting.

**(b) Parental Responsibilities (Article 18 paras 1-2)**

173. The concept of parental responsibility for the upbringing and development of the child has found recognition in the laws of the state. This is revealed in the Law of Minors Act at section 4. This was referred to in the first report. Section 4 provides the following:

- 4.(1) In relation to the custody or upbringing of a minor, and in relation to the administration of any property belonging to or held in trust for a minor or the application of income of any such property, a mother shall have the same rights and authority as the law allows to the father, and the rights and authority of mother and father shall be equal and be exercisable by either without the other.
- (2) An agreement for a man or woman to give up, in whole or in part, in relation to any child of his or hers, the rights and authority referred to in subsection (1) shall be unenforceable, except that an agreement made between husband and wife which is to operate only during their separation while married may, in relation to a child of theirs, provide for either of them to do so; but no such agreement between husband and wife shall be enforced by any court if the court is of the opinion that it will not be for the benefit of the child to give effect to it.
- (3) Where a minor's father and mother disagree on any question affecting his welfare, either of them may apply to the court for its directions, and (subject to subsection (4)) the court may make such order regarding the matters in difference as it may think proper.
- (4) Subsection (3) shall not authorise the court to make any order regarding the custody of a minor or the right of access to him of his father or mother.
- (5) An order made under subsection (3) may be varied or discharged by a subsequent order made on the application of either parent or, after the death of either parent, on the application of any guardian, or (before or after the death of either parent) on the application of any person having the custody of the minor.
- (6) Nothing in the foregoing provisions of this section shall affect the operation of any written law requiring the consent of both parents in a matter affecting the minor, or to be taken as applying to a minor born out of wedlock.

174. The legislation thus places equal rights for the custody and upbringing of a minor on both parents except where they otherwise agree or the court otherwise orders in a situation where there is dispute. The rights and responsibilities of the parent have been mentioned in broad and unspecific terms. It is however understood that such responsibilities include giving the child a name, the right to pass on the nationality of the parents, the right to provide religious instruction and guidance and the right to provide education amongst other things. The section which follows, section 5, requires the court to regard the welfare of the child as the paramount consideration when any matter relating to the custody welfare or property of the minor comes up for consideration. This was referred to at paragraph 65.

175. The Law of Minors Act deals extensively with the question of guardianship of the minor in certain situations. In a situation where the mother or the father becomes deceased section 6 of the Act provides that

the surviving parent together with any person appointed by the deceased parent shall be the guardian of the child. In the event that a deceased parent fails to appoint a guardian prior to death then the court may if it thinks fit appoint a guardian to act jointly with the surviving parent. Thus the law preserves the concept of the equality of parental rights even after the death of a parent. As is seen at section 7 such rights can be passed on to a third person by deed or will appointing a guardian in the stead of the deceased parent. The court has the residual power to order the surviving parent to be the sole guardian or order that the surviving parent act as guardian jointly with an appointed guardian.

176. Pursuant to section 8 in the case of a child who has no parent, guardian or other person having parental rights with respect to him the court may on the application of any person appoint that person guardian if it is fitting to do so.

177. Under sections 9 and 10 the court may remove or replace a guardian and appoint another person as guardian if it considers it fit in the interest of the welfare of the child for this to be done. In the event of dispute between joint guardians the court on an application made to it by any of the disputing guardians may give any direction it considers fit for the resolution of the matter in dispute between the guardians.

178. In relation to custody and maintenance the court under section 12 of the Law of Minors Act may on the application of the mother or father of the minor make an order with respect to the custody of the minor and the right of the mother or father of the minor to access to the minor. Section 12 (2) makes the following provision in relation to maintenance where there has been a grant of custody:

12. (1) .....

(2) Where by an order under subsection (1) the custody of a minor is given to one of the parents, the court may also, subject to section 17, make one or both of the following orders -

(a) an order requiring the parent not having custody to make to the other parent for the benefit of the minor, or to the minor, such periodical payments and for such term as may be specified in the order;

(b) an order requiring the parent not having custody to pay to the other parent for the benefit of the minor, or to the minor, such lump sum as may be specified.

179. Under section 13 of the Act the court further has the power to commit a minor to the supervision of a probation officer or some other relevant person or to commit the minor to an approved institution in appropriate cases despite having made an order for custody. Section 13 provides:

13.(1) Where an application under section 12 relates to the custody of a minor under the age of sixteen, then, subject to section 14 -

(a) if, by an order made on that application, any person is given custody of the minor, but it appears to the court that there are exceptional circumstances making it desirable that the minor be under the supervision of an independent person, the court may order that the minor shall be under the supervision of a specified institution or probation officer;

(b) if it appears to the court that there are exceptional circumstances making it practicable or undesirable for the minor to be entrusted to either of the parents or to any other individual, the court may commit the care of the minor to a specified institution.

- (2) Where the court makes an order under subsection (1) (b) committing the care of the minor to a specified institution, the court may make a further order requiring the payment by either parent to that institution, while it has the care of the minor, of such periodical sum towards the maintenance of the minor as the court thinks reasonable.
- (3) In this section "institution" means any place specified by the Governor-General, by order in the Gazette, as an institution for the purposes of this section.

180. The foregoing section demonstrates that although the court recognizes and encourages the concept of parental responsibilities in relation to the child the court reserves the right to take control of and responsibility for the minor in exceptional circumstances. Such circumstances include situations where the minor has been convicted of an offence or is otherwise in conflict with the law.

181. The legal recognition of the parent's responsibility towards the child is seen further in section 15 of the Act where the court is empowered to order the mother or father of the child to pay maintenance to the court appointed guardian in circumstances where some person other than the mother or father is appointed guardian or is appointed guardian to the exclusion of the mother or father. The court may further make an order for the right of access to or custody of the child.

182. Apart from the law recognising the rights and responsibilities of parents in relation to their minor children the law further criminalizes conduct which amounts to parents shirking their responsibilities. Sections 197 and 198 of the Criminal Code have already been referred to at paragraph 84 of this report. Section 8 of the Juvenile Act was also referred to at paragraph 85 in this regard.

183. Maintenance is one of the primary responsibilities of the parent to the child and the law of the state recognizes this in the provisions of the Law of Minors Act and the Maintenance Act. The Maintenance Act places an equal responsibility on the mother and father of the child to maintain that child.

184. The responsibility for the care and upbringing of the child had traditionally been that of the mother even in families that are comprised of both parents. There are a large number of single parent families with the mother often taking responsibility for the child on her own. Through the Family Court the mother can compel the father to provide financial and other support for the child. It is often the father who is delinquent in his responsibilities towards the child. Questions of paternity coming before the court are often contested and the issue is often resolved by means of a paternity test.

185. There are a number of programmes within the state to assist the parent in meeting his/her responsibility towards the child. It is critical to the development of the child that there is an environment of good parenting. As seen before VINSAVE, Marion House and the Ministry of Health and the Environment, Ministry of Education and the Ministry of National Mobilisation provide or support programs geared towards early childhood education and parenting techniques.

186. The state also provides public Assistance to children and families comprising children in need of financial and other assistance. Public Assistance is administered under the Public Assistance Act Chapter 231 of the Laws of the state. The legislative requirements for the Public Assistance Board for the granting of public assistance have not changed since the First Report of the State. Children become eligible for public assistance through their guardians in instances where the child has been abandoned, in cases of poverty, if a parent responsible for providing for the child is deceased or incarcerated, if the child is physically or mentally disabled, homeless, orphaned or otherwise in a situation of need.

187. The Ministry of National Mobilisation continues to spearhead the celebration of Child Abuse Prevention Month in April and Child Month in May each year and uses the opportunity to host programs educating the

public especially parents of their rights and responsibilities in relation to children. The Ministry of National Mobilisation through the Family Services Division and the Social welfare Department continues to provide assistance directly to children such as financial assistance, school supplies, and subsidized transportation to and from school. Through the Family Court and the Ministry of National Mobilisation counselling is provided to parents, children and family members geared towards assisting with parenting techniques and resolving situations of dispute.

**(c) Separation from parents (Article 9)**

188. The law of the state recognizes the need for the family to co-exist together as a unit. Strong stable family units mean a stronger nation. The law of the state however provides for those exceptional circumstances where it may become necessary to remove the child from the family home or a parent from that home. This is principally in situations of conflict. As seen in paragraph 175 above the court has the power under section 13 of the Law of Minors Act to place a child under a supervision order or place the child under the charge of an approved institution despite having made an order of custody in favour of a parent.

189. Section 14 of the Law of Minors Act includes provisions specifying the rights and duties of parents in cases where a supervision order has been made with respect to a child. Such an order shall cease to have effect upon the minor attaining the age of sixteen years. A parent of the child may apply to the court to vary or discharge the supervision order.

190. Section 22 of the Law of Minors Act restricts the removal of a minor who has been made the subject of a court order from Saint Vincent and the Grenadines. The section provides:

22.(1) Where a court makes an order including an interim order under section 12(1), 15(1) (a) or 16 (a) regarding the custody of a minor, the court, on making the order or at any time while the order is in force, may, if an application is made under this section, direct that no person shall take the minor out of Saint Vincent and the Grenadines while the order is in force, except with the leave of the court.

(2) An order made under section (1) may be varied or discharged by a subsequent order.

(3) An application for an order under subsection (1), or for the variation or discharge of such an order, may be made by any party to the proceedings in which the order was made.

191. As seen before the Domestic Violence (Summary Proceedings) Act contains provisions for the protection of the child from abusive acts or conduct at home. For its purposes the Act describes the child as follows:

In this Act -

“Child” means -

(a) a child of both parties to the marriage;

(b) a child (whether or not a child of either party to a marriage) who is or has been living in the household residence as a member of the family;

(c) a child of a man and a woman who' although not married to each other are living or have lived together in the same household;

(d) a child (whether or not a child of the man and woman referred to in paragraph (c) or either of them) -



- (i) who is or has been a member of their household; or
- (ii) who resides in that household on a regular basis; or
- (iii) is a child of whom either the man or woman is a guardian.

192. Under section 7 of the Domestic Violence (Summary Proceedings) Act the court may on an application made by or on behalf of a minor make an occupation order granting the person named in the order the right to live in the household residence. The Act provides that the following persons may make an application where the conduct involves a child:

3. (1) An application for an order other than a tenancy order under this Act may be made by -

- (a) .....
- (b) .....
- (c) .....
- (d) where the alleged conduct involves a child or dependant
  - (i) a person with whom the child or dependant normally resides or resides on a regular basis or any other member of the household;
  - (ii) a parent or guardian of the child or dependant;
  - (iii) .....
  - (iv) a person experienced or qualified in social welfare approved by the Minister in writing;
  - (v) a police officer;
  - (vi) a person holding the office or performing the duties of a probation officer or medical social worker; or
  - (vi) the solicitor general.

(2) An application for a tenancy order may be made by the spouse of the respondent in the circumstances in subsection 1(a) or by a parent or guardian of a child or a dependent.

193. The effect of an occupation order is spelt out at section 8 of the Act in the following terms:

- 8.(1) Where an occupation order is made the prescribed person to which it relates shall be entitled, to the exclusion of the respondent, personally to occupy the household residence to which that order relates.
- (2) The conditions attached to an occupation order may include such arrangements as may be necessary for the financial support of the members of the household where appropriate.

194. Not only may the court exclude the respondent from the household in appropriate circumstances but it may also make an order granting the applicant the use of furniture and appliances in the household:

-16.(1) On or after making an occupation order, the court may, subject to subsection (2), make an order granting to the applicant the use, for such period and on such terms and subject to such conditions as the court thinks fit, of all or any of -

- (a) the furniture;
- (b) household appliances; and
- (c) household effects,

In the household residence or other premises to which the occupation order relates or in the dwelling house to which the tenancy order relates.

(2) .....

195. Thus the court may exclude or separate a respondent parent from the household and from contact with the child pursuant to an occupation order where the circumstances so require.

196. Similar provisions are contained in the Domestic Violence and Matrimonial Proceedings Act Chapter 227 of the laws of the state. This short Act of four sections deals with domestic violence in situations where a marriage is involved. Section 4 of the Act provides that a party to a marriage may apply to the court for an order restricting the respondent from accessing the matrimonial home or an area in which the matrimonial home is located. The order effectively removes the respondent spouse from the matrimonial home and from any child residing in that home. Violent or other conduct towards a child of the home may form the basis of the application for the exclusion order. The matter is heard *inter partes* and the court may attach a power of arrest to the order.

197. As is seen in the first report submitted by the state the juveniles Act at sections 10, 11, 12 and 13 mentioned in paragraph 73 of this report includes provisions dealing with situations where a juvenile may be brought before the court on a warrant in circumstances where it is alleged that the juvenile is being assaulted, ill-treated, neglected or is the victim of a criminal offence specified in the first schedule or is otherwise in need of care and protection. In such circumstances the court may order that the juvenile be separated from the parents and placed in the care of a fit person who under section 37 of the Act shall have the same rights and powers and be subject to the same liabilities in respect of the child's maintenance, as if he were his parent and the juvenile so committed shall continue in his care notwithstanding any claim by a parent or other person.

198. There are a number of other provisions in the law of the state that authorises the court to order that a child be separated from his parents. As seen in the first state report these include section 143 of the Criminal Code, section 9 of the Maintenance Act, section 65 of the Matrimonial Causes Act and section 24 of the Juveniles Act.

199. In matters coming before the court under the provisions discussed above under the Domestic Violence (Summary Proceedings) Act, The Juveniles Act, the Law of Minors Act and the other legislation the court usually require the attendance of interested parties or summon their appearance so that it would be in receipt of all relevant information prior to making its decision. An occupation order for instance will not be made without the representation of the respondent's interests to the court. A court will not make an order against a parent or guardian separating a child from the parent or guardian without hearing representations on the parent or guardian's behalf pertaining to the issue. In the event that the child is separated from the parent or guardian

the order of separation is usually for a limited period and the parent or guardian is in certain circumstances permitted access to the child and as has been seen may be ordered to make financial provision for the child though the child may be committed to an institution.

**(d) Family Reunification (Article 10)**

200. As presented in the first state report on the Convention immigration is dealt with in the **Immigration Restriction Act chapter 114** of the laws of the state. At paragraph 114 the circumstances in which a person may be considered to belong to Saint Vincent and the Grenadines under the Immigration Act is spelt out. There is no specific legislative provision permitting entry into the state for the purpose of family reunification within the meaning of the convention. A child, stepchild or adopted child under 18 years of age of a citizen, a Commonwealth citizen domiciled in the state or a person married to a citizen or a domiciled Commonwealth citizen is deemed to be a believer to Saint Vincent and the Grenadines.

201. A person entering the state must have documentation properly identifying that person to the immigration authorities. Under section 5 of the Act a person entering Saint Vincent and the Grenadines without a passport is deemed to be a prohibited immigrant. A passport is thus required for entry into the state. This is except in the case of Nationals of the Eastern Caribbean territories who may now enter the state on presenting some form of nationally recognised identification such as driver's licence or National identification card. The Act classifies certain groups of persons as prohibited immigrants. These include persons entering the state with insufficient means of supporting themselves and their dependants travelling with them and who by reason of infirmity of body or mind is likely to become a public charge, any idiot or epileptic or a person who is insane or mentally deficient or any person who is deaf and dumb or dumb and blind unless an accompanying person can disclose sufficient means for the support of that person, a person certified to be suffering from a contagious disease, a convicted person who appears to be dangerous to the community, a prostitute or any person who may be living on the earnings of prostitution, an undesirable person and dependants of persons classified as undesirable immigrants.

202. In the event that a child is born to parents of different nationalities so long as a parent is a citizen of the state that child is considered to be a citizen of the state although born outside of the state. As seen before, this is specifically provided for in the Citizenship Act and in the Constitution of the state.

203. Where a person is not a prohibited immigrant entry into the state is the same as in most democratic countries world-wide. The immigrant must possess a passport or other document sufficiently proving identity to the satisfaction of the immigration officer, proof that he is able to sustain himself whilst in the state, a return ticket, an address where the immigrant intends to stay whilst in the state and an entry Visa in the case of certain specified countries which are usually countries with which the state has no diplomatic relations.

204. In the case of the wife and the child of the dependant wishing to immigrate to the state regulation 4 of the Immigration (Restriction) Regulations provide the following:

4. **Evidence of Identity, etc; of a wife or child.** An immigration officer may require, for the purpose of an application of a wife or child of an immigrant to enter Saint Vincent and the Grenadines, a properly authenticated copy of the certificate of the marriage or of the birth, as the case may be. If no copy of such marriage certificate or birth certificate can be produced, the immigration officer may require evidence to satisfy himself that that person is such wife or child as alleged and of the identity of the person, and that such wife or child is exempted from being considered a prohibited immigrant.

205. There are no specific provisions restricting a person from leaving the country. Public officers are usually required to obtain permission to leave the state and persons whose movements are restricted by an order of the court are usually required to obtain permission from the court before leaving the state. A person leaving the

state would usually require a passport or other identification to show upon departure and must be in a position to comply with the immigration laws of the receiving country.

206. The concept of immigration for the purpose of family reunification has never been dealt with in isolation by immigration authorities. If the relationship to a person residing within the state is proved then so long as the immigrant is not prohibited no difficulty is perceived. For the year 2009 the state has actively taken on the concept of reunification not only in terms of the family but in terms of the entire nation by launching the 'National Homecoming' event. By this event the government invited all Vincentians and extended Vincentian families to return home to Saint Vincent and the Grenadines for the year 2009.

**(e) Illicit Transfer and Non-Return of Children (Article 11)**

207. The laws of the state prohibit the illicit transfer, control and non-return of children. Children are normally within the control and under the supervision of their parents and/or guardians who may agree to take the child to different places within the state or outside of the state for any lawful purpose. It is where the child is taken from the parents or guardian to be transferred to a different place within or outside the state without the parents' or guardian's consent or whilst the parents or guardian is under duress that the state intervenes through the law to protect the child and the rights of the parents and/or guardian. The Criminal Code provides the legislative enactments that address the issues raised by this aspect of the convention at Chapter XII.

208. As mentioned in the first report of the state Section 199 of the Act deals with forceful abduction. The section states the following:

199. Any person who, by force, compels, or by any deceitful means induces, any person to go from any place is said to abduct that person and is guilty of an offence and liable, unless some other punishment is provided, to imprisonment for five years.

209. The following sections 200 and 201 deals with the offence of kidnapping and the special offence of abduction with intent to convey out of Saint Vincent and the Grenadines.

200. Any person who steals and carries away or secretes any person without the consent of that person, or some person legally authorized to consent on behalf of that person, or who imprisons any person in such a manner as to prevent him applying to a court for his release, or from discovering to any other person the place where he is imprisoned, or in such a manner as to prevent any person entitled to have access to him from discovering the place where he is imprisoned, is said to kidnap that person and is guilty of an offence and liable to imprisonment for fourteen years.

201. Any person who abducts any person with intent to cause him to be taken out of Saint Vincent and the Grenadines is liable to imprisonment for fourteen years.

210. Sections 203 and 204 are specific to children and deals with the offences of unlawful taking of a girl under fifteen years old from her parents and the offence of child stealing.

203. Any person who unlawfully takes, or causes to be taken, any girl under the age of fifteen out of the possession of and against the will of her parents or other person having the lawful charge or care of her, is guilty of an offence and liable to imprisonment for two years.

204. (1) Any person who, with intent to deprive any parent or other person having charge or care of a child under the age of fourteen, of the possession of such child, or with intent to steal any article on or about such child, by force or fraud takes or entices away or detains such child, is guilty of an offence and liable to imprisonment for seven years.

- (2) It is a defence to a charge under subsection (1) if the accused claims in good faith a right to possession of the child, or, in the case of an illegitimate child, is its mother or claims to be its father.

211. Sections 203 and 204 seem to reveal certain weaknesses in that in the case of section 203 it is limited to a girl under fifteen and any other category of child may fall victim to the conduct prohibited by law without the offender fearing any legal consequence. In the case of section 204 one is left to query the reason for an age limit of less than fourteen years. Perhaps the previous provisions dealing with kidnapping and abduction and the following provisions made under section 205 and the catch-all section 206 may help to answer some of these queries.

205. Any person who, knowing that any person has been the object of an offence under section 199, 201, 202, or 204 wrongfully conceals or confines such person, is guilty of an offence and shall be liable to the same punishment as if he kidnapped, abducted or stole such person with the same intent or for the same purpose as that with or for which he conceals or detains such person.

206. Any person who, without lawful authority, confines any person in circumstances not constituting an offence under any of the other provisions of this Chapter is guilty of an offence and liable to imprisonment for two years.

212. There is no record of any report being made under the provisions mentioned in this section in relation to a child or any person under the age of eighteen years. There have however been reports of abductions and kidnappings of adults but these have been isolated instances in terms of their frequency.

#### **(f) Recovery of Maintenance for the child (article 27, para. 4)**

213. The first state report dealt with this subject in detail and since its submission there has not been any substantial change in the regime of child maintenance in the state. The principal legislative enactment dealing with the issue of child maintenance is the Maintenance Act, which came into operation from the year 1989. The subject of maintenance has been dealt with consistently throughout this report as the maintenance of the child is so fundamental to the welfare and development of the child and touches and concerns almost every other issue having to do with the child. Almost every piece of legislation concerning the child at some point deals with the issue of maintenance.

214. This report will elaborate on some of the provisions dealing with maintenance to demonstrate the level of state compliance with the Convention on the Rights of the child. Section 3 of the Maintenance spells out the duty to maintain the child.

3.(1) It shall be the duty of every man to provide reasonable maintenance for -

(a) his wife and children under the age of sixteen; and

(b) .....

(2) It shall be the duty of every married woman having separate property to provide reasonable maintenance for -

(a) her husband and children under the age of sixteen; and

(b) .....

(3) It shall be the duty of every single woman to provide reasonable maintenance for -

(a) her children under the age of sixteen; and

(b) .....

(4) It shall be the duty of a man who marries a woman having children under the age of sixteen to provide reasonable maintenance for such children until they have attained that age; Provided that nothing in this subsection shall be held to absolve a person against whom a paternity order has been made to provide reasonable maintenance for the child to whom the order relates.

(5) Nothing in this section shall preclude a court making an order in respect of a child over the age of fifteen in accordance with the provisions of section 8

215. It is of interest to note subsection (4) of the above section which places a duty on a man who marries a woman with children under the age of sixteen to provide for their maintenance. Then subsection 5 gives the court the power to order the man to maintain the children of a woman he marries over fifteen years of age in accordance with the provisions of section 8. This is legislative recognition of the child of the family principle. Under this principle a married man has a duty to maintain children who were born to either spouse to the marriage after the marriage as they are deemed at law to have become children of the marriage.

216. Section 4 (2) of the Act sets out the ground on which any of the category of persons may apply to a court for a maintenance order pertaining to a child under section 5.

4.(1) .....

(2) Any of the following persons may apply to a court for an order under section 5 on behalf of any child on the ground that any person liable to do so has failed to provide, or to make a proper contribution towards, reasonable maintenance for such child:

(a) the father or mother of the child;

(b) the lawfully appointed guardian of the child;

(c) any person charged with the relief of destitute persons;

(d) any person having actual custody of the child; or

(e) if the child is over the age of fourteen the child himself.

(3) Notwithstanding anything contained in subsection (2), an application shall not be made by a mother in respect of a child born outside of wedlock unless -

(a) a paternity order has been made in respect of such child; or

(b) the child has been treated by both parties to the marriage as a child of the family.

(4) An application under subsection (2) may be made at the same time as an application for a paternity order.

(5) .....

(6) .....

(7) .....

217. Subsection 3 includes the necessary caution with respect to an out of wedlock child who may become the subject of a paternity order or though born out of wedlock may be treated by the parties to a marriage as a child of the family. Section 5 of the maintenance Act makes provision for the type of orders that a court may make. Subsection (2) of that section sets out the orders that may be made in the case of a child.

5. (1) .....

(2) Where on an application for an order under this section the applicant satisfies the court that any person liable to provide reasonable maintenance for any child specified in the application has failed to do so, the court may, subject to the provisions of this Act make one or both of the following orders -

- (a) an order that the respondent shall make to the applicant for the benefit of the child to whom the application relates, or to such a child, such periodical payments, and for such term, as may be so specified;
- (b) an order that the respondent shall pay to the applicant for the benefit of a child to whom the application relates, or to such a child, such lump sum as may be specified.

(3) .....

(4) Without prejudice to the generality of subsections (1) (b), (2) (b), or (3) (b), an order under this section for the payment of a lump sum may be made for the purpose of enabling any liability or expenses reasonably incurred in maintaining the applicant, or any person to whom the application relates, or for the birth or funeral expenses of the person to whom the application relates, before the making of the order to be met.

(5) The amount of any lump sum required to be paid by an order under this section shall not exceed two thousand dollars or such larger amount as the Governor-General may, by order, fix for the purposes of this section.

218. Section 6 of the maintenance Act then deals with the matters that the court must take into consideration when making an order for maintenance. The matters in relation to a child are dealt with at subsection 2.

6.(1) .....

(2) Where an application is made for an order under section (5) (2), the court, in deciding whether to exercise its powers under that section and, if so, in what manner, shall have regard to all circumstances of the case including the following matters, that is to say -

- (a) the financial needs of the child;
- (b) the income earning capacity (if any), property and other financial resources of the child, the applicant (where relevant), and the person against whom the order is sought;

- (c) any physical or mental disability of the child;
  - (d) the standard of living enjoyed by the family before the occurrence of the conduct which is alleged as the ground of the application;
  - (e) the manner in which the child was being, and in which the parties to the marriage expected him to be, educated or trained;
  - (f) the matters mentioned in relation to the parties to the marriage in subsection (1) (a) and (b).
- (3) The court, in deciding whether to exercise its powers under section 5 (2) in favour of a child who is not the child of the respondent and, if so, in what manner, shall in addition to the matter mentioned in subsection (2) have regard (among the circumstances of the case) -
- (a) to whether the respondent had assumed any responsibility for the child's maintenance and, if he did, to the extent to which, he assumed that responsibility;
  - (b) to whether in assuming and discharging that responsibility, the respondent did so knowing that the child was not his own child; and
  - (c) to the liability of any other person to maintain the child.

219. The Act at section 8 sets out the duration for child maintenance orders in the following terms:

- 8.(1) Subject to subsection (3), no order shall be made under section 5(2) in favour of a child who has attained the age of eighteen.
- (2) The terms to be specified in an order made under section 5(2) in favour of a child may begin with the date of the making of an application for the order in question or on any later date, but shall not in the first instance extend beyond the date of the child's sixteenth birthday unless the court thinks it right in the circumstances of the case to specify a later date and shall not in any event extend beyond the date of the child's eighteenth birthday.
- (3) The court -
- (a) may make an order under section 5(2) in favour of a child who has attained the age of eighteen; and
  - (b) may include, in an order made under section 5(2) (a) in relation to a child who has not attained that age, a provision for extending beyond the date when the child will attain that age the term for which by virtue of the order any payments are to be made to or for the benefit of the child.
- if it appears to the court -
- (i) that the child is, or will be, or if such an order or provision were made would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
  - (ii) that there are special circumstances which justify the making of the order or provision.



- (4) Any order made under section 5(2) (a) in favour of a child shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

220. An important preliminary step for recovery of maintenance in the case of a child born outside of wedlock is for the mother of the child to commence affiliation proceedings against the putative father of the child. Such proceedings may be commenced under section 16 of the maintenance Act.

16. A single woman who is with child, or who has been delivered of a child, may apply by complaint to a court for a summons to be served on the man alleged by her to be the father of the child.

221. Section 17 of the Act sets out the time limitations for an application under section 16.

17. A complaint under section 16 where the complainant has been delivered of child, may be made -

- (a) at any time within five years from the child's birth;
- (b) at any subsequent time, upon proof that the man alleged to be the father of the child has, within the five years next after the birth, paid money for its maintenance; or
- (c) at any time within the twenty four months next after the man's return to Saint Vincent and the Grenadines, upon proof that he ceased to reside in Saint Vincent and the Grenadines within the five years next after the birth.

222. Upon affiliation proceedings coming before the court for hearing the court may exercise any of the powers spelt out in section 18 of the Act.

- 18.(1) On hearing of a complaint under section 16, the court may adjudge the defendant to be the putative father of the child but shall not do so unless, if the mother be alive and of sound mind, she gives evidence and her evidence is corroborated in some material particular by other evidence to the satisfaction of the court.

- (2) Where the court has adjudged the defendant to be the putative father of the child it shall make an order, called a paternity order, to that effect.

223. Apart from the Maintenance Act other legislation deals with the question of maintenance of the child. The Law of Minors Act at section 12 also places the duty to maintain the child on a parent not having custody of the child in the case where the court grants custody to a particular parent. That provision was dealt with at paragraph 174 of this report.

224. In the case of an interim order made under section 14 of the Adoption Act. The court may make an order for maintenance and education of the child.

14. (1) Subject to the provisions of this section, the court may, upon an application for an Adoption order, postpone the determination of the application and make an interim order giving custody of the child to the applicant for a period not exceeding two years by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the child and otherwise as the court think fit.

- (2) .....

(3) .....

(4) .....

225. Under the Juveniles Act the law also deals with the subject of maintenance in circumstances where the juvenile has been committed to the care of a person other than the parents or to an institution. At section 40 the Act provides the following:

40.(1) Where an order has been made by a juvenile court committing a juvenile to an approved school or to the care of a fit person, it shall be the duty of the following persons to make contributions in respect of him if the court is satisfied of their ability to make such contributions -

(a) his father, adopted father or stepfather;

(b) his mother, adopted mother or stepmother; and

(c) any person, who, at the date when any such order is made, is cohabiting with the mother of the juvenile, whether he is the putative father or not.

(2) Where a juvenile has been committed to an approved school or to the care of a fit person, contributions under this Act shall be payable to the matron of the approved school or fit person, as the case may be, in or towards the maintenance, or otherwise for the benefit of the juvenile.

226. The above provision is interesting since it is the only provision in the law of the state which places a duty of any man cohabiting with the mother of the juvenile whether the father or not or whether married or not to contribute towards the maintenance of a child. This seems to be outside of maintenance as it is ordinarily understood and approached by the courts. The law seems to recognise a difference with Section 40 and the usual concept of maintenance in section 41.

41.(1) Where an order has been made by a juvenile court committing a juvenile to an approved school or to the care of a fit person the court may at the same time make a contribution order on any person who is, under section 40, liable to make contributions in respect of the juvenile requiring that person to contribute such weekly sum, not exceeding five dollars in respect of each juvenile, as the court having regard to his means thinks fit.

(2) A contribution order shall, unless varied or revoked, remain in force so long as the juvenile remains in the approved school or in the care of the fit person, and the court when making such order shall have regard to any affiliation order in force in respect of the juvenile. Any such contribution order may be varied or revoked on the application of either the contributor or the person to whom the contributions are payable.

(3) A contribution order shall be enforceable, at the instance of the person to whom the contributions are payable, in the same manner as an affiliation order made under the maintenance Act.

(4) a person on whom a contribution order is made shall, if he changes his address, forthwith give notice thereof to the person whom, immediately before the change, the contributions were payable, and, if he fails so to do, or if he knowingly gives false notice in any material particular, he is guilty of an offence against this Act.

227. Section 42 then deals with the situation where there is an existing affiliation order when the court makes an order committing the juvenile to an approved school or to the care of a fit person.

- 42.(1) Where a juvenile who is ordered by a juvenile court to be committed to an approved school or to the care of a fit person is a person born out of wedlock and an affiliation order for his maintenance is in force, the court may at the same time order the payments under the affiliation order to be paid to the person to whom contributions in respect of the juvenile are payable under section 40(2). (2) Any sums received under the affiliation order shall be applied in like manner as if they were contributions received under a contribution order.

228. The Married Women's Property Act Chapter 175 of the Laws of the state also contains a provision similar to the Maintenance Act placing a duty on a married woman under section 14 to maintain her children.

14. A married woman having separate property shall be subject to all such liability for maintenance of her children and grandchildren as the husband is now by law subject to for the maintenance of her children and grandchildren:

Provided always that nothing in this Act shall relieve her husband from any liability imposed upon him by law to maintain her children and grandchildren.

229. In the event that the court is dealing with a matter of custody the law provides it with power to make orders in relation to maintenance at the same time. Section 9 of the Maintenance Act is one such provision.

- 9.(1) Where an application is made by a party to a marriage for an order under section 5 then, if there is a child who is under the age of eighteen, the court shall not dismiss or make a final order on the application until it has decided whether to exercise its powers under this section and, if so, in what manner.
- (2) On an application for an order under section 5, the court, whether or not it makes an order under the said section, shall have power to make such order regarding -
- (a) the legal custody of any child of the family who is under the age of eighteen; and
  - (b) access to any such child by either of the parties to the marriage or any other person who is a parent of that child as the court thinks fit.
- (3) An order shall not be made under subsection (2) giving custody of a child to a person other than a party to the marriage or a parent of the child unless the court is of the opinion that legal custody should be given to a person who is not a party to the marriage or a parent of the child, and in such case it may give custody to such person.
- (4) An order shall not be made under this section giving the legal custody of a child to more than one person; but where the court makes an order giving the legal custody of a child to any person under this section, it may order that a party to the marriage in question who is not given the legal custody of the child shall retain all, or such as the court may specify, of the parental rights and duties comprised in legal custody (other than the right to the actual custody of the child) and shall have those rights and duties jointly with the person who is given the legal custody of the child.
- (5) An order made under subsection (2) shall cease to have effect as respects any child when he attains the age of eighteen.

(6) Where an order is made under subsection (2), the court may direct that the order, or such provision thereof as the court may specify, shall not have effect until the occurrence of an event specified by the court or the expiration of a period so specified; and where the court has directed that the order, or any provision thereof, shall not have effect until the expiration of a specified period the court may at any time before the expiration of that period, direct that the order, or that provision thereof, shall not have effect until the expiration of such further period as the court may specify.

(7) The court shall not have power to make an order under subsection (2) with respect to a child in respect of whose custody an order made by the High Court or another magistrate's court in Saint Vincent and the Grenadines is in force.

230. Those provisions may be read and applied together with the provisions of sections 15 and 16 of the Maintenance Act.

15.(1) Where the court makes an order under section 7(4) that a person shall be the sole guardian of a minor to the exclusion of his mother or father the court may -

(a) make such order regarding -

(i) Custody of the minor; and

(ii) the right of access to the minor of his mother or father, as the court thinks fit having regard to the welfare of the minor; and

(b) subject to section 17, make one or both of the following orders -

(i) an order requiring the mother or father to pay to the guardian for the benefit of the minor, such periodical payments, and for such term, as may be specified in the order;

(ii) an order requiring the mother or father to pay to the guardian for the benefit of the minor, such lump sum as may be so specified.

(2) The powers conferred by subsection (1) may be exercised at any time and include power to vary or discharge any order, other than an order for the payment of a lump sum, previously made under those powers.

231. Section 16 of the Act provides the following:

16. The powers of the court under section 15 shall, where one of the joint guardians is the mother or father of the minor, include power -

(a) to make such order regarding

(i) the custody of the minor; and

(ii) the right of access of his mother or father, as the court thinks fit having regard to the welfare of the minor;

(b) to make, subject to section 17, one or both of the following orders -

- (i) an order requiring the mother or father to pay to the other guardian for the benefit of the minor, or to the minor, such periodical payments, and for such term, as may be specified in the order;
  - (ii) an order requiring the mother or father to pay to the other guardian for the benefit of the minor, or to the minor, such lump sum as may be so specified; and
- (c) to vary or discharge any order, other than an order for the payment of a lump sum, previously made under that section.

232. Section 17 of the Law of Minors Act then sets out the duration for the custody and maintenance orders that may be made under the Act.

17.(1) The term to be specified under Section 12, 13, 15 or 16 for the making of periodical payments in favour of a minor may begin with the date of the making of the application for the order in question or on any later date but –

- (a) shall not in the first instance extend beyond the date of the minor's sixteenth birthday unless the court thinks it right in the circumstances to specify a later date; and
- (b) shall not in any event, subject to subsection (2), extend beyond the minor's eighteenth birthday.

(2) Subsection (1) (b) shall not apply in the case of a minor if it appears to the court that –

- (a) the minor is, or will be, or if an order was made without complying with that paragraph would be, receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation whether or not he is also, or will also be in gainful employment; or
- (b) There are special circumstances which justify the making of an order without complying with that paragraph.

105.

(3) Any order made under section 12, 15 or 16 requiring the making of periodical payments shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

233. The maintenance provisions referred to above clearly recognises that a child becomes an adult at 18 years. Thus provision is made for the cessation of the responsibility of a parent to maintain the child at that age generally. On interpreting the provisions it seems however that prior to achieving the age of eighteen years the child can in certain circumstances obtain an order for maintenance extending beyond the child's eighteenth birthday. It seems however that the child cannot make an application for maintenance when the child attains eighteen years.

234. It remains the law that a bankrupt public officer's children may still receive payments from that officer's pension where such pension is due even where in such circumstances the pension will normally cease. The relevant provision of the **Pensions Act Cap 272** which is section 14 (3) provides:

14 (3). Where a pension or allowance ceases by reason of this section, the Governor-General may, from time to time during the remainder of such person's life, or during such shorter period or periods, either continuous or discontinuous, as the Governor-General, shall think fit, direct all or any part of the moneys to which such person may have been entitled by way of pension or allowance, had he not become bankrupt or insolvent, to be paid to, or applied for the maintenance or benefit of, all or any, to the exclusion of other or others, of the following, that is to say, such person and any wife, child or children of his, in such proportions and manner as the Governor-General, thinks proper, and such moneys shall be paid or applied accordingly.

235. Payment of maintenance under that provision seems to be entirely within the discretion of the Governor-General who may take any of the options that are available to him.

236. It is notable that that provision is restricted to public servants. Another provision that relates to public servants under the same Act is section 18 which deals with situations when a public officer dies on duty. The relevant parts of the section dealing with children are the following:

18 (1) Where an officer dies as a result of injuries received –

- (a) in the actual discharge of his duty; and
- (b) without his own default; and
- (c) on account of circumstances specifically attributed to the nature of his duty, while in the service of the Government, the Governor-General may grant, in addition to the grant, if any, made to his legal representative under section 17 –
  - (i) .....
  - (ii) If the deceased officer leaves a widow, to whom a pension is granted under paragraph (i) and a child or children, a pension in respect of each child, until such child attains the age of eighteen, of an amount not exceeding one-eighth of the pension prescribed under paragraph (i);
  - (iii) If the deceased officer leaves a child or children but does not leave a widow, or no pension is granted to the widow, a pension in respect of each child, until such child attains the age of eighteen, of double the amount prescribed in paragraph (ii);
  - (iv) If the deceased officer leaves a child or children and a widow to whom a pension is granted under paragraph (i), and the widow subsequently dies, a pension in respect of each child as from the date of the death of the widow until such child attains the age of eighteen of double the amount prescribed in paragraph (ii);
  - (v) .....
  - (vi) .....
  - (vii) .....

Provided that –

- (a) Pension shall not be payable under this subsection at any time in respect of more than six children.

237. Here again the payment of the pension lies within the discretion of the Governor-General. It is not as of right as it is a payment outside of normal pension payments. Although it is referred to as a pension it is really a gratuitous benefit.

238. In relation to enforcement of maintenance orders section 21 of the Law of Minors Act provides the following:

21. (1) .....

- (2) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money under this Act shall give notice of any change of address to such person (if any) as may be specified in the order, and any person failing without reasonable excuse to give such notice is guilty of an offence and liable to a fine of one hundred dollars.
- (3) Any order of a magistrate's court for the payment of money under this Act may be enforced in like manner as an affiliation order, and the provisions relating to such orders shall apply accordingly with the necessary modifications.

239. Affiliation orders are made principally under the Maintenance Act. The Act provides for the making of affiliation proceedings as already noted and the time limits for the filing of such proceedings. Where an affiliation or custody order has been made the Act specifies the person to whom the payment for the benefit of the child should be made at section 20.

20.(1) Subject to the provisions of subsection (2), all payments made under any order made under this Act shall be made to the applicant for the order.

(2) Where an order for periodical payments, or for the payment of a lump sum in instalments, has been made, the court may, at the request of the applicant for such order, direct that the payments shall be made –

- (a) Into court;
- (b) If a maintenance officer has been appointed for the magisterial district, to the maintenance.

240. The maintenance officer is a special appointment under the Act by section 21. The Governor-General appoints a maintenance officer with respect to each of the three magisterial districts although one officer may be appointed for more than one district. The court may by order appoint the maintenance officer to receive payments under an affiliation order and that officer must make the payment to the person entitled to the payment without deduction. If the payment due to be made under an order remains unpaid for 7 days after it is due the maintenance officer or the clerk of the court must notify the person entitled to the payment of the fact that the payment is in arrears and the details thereof.

241. It is where there is a situation of arrears with respect to a maintenance order that the court takes steps pursuant to section 22 of the Act to enforce the order.

22.(1) Where any person against whom an order has been made is in default for more than seven days of any payment, or part thereof, due under such order, the person entitled to payment under the order may apply to the court for an order under this section:

Provided that where such payment should have been made to a maintenance officer such officer may apply for an order.

(2) Upon an application under this section the court may –

- (a) issue a warrant for the levy of the amount due on the movable and immovable property of the defaulter; or

(b) commit the defaulter to prison for a period not exceeding the period it could have committed him to prison for the non-payment of a fine of similar amount under section 29 of the Criminal Code.

(3) A court shall not commit a defaulter to prison under subsection (2) if the defaulter satisfies the court that his failure to pay was due neither to his culpable neglect or wilful refusal.

242. The preferred mode of enforcement is by way of an application for an order for committal to prison. The defaulter by being in arrears finds himself in contempt of court and the court readily proceeds to make the order of committal if the Defaulter can show no good reason. In practice the order is conditional in that the defaulter is given a further opportunity to make good the payment before the warrant is issued for his committal.

243. The Act by section 27 limits an applicant to sixteen weeks to make an application for arrears. If the period in which the defaulter falls into arrears exceeds 16 weeks then the applicant cannot recover outside of that period. Section 29 incorporates a positive duty upon the applicant to notify the clerk of the court or the maintenance officer of a change of his address. If he fails to do so within fourteen days of the change he commits a fine and becomes liable to a fine of fifty dollars. The difference here with the Law of Minors Act is that the fine is higher under that Act although the objective is the same. Affiliation proceedings are in practice brought under the Maintenance Act rather than under the Law of Minors Act.

244. In the High Court it is where there is a situation of divorce or family breakdown brought before the court that the issue of maintenance comes before the court. These situations are governed by the Matrimonial Causes Act. By section 31 (1) (d), (e) and (f) on granting a decree of divorce, a decree of nullity of marriage or a decree of judicial separation or at any time thereafter the court has power to make an order that a party to a marriage shall make or secure periodical or lump sum payments for the benefit of a child of the family.

245. The court has the power to enforce maintenance orders in several ways not covered by the Maintenance Act. Under section 32 of the Act the court has power to order that a party to a marriage transfer property for the benefit of a child. Also under section 47 the court has power to revoke a property transfer made by a party to a marriage to another person if it is satisfied that such transfer was intended to defeat the effect of a maintenance order. A person may enforce arrears under a maintenance order made under the Matrimonial Causes Act similar to under the Maintenance Act. The time limitation found in the Maintenance Act is not reflected in the Matrimonial Causes Act. Under the Matrimonial Causes Act section 41 provides that a person who fails to enforce the payment of arrears within a period of twelve months after the payment falls due must obtain the leave of the court before making the application.

246. The **Maintenance Orders (Reciprocal Enforcement) Act Cap. 235** of the laws of the state came into effect in 1989. Its stated purpose is to provide for the enforcement of maintenance orders made in other countries within the territory of the state party and for the enforcement of maintenance orders made in the state party in the reciprocating countries. The Act sets out the provisions for enforcement in the state of foreign enforcement orders including provisions for registration and confirmation of the order. The territories to which the Act applies are listed in order of the date of application Maintenance Orders (Reciprocating Countries) Order. The provision applies to commonwealth Caribbean countries which are reciprocating territories.



**(g) Children deprived of their family environment (Article 20)**

247. In relation to this subject area there has also been no legislative change since the presentation of the initial report of the state party. There are many circumstances through which a child can be deprived of his family environment. The convention recognises the integrity of the family unit and the importance of the family environment for the development of the child and for normal transition into adulthood. Incidents such as war, poverty, civil strife, conflict with the law and family break down only to mention a few can have the effect of depriving the child of his family environment.

248. It has already been noted that there is a strong incidence of single parent families existing in the state. Many children receive financial support through an order of the court. Also, very often the term family is understood to mean the extended family of a single parent rather than a family comprising both parents. Many parents migrate to North America or Europe in pursuit of a better life and children are often left with relatives or persons who cannot be considered to be their family. With these general observations mention must also be made of the Family Affairs Division of the Ministry of National Mobilisation and the critical role that it plays in keeping the families of the state together and in counselling families in difficulty.

249. The Family Affairs Division has a responsibility to find appropriate family environment for a child who is deprived of his family environment or has to be removed from such environment in his best interest. There are several facilities providing shelter for children within the state. The Catholic Church has started a shelter for girls at Cane End in the Marriagua Valley in the State. The Salvation Army which is a religious NGO of international repute has established a shelter for children at Campden Park. This is available for boys and girls. The Liberty Lodge Boys training Centre is a state sponsored institution which has been long in operation but catering only for boys. Recently a crisis centre was established to cater for girls and women who are in situations of dire need. The Ministry of National Mobilisation through the Family Affairs Division manages this facility. Because of the sensitivity of the situations that requiring the use of this facility its location is kept secret.

250. As noted before a child between the ages of 16 and 17 can be incarcerated by order of the court where that child has been found guilty of a criminal offence. The period of sentence can range from a short term to an indeterminate period during her majesty's pleasure. In such a situation the child will be exposed to a prison life and deprived of his family life and environment. At present there is no system for the separation of children prisoners from adult prisoners and as mentioned before there is unrestrained opportunity for intermingling.

251. The court has the power under the Law of Minors Act, of Minors Act to make custody orders under section 5 and to restrict the removal of the child from the state under section 22. The High Court can order that a child be brought to the court for an examination into the circumstances of the child. By section 27 of the Act the High Court if it is satisfied that the applicant parent or guardian has abandoned the child or otherwise act to the prejudice of the interests of the child it may decline the application. At section 29 it is further provided that:

29. Where a parent has-

- (a) abandoned or deserted his minor child;
- (b) allowed his minor child to be brought up by another person at that person's expense for such length of time and under such circumstances as to satisfy the High Court that the parent was unmindful of his parental duties,

the Court shall not make an order for the delivery of the child unless the parent satisfies the court, having regard to the welfare of the minor that he is a fit person to have custody of the minor.

252. These provisions demonstrate how the court can act in the event that a child has been abandoned or brought up to the Court. The Juveniles Act contains provisions at section 11, 12 and 13 of the Act that provide the court with powers similar to those under the Law of Minor's Act. Under the Juveniles Act the relevant court is the Magistrates Court whilst under the Law of Minors Act it is the High Court that is moved. It therefore presents the situation that the applicant has a choice of court in the circumstances where a child has been abandoned or neglected.

253. Through the Family Service Division of the Ministry of National Mobilisation the state has made arrangements for foster care and for the placement of children in need of assistance or in situations of emergency. This resource is arranged with the assistance of NGO's especially religious entities. It is recognised that this is a limited resource and is utilised in exceptional cases. There continues to be no legal framework for foster child care existing in the state.

#### **(h) Adoption (Article 21)**

254. Adoption in the state is governed by the Adoption Act Cap. 225. The Act is comprised of 29 sections and is accompanied by regulations and rules that augment the Act. The Act establishes the Adoption Board at section 3 to deal with matters pertaining to adoption in the state.

255. At section 4 (1) the Act provides that no person or body of persons other than the Board may make arrangements for the adoption of a child. It is a criminal offence under subsection 2 for any person or body other than the Board to make arrangements for the adoption of a child. At section five the Board has a positive duty to make arrangements for adoption of children and for that purpose to receive applications from parents, guardians and adopters and to do all things including investigations for the consideration of the court dealing with the adoption.

256. There can therefore be no adoption without the Board. In the first instance there is a six month period before an application can be made to a court for the formal adoption of the child. During that period pursuant to section 6 the Board may notify the adopter that it has no intention of allowing the child to be adopted and the adopter may also notify the Board of an intention not to proceed with the adoption of the child. In the usual situation the child is placed into foster care pending the determination of the Board and the Court. In the event that the child is not to be adopted the adopter who with the supervision and arrangement of the Board arranges finance foster care is mandated to cause the return the child within seven days of notice.

257. It is the court that has the final word on whether a child is to be adopted or not. In this regard it is dependent upon the Board's investigations and recommendations for guidance. Section 10 of the Act is concerned with the power of the court to make adoption orders in a situation where the applicant is domiciled in the state. In order to qualify as an adopter the applicant or one of them in the case of joint applicants must have attained the age of twenty five years in the case of a non-relative, twenty one years in the case of a relative or the mother or father of the child in any other case. The act restrict a sole male applicant in the case of a female child except where he can satisfy the court of exceptional circumstances justifying the adoption as an exceptional measure. The act by section 11 (3) does not permit more than two persons to jointly adopt a child.

258. In relation to consents section 11(4) provides the following:

11.(4) Subject to the provisions of section 13, an adoption order shall not be made –

- (a) in any case, except with the consent of every person who is a parent or guardian of the child;
- (b) On the application of one of two spouses, except with the consent of the other spouse.

259. Although the general rule is that the consent of the parents must be obtained for an adoption to proceed the following provision is made in exception at paragraph 13 (1):

13 (1) The court may dispense with any consent required by section 11 (4) (a) if it is satisfied –

- (a) in the case of a parent or guardian of the child, that he has abandoned, neglected or persistently ill-treated the child;
- (b) In any case the person whose consent is required cannot be found or is incapable of giving his consent, or that his consent is unreasonably withheld or for any other reason such consent should be dispensed with.

260. In the case of a spouse section 13 (2) provides that the consent of a spouse of the applicant may be dispensed with if the court is satisfied that the person cannot be found or that the spouses have separated and are living apart and that the separation is likely to be permanent. Further the Act at section 13 (3) permits the granting of conditional consents pertaining to the religious persuasion of the child for the child to be brought up without knowing the identity of the applicant adopter.

261. Section 13 (4) of the Act is another important provision as it restricts the rights of the parents where an application for an adoption order is pending. The provision states as follows:

13(4) While an application for an adoption order in respect of a child is pending in the court, any parent or guardian of the child who has signified his consent to the making of an adoption order in pursuance of the application shall not be entitled, except with the leave of the Court, to remove the child from the care and possession of the applicant; and in considering whether to grant or refuse such leave the court shall have regard to the welfare of the child.

262. Apart from making a full adoption order the Court by virtue of section 14 of the Act has the power to make an interim order for a maximum probationary period of two years. During this period it postpones the making of the final order and may make further orders for the maintenance, education, supervision and the welfare of the child. This provides the court and all relevant parties to consider the circumstances of the child and the relevance of the adoption. All relevant consents must be given in the case of an interim order as in the case of a full order. Section 15 permits a person required to give consent to submit a document containing such consent if attested to by a justice of the peace, notary public or a commissioner of oaths as admissible proof of his consent. This obviates the personal attendance or appearance of the person giving the consent before the Board.

263. The Act makes special provision for adoption by persons not ordinarily resident or domiciled in the state. Such persons must make an application to the Board under section 12 of the Act. The application must be made by the applicant in person or through a legal practitioner and must be accompanied by an affidavit sworn to by the applicant. Section 12 (3) further provides the following:

12 (3) The applicant shall produce such evidence and give such undertaking as the Board may require to satisfy itself that –

- (a) that the applicant is a fit person to apply for the adoption of the child;
- (b) that the applicant has adequate means to maintain the child in an appropriate manner;
- (c) that the applicant may be expected to look after the interests of the child; and
- (d) on any other matter relating to the safety, interests and welfare of the child.

264. It is only after the Board is satisfied after making all the inquiries that it deems fit that it may make the order permitting the applicant to move the court for an adoption order. Upon receiving the application the Court may call upon the Board to transmit all or any record relevant to the matter before it and such records shall be admissible in evidence notwithstanding anything contained in any other law with the necessity of further proof. The Act further bestows upon the court a very wide discretion at section 12 (7) with respect to an overseas adoption. That section provides the following:

12 (7) Notwithstanding anything contained in this Act, the Court may, in the matter of adoption of any child by a person not ordinarily resident in Saint Vincent and the Grenadines for transfer of the child abroad, make such exceptions or dispense with such requirements of formalities as it may deem fit, if it is satisfied that the proposed adoption for transfer abroad is for the welfare of the child and that under the circumstances of the case an expeditious disposal of the matter is called for.

265. Section 16 provides for the matters that the Court must take into consideration before making an adoption order. It must ensure that all relevant consents have been obtained or dispensed with and that the parents of the child understands the nature and effect of the adoption order and that the order will permanently deprive them of their parental rights. The court must also ensure that the order is for the welfare of the child and that the wishes of the child where appropriate has been considered. Further, the court must be satisfied that no payment or reward was given for the parents' agreement to consent to the adoption order being made.

266. Under the Adoption Act section 17 (1) recognises that upon the adoption order being made all rights, duties, obligations and liabilities of the parents or guardians of the child in relation to future custody, maintenance and the education of the child shall be extinguished and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and

enforceable against the adopter as if the child was a child born to the adopter in lawful wedlock. The adopter and the child shall be deemed to be within the prohibited degrees of consanguinity in relation to the law of marriage within the state.

267. In the case of affiliation proceedings the Act at section 18 provide generally for existing affiliation orders to cease to have effect after the adoption order is made. Existing arrears up to the date of the adoption order are still enforceable against the defaulter. In the case of the adopter being the mother of the child and she be a single woman then the affiliation order shall not cease to have effect except that if she becomes married subsequently the court may revoke or vary the order as appropriate.

268. In terms of succession the Act at section 19 provides that after the making of an adoption order the adopted child is legally entitled to share in the intestate estate of his adopted parents as if he was a child born to them in lawful wedlock. Any reference to child in any testamentary document shall include the adopted child as if that child was born in lawful wedlock unless a contrary intention appears. Section 20 provides that for the purposes of devolution of property an adopted child shall be deemed to be related to any other person being the child or adopted child of the adopter.

269. An adoption order or interim adoption order may pursuant to section 21 of the Act be made with respect to a child who has already been the subject of an adoption order and on an application for a further adoption the adopter or adopters under the previous order shall be deemed to be the parents of the child for the purposes of the Act.

270. The act prohibits the publishing of an advertisement indicating that the parent or guardian of a child is desirous of causing a child to be adopted or a person is desirous of adopting a child. The provision at section 23 of the Act incorporates a criminal penalty of a fine of two thousand dollars.

271. The regulations under the Act provides for matters such as the application form and certificate of health with respect to the adopter (s), the memorandum of agreement for the parents of the child to peruse and understand before the adoption can proceed, the duty of the board to make inquiries, the interviewing of adopters and visits and reports to be made by the board to the child where an interim order is made.

272. The Adoption of Children Rules provides for the formalities with respect to an application for an adoption order: It is important to note that under the rules proceedings are held in camera and notices are to be served upon the parents and the child for appearance at the hearing. When the matter reaches the court the court may question the child and the parents of the child. It normally accepts the recommendation of the Board as to the granting of the order except in extraordinary circumstances.

### **(i) Periodic Review of Placement (Article 25)**

273. Under section 9 of the Law of Minors Act the High Court has the discretion on being satisfied that it is for the welfare of the minor, to remove any testamentary guardian or any guardian appointed by virtue of the Act, and may also, if it deems it to be for the welfare of the minor, appoint another guardian in the place of the guardian removed. Under section 7 a parent may appoint a guardian and under section 8 the court may appoint a guardian where it is apparent that the child has no parent or guardian.

274. The court is empowered to make supervision orders with respect to a minor by virtue of section 13 of the Law of Minors Act. Section 13 (1) provides the following:

13 (1) where an application made under section 12 relates to the custody of a minor under the age of sixteen, then, subject to section 14 –

- (a) If, by an order on that application, any person is given custody of the minor, but it appears to the Court that there are exceptional circumstances making it desirable that the minor should be under the supervision of an independent person, the court may order that the minor shall be under the supervision of a specified institution or a probation officer.
- (b) if it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the minor to be entrusted to either of the parents or to any other individual, the court may commit the care of the minor to a specified institution.

275. Under section 14 it is stipulated that the supervision order shall cease to have effect when the child is sixteen years of age. A parent, guardian or other person having custody of the minor may apply to the court for a variation or discharge of the order. Section 10 of the Maintenance Act contains similar provisions to section 13 of the Law of Minors Act. One difference is that the Maintenance Act does not refer to an institution but restricts itself to committing the minor to the supervision of a probation officer for the magisterial district where the child will be resident. Another important difference is that the supervision order can continue into existence until the child attains the age of eighteen. This appears to be more in keeping with the Convention's definition of a child as a person under the age of eighteen years.

276. Under section 66 of the Matrimonial Causes Act the Court also has power to make an order for the supervision of a child when dealing with a petition for divorce. In this section the reference is to a welfare officer rather than to a probation officer or an institution. The section however goes on to classify a welfare officer as a probation officer approved by the court. The section empowers the court to vary or discharge the order.

277. It has been already noted that section 11 of the Juveniles Act provides for the bringing of a juvenile in need of care and protection before the court. Under Section 12 the powers of the Court includes the power to place the juvenile under supervision of a probation officer for a period not exceeding three years, commit him to the care of a fit person whether a relative or not or commit him to an approved school. Under this provision it seems that once the Court makes the order there is no requirement for any further involvement of the court except if an application is made to vary or discharge the terms of the order. The Family Affairs Division of the Ministry of National Mobilisation in practice takes responsibility for reviewing the order and the progress of the child. There is however no specific legislation for this.

278. Under regulation 7 of the Adoption of Children Regulations where a child has been placed for adoption the following is provided:

At least once every month of the probationary period of six prescribed by section 6 of the Act or, where an interim order has been made under section 14 of the Act, of the period of such order, a representative of the Board shall visit the child and also visit, or otherwise make contact with, the parents or guardian of the child and shall report upon the case and the results of such visits and contact to the case committee. If the case committee so recommend, the Board shall immediately remove the child from the care and possession of the adopter.

279. Under the **Mental Health Act Chapter 294** of the laws of the state section 4 (6) provides that where a person is under the age of eighteen an application for admission under subsection (1) or for discharge under subsection (4) may be made on his behalf by his parent or guardian. That is the only provision in the Act dealing with a minor and there is no provision for the special treatment of a minor having regard to his minority.

280. There is a paucity of provisions dealing with the issue of periodic or general review of placement whether in an institution or for supervision or with a welfare or probation officer. After the order for placement is made it seems that the matter rests administratively with the Family Affairs Division. The Children (Care and Adoption) Act 2010 which shall soon become law provides for a directorate of family services with responsibility amongst other things to provide for all matters concerning children. The Minister of National Mobilisation may provide regulations having the force of law to address issues in this area.

#### **(j) Abuse and Neglect (Articles 19 and 39)**

281. It is recognised as a principle of law within the state that the child is a ward of the court. This means that the child is generally under the special protection of the law. Protection in this sense means protection from abuse neglect and abandonment. Children by nature being especially vulnerable they are often the subject of abuse and neglect in various forms. Children suffer especially when the persons who are supposed to be their parents/guardians or carers commit acts against them that are contrary to their physical, mental and emotional well-being.

282. Much of the legislative provisions dealing with the subject of abuse and neglect have been mentioned already. For the purposes of this section the Domestic Violence Summary proceedings Act is an appropriate starting point. The Act has as one of its objective the protection of the child in his home environment. The interpretation section incorporates a wide definition of the child.

283. Under section 4 of the Act a child or a person on behalf of the child may apply to the court for a protection order prohibiting the respondent from entering or remaining in a household residence, specific area in which the household residence is situated, place of work or education or from molesting the child. The court has power to attach a power of arrest and may make the order on an ex parte application where the respondent

has threatened to use violence or caused physical or mental injury to the child and is likely to do so again. Upon breaching the order section 5 includes a penalty of a fine of five thousand dollars, imprisonment for six months or both.

284. The Act at section 7 incorporates provision for the grant of an occupation order for the right of a child to occupy household premises or any other premises if the Court is satisfied that such order is in the best interest of a child. Section 8 provides that under the occupation order the child has the right to occupy the premises to the exclusion of the respondent though he may be the legal owner of the premises. Such an order may also be granted ex parte in circumstances where the respondent has used threatened violence or caused physical or mental injury to the child.

285. Another order that the court may grant against a respondent under the Act is a tenancy order. This occurs where the respondent is either the sole tenant or a joint tenant with the child or applicant on behalf of the child and the premises to which the tenancy relates is the household residence of the child. The order is made where the court is satisfied that it is for the protection of the child or is in the best interest of the child. It may also be issued ex parte in circumstances of threats of violence against the child or where physical or mental injury has been caused to the child and is likely to be continued. Under section 13 the court may incorporate a term that the respondent be excluded from the premises although he continues to meet his obligations under the tenancy agreement with the landlord.

286. The Domestic Violence Summary proceedings Act is a very important and widely used piece of legislation in the state in relation to domestic violence and child abuse. It legislated in an area that the law had not previously intervened. That is in the household where the abuser may feel some sense of freedom to carry out acts of abuse without external intervention. It represents a whittling away of the previously thought of unrestrained right of parents to deal with matters pertaining to the upbringing of a child. The law now has a final word as to whether a parent, guardian or carer of a child has exceeded what is permissible.

287. The Family Court administers the Act and in the majority of cases the respondent has a right of audience before the court determines whether his behaviour crosses the line so as to warrant the grant of an order. The applicant is able to file an application at the very modest cost of \$1.20 which cost has not changed since the inception of the Act. Legal representation is not an essential as an applicant or respondent can present his case in a semi-formal setting and with counsellors and social workers available in court.

288. The court under section 16 of the Act may make an ancillary order granting the child the use of furniture, household appliances and household effects in the dwelling house to which an order relates for such period as the court deems fit though such articles may be the property of the excluded respondent. Under section 18 the hearing is in camera and reports of proceedings are restricted under section 20. Significantly the court may order the parties to the application (including the child) to participate in counselling. Failure to comply with a counselling order may result in a fine of five hundred dollars being imposed upon the defaulter. The power to order counselling means that in cases where the default is not particularly serious the court can actively pursue family reunification even prior to making an order under the Act.

289. This legislation has somewhat superseded legislation such as Juveniles Act which, also contains provisions addressing the issue of child abuse and neglect. Section 8 of that Act addresses the issue of cruelty to a juvenile.

8 (1). Any person who, having attained the age of seventeen and having the custody charge or care of a juvenile, wilfully assaults, ill-treats, neglects, abandons or exposes such juvenile, or causes or procures him to be assaulted, ill-treated, neglected, abandoned or exposed, in any manner likely to cause that juvenile unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb or organ of the body, and any mental derangement is guilty of an offence and liable –

- (a) on conviction on indictment to a fine of five thousand dollars and to imprisonment for two years; and
- (b) on summary conviction, to a fine of fifteen hundred dollars and to imprisonment for three months.

290. Section 8(2) provides the following:

8 (2) For the purposes of this section-

- (a) a parent or other person legally liable to maintain a juvenile shall be deemed to have neglected him in a manner likely to cause injury to his health if, being able to do so, such parent or other person fails to provide adequate food, clothing, rest medical aid or lodging for him;
- (b) where it is proved that the death of an infant under three was caused by suffocation (not being suffocation caused by disease or the presence of any foreign body in the throat or air passage of the infant) while the infant was in bed with some other person who has attained the age of seventeen and was at the time going to bed under the influence of any drink or drug, then that other person shall be deemed to have neglected the infant in a manner likely to cause injury to the infant's health;
- (c) any person, having attained the age of seventeen, who; gives, or causes to be given, or sells, or causes to be sold, to any child under the age of ten any intoxicating liquor, except under the order of a duly qualified medical practitioner, or in a case of sickness, apprehended sickness or other urgent cause, shall be deemed to have ill treated that child in a manner likely to cause injury to the child's health.
- (d) any person, having attained the age of seventeen and having the custody, charge or care of any child under the age of seven, who allows that child to be in any room or yard containing a stove, coal-stove or open fireplace not sufficiently protected to guard against the risk of that child being burnt or scalded, without taking reasonable precautions against the risk, and by reason thereof the child is killed or suffers serious injury, shall be deemed to have neglected the child in a manner likely to cause injury to that child's health:

Provided that neither this paragraph nor any proceedings taken hereunder shall affect the liability of any person to be proceeded against by indictment for manslaughter or for any offence under Chapters VIII, IX, XI, and XII of the Criminal Code.

291. It is rare for proceedings to be brought under this provision as prosecutors prefer the much higher penalties contained under the Criminal Code. The provision highlights the principal categories of neglect and abuse. Under section 9 a person whether having the custody or charge of a juvenile or not who causes or procures the juvenile to be in any street, premises or place for the purpose of begging or receiving alms commits a criminal offence under the Act.

292. In any instance where a magistrate receives information that a juvenile is being abused or neglected he may issue a warrant for the juvenile to be removed from the abusive situation until such time that the juvenile can be brought to the court and under that warrant and under that very warrant he may order the apprehension of the accused perpetrator. The court then has power under section 12 of the Act to commit the juvenile to the care of a fit person willing to undertake the care of him, require the parents or guardian of the juvenile to enter into a recognisance to exercise proper care and guardianship, place the juvenile under supervision or with a probation officer for a period not exceeding three years or commit him to an approved school. The Family Court also administers this Act.



293. The *Domestic Violence and Matrimonial Proceedings Act Cap 227* deals with matrimonial injunctions issued by the High Court. A party to a marriage may make an application for an injunction against another party restraining the respondent party from using violence against a child living with the applicant. The court may exclude the respondent from the matrimonial home and attach a power of arrest to the injunction. Even where a person is able to apply to the court under this Act that person because of the expense and delay that may be involved in moving what is a High Court procedure may opt to proceed for a protection order under the Domestic Violence (Summary Proceedings) Act.

294. The Ministry of National Mobilisation is active in making the nation aware of issues pertaining to child abuse and neglect. The Family Affairs Division is an open public forum for nationals to bring any issue pertaining to children and their welfare to the attention of the court. Increasingly the child is no longer regarded as under the exclusive authority of the parent. The rights of the child and the right of the state to intervene on behalf of the child into the parent's or guardian's approach to parenting are now recognised as matters of law. Legislation such as the Domestic Violence (Summary Proceedings) Act demonstrates that the state is prepared to flex its authority in areas that parents and guardians considered their exclusive domain.

295. The promotion of the awareness of child abuse and the yearly recognition of child abuse awareness and prevention month as well as child month demonstrates the desire of the State to place the child at the forefront of its desire to move forward. The approach of the Family Court is deserving of commendation. The Court has discarded the rigours of strict formality and without sacrificing the seriousness that matters brought before the court deserve it has managed through the president to treat deserving matters as a forum for discussion, restoration of relations and reunification. It has been very successful in this venture. Even in matters of maintenance it is difficult for the citizen within the state to miss the often relayed advertisement of the Court asking persons to maintain and support their children.

296. That approach of the Court as well as the efforts of the Ministry of National Mobilisation reveals a strong campaign to combat and eradicate child abuse and neglect from the state. The Ministry of National Mobilisation has already launched its Child Abuse Protocol which deals with the reporting, response and treatment of situations of child abuse and neglect.

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## **7. BASIC HEALTH AND WELFARE**

**(Articles 6, para. 3, 23, 24, 26, 27 and 18 para. 1-3)**

297. Every civilised society maintains the provision of health services to its citizens as one of its primary objectives. An unhealthy nation could not be a productive one. It is especially important that the health and welfare of the children of the nation be given priority. A nation that neglects the health and welfare of its children will experience limited progress in the future.

298. The state has a responsibility to ensure that its children are provided with the necessary facilities and environment for their survival from childhood into adulthood. As has been seen, the Constitution of the state guarantees the right to life and this is especially so in the case of Children.

### **(a) Disabled Children (Article 23)**

299. There is no legal provision in the state that discriminates against disabled children. It is however recognised that disability may take a physical form or a mental/emotional form. Part VI of the Education Act Cap 202 of the Laws of the state deals with the education of persons with special needs. Section 112 provides the following:

112 (1) The Chief Education Officer shall provide a special program for any student of compulsory age and may provide such education for student beyond that age, who by virtue of intellectual, behavioural, physical or multiple exceptionalities is in need of special education.

(2) A student who is entitled to a special education programme shall have the programme delivered in the least restrictive and most enabling environment that resources permit, and that is considered practicable by the Chief Education Officer in consultation with the principal and professional staff of the school and the student's parents, having due regard to the educational needs and rights of other students.

(3) A special education programme may take the form of an individual education plan tailored to the specific or individual needs of the student.

(4) If it is determined that a student will require an individual education plan, the cost of developing, providing and maintaining the plan shall be apportioned between the parents and the Ministry, in the manner prescribed by the regulations.

300. By section 13 the principal in consultation with the professional staff of his school shall determine whether a student attending the school has special educational needs. The same concept is applicable to a student of compulsory age who is not attending school. Before a determination is made the parents shall be informed and their consent obtained before an assessment of the child is done. A parent may make a request for a child to be assessed. There is a right of appeal against a determination under section 114 of the Act and under section 115 the Minister may establish an advisory council called the Council on Special Education.

301. Within the state there is a non-governmental body known as the National Society of Persons with DisAbility that act in the interests of disabled children and persons with disability generally. The society has been in existence for more than 20 years. It is an NGO governed by a Constitution which states that it is a society of persons with disabilities managed by persons with disabilities. Under the constitution 66% of the executive must be persons with disabilities.

302. The Society works with the Ministry of National Mobilisation and receives an annual subvention from the Government of the state. The society provides scholarships to children with disabilities in schools and also provides physiotherapy and counselling. It recommends referrals to the Association of Persons with Disabilities (Helping Hands Center) for children with severe disabilities. The Society also advocates for and promotes effective measures for the prevention of needless disability and for the education and training, rehabilitation, employment and welfare of persons with disabilities. These programs facilitate the integration of persons with disabilities into regular Vincentian society.

303. In terms of the welfare of children with disabilities the society engages field officers and counsellors to make home visits and conduct assessments. If upon making a home visit a child with disability is found to be not attending school the Society ensures that the child is placed in one of the three schools within the state for children with special needs or the helping hands centre where the disability is severe. The Society pays special attention to such children and ensures that all their needs are met.

304. The Ministry of Health has the primary responsibility for the health and welfare of children with disabilities it is much assisted by the Society and often consults with the society which regularly reports to it. The important role of the Society is especially seen in the 3 week summer programme that it hosts annually for children between the ages of 7 and 13 years with disabilities. It regularly hosts workshops and broadcast radio and television programmes particularly during the month of November which is celebrated as Disability Month. It has a regular radio programme Disability in focus which is a sensitisation and education programme. There is also the life to live registration programme for monitoring and encouraging children living with disabilities

**(b) Health and Health Services ( Article 24)**

305. In keeping with its responsibility to provide health care services to citizens of the state the children of the state has access to free health care and services at all state operated health institutions. There is no difficulty in accessing any of the institutions and it is the practice to provide special care and attention to any child admitted to or attending any of the state institutions for care or treatment.

306. The Health legislation makes general reference which would include the children of the state. Matters pertaining to health remain the mandate of the Ministry of Health which operates through the nine health districts in the state. The Milton Cato Memorial Hospital which was formerly the Kingstown General Hospital is the principal health institution in the state. Child and maternal mortality remains low within the state as there is general improvement in the provision of Health care services.

307. The Ministry of Health continues to provide primary health care for the children of the state through its child health care programmes delivered through its community nursing service. Through this service community health workers visit homes within the community and interview the occupants of the home. Through this approach useful information is gathered with respect to particular needs. The immunization of children continues through this programme to ensure that no child is omitted.

308. The Community Nursing Service continues its School Health Service programme in providing primary health care to school children in all schools throughout the state. The principals and teachers who have care and control of the children during school hours are consulted for information pertaining to the children attending the particular school. This facilitates the efficiency of the service.

309. It is part of the programme of the Ministry of Health to promote health education within the schools of the state. Through this programme students are educated about the importance of basic hygiene and taught basic health practices. The children are also educated about their rights with respect to medical treatment. As is already seen section 4 of the Age of Majority Act provides the age of sixteen years as the age where a child can consent to surgical, medical or dental treatment that would otherwise be a trespass to his person without having to seek the consent of his parents.

310. The Ministry of Health and the Environment continues to provide family life education to young persons and adolescents on matters occurring in life that concern their health and survival such as human sexuality, HIV/AIDS awareness and prevention (through the HIV/AIDS unit), Drug abuse and child abuse amongst other subjects. Some of these programs are delivered in the school environment by specific groups and organisations working through the Ministry of Health and the Environment and the Ministry of Education. An example can be seen with respect to the program on drug abuse presented by representatives of the police service through the Drug Abuse Resistance Education (DARE) programme. They travel from school to school throughout the state to deliver their presentation on drug abuse.

311. Child nutrition is an area of principal concern for the Ministry of Health and the Environment. The incidence of malnutrition in the state has continued its steady decline. The nutrition support programme of the Ministry is now well advanced and there is a lower incidence of groups labelled as vulnerable within the state. Distant and remote communities now have easy access to district clinics and community centres where they can receive the benefit of the Ministry's supplementary food basket. Community health workers who are based within all of the state's health districts visits individual homes and assess the nutritional needs then recommend the appropriate action to be taken.

312. The Ministry is also active in the schools of the state where it has continued its school feeding programme. Most schools now provide meals to children during the luncheon period at a modest or no cost in appropriate circumstances. The diet is approved and controlled by the Ministry and supervised by the school officials. Meals are prepared in most state owned primary schools under the supervision of the Ministry of Health and also in a number of secondary schools. The state bears the cost of this programme at present.

313. The Ministry of Health through its Nutrition Support programme continues to conduct educational programmes within and outside the school on matters concerning healthy diet contents. Programs and demonstrations continue at clinics and health centres in the state. NGO's such as the Salvation Army continue to provide valuable assistance to the state in the continuation of its kitchen feeding programme geared towards schoolchildren. This programme predates the Government school feeding programme.

314. The state has completed its school rehabilitation and improvement project in the year 2010. In that programme it refurbished and improved the schools facilities so as to provide a healthy and conducive environment for learning. Areas such as toilets and kitchens were given particular attention as these were areas of concern in the past. A system of monitoring is in place to ensure that these facilities are up to standard. Most homes within the state are comprised of modern facilities and amenities. This has resulted in the state having to cease the provision of public water stations

131.

and bathroom facilities in many communities as such facilities are found in most Vincentian homes.

315. The state continues to be challenged by the incidence of pregnancy amongst teenage girls attending institutions of learning. It is no longer the situation that a pregnancy in school will represent the end of the child's educational career. It is now generally the practice that the child is able to return to school after the pregnancy to continue her education. The law criminalises sexual intercourse with a child under the age of fifteen years. There have been instances of pregnancies amongst girls below the age of 15 years in the state. These situations provide many challenges as the child is not often forthcoming or willing to provide details that will lead to criminal investigations and prosecutions by the authorities. There have been convictions in some instances.

316. The Ministry of Health is robust in its programme to eradicate the incidence of teenage pregnancy amongst school attending girls. It has sought to improve the content of its Family Planning Programme by utilising modern art forms and techniques. The Saint Vincent and the Grenadines Planned Parenthood Association continues its close working relationship with the state in this regard. The programme of the Ministry of Health especially targets schools.

### (c) Social Security and Childcare Services and Facilities (Article 26 and 18 Para 3)

317. Social security is generally applicable to the gainfully employed Vincentian Adult. **The National Insurance Act Chapter 296** was first passed in 1986. The Act provides a national social security service for the Vincentian public. The Act under section 18 (1) (b) is relevant to only those children who are over the age of sixteen years and gainfully occupied in an insurable employment set out in the Second Schedule to the Act. The Act at section 18(5) however provides that regulations made under the Act may provide for the insurance of persons under the age of sixteen years. Under section 26 (d) the category of survivor's benefit is applicable to the child of an insured person who dies.

318. Regulation 43 of the National Insurance Act deals with the issue of the entitlement of the children of a deceased insured worker to survivors benefit. Regulation 43 (1) follows on from Regulation 42 where

provision is made for the children of the deceased generally to include the unmarried children of the deceased and who were wholly or mainly maintained by him at the time of his death. Under regulation 43 (2) the benefit is payable to the widow or widower or to the person having custody of the dependent children at the time the benefit is due. This will be deemed an orphan's grant or pension in the case of a child with no parent or step-parent and payable to the person having custody as per regulation 43 (3).

319. The pension payable to the child under Regulation 43 continues until the child is sixteen years but is extended until the age of eighteen years if the child is continuing in full time education. If the child is suffering from invalidity the payment continues beyond the age of sixteen until the invalidity ceases. Any payment of the survivor's grant or benefit under regulation 43 continues only for so long as the child continues to reside with the widow, widower or person having custody of the child. The regulation contains a definition of child for its purposes. The word child is stated to include adopted children, step-children and children born out of wedlock.

320. The only other legislation that is in the nature of social security is the **Public Assistance Act Chapter 299** this is one of the most widely used legislation in the state as it is the means by which the state provides assistance to the indigent and poor persons living within its borders. The Act is applicable to children and the assistance provided includes but is not limited to educational materials and medical supplies.

321. The Family Affairs Division of the Ministry of National Mobilisation also presents assistance to the children of the state. The division assists with financial contributions for the benefit of children of indigent families. It assists in the provision of food, clothing and shelter (mainly in cases of emergency and for temporary periods). The division educates and assist families in making adequate provision for themselves and their dependent children. Sometimes this is done by assisting parents or adult siblings in finding gainful employment.

322. The state as part of its Educational Revolution has completed its early childhood education project. This followed from its national adult education exercise which was a resounding success. By way of this project the state made additions to or reconfigured primary schools operated by the state to include a pre-school/early childhood education section comprised of staff paid for by the state. This major and significantly successful project serves several purposes. It merges child care with early childhood education, relieves the financial strain and burden on parents who have to tread the narrow difficult line between work and caring for their children and benefits the state in terms of the early exposure of the child to learning with the resultant future productivity of the nation.

323. The provision of child care services is widespread throughout the communities of the nation. This is mainly on a commercial level and can be regarded as the fruit borne by the pioneers of child care services and education within the state being the British Save the Children Fund started in 1963 and the Canadian Save the Children Fund started in the year 1969. These two organisations combined and became VINSAVE in 1986. VINSAVE is an autonomous body managed by a board of directors and its own staff. The organisation has over the years of its existence provided training in early childhood development, day care and the training of pre-school teachers. It is concerned with children between the ages of 0-5 years.

324. VINSAVE receives an annual subvention of \$25,000.00 and a pre-school subvention of \$2000.00 from the state. It also operates income generating projects such as a sewing and poultry project in Layou and Byera managed by community members. This vibrant NGO can take credit for the nationwide presence of private and public pre-schools and child care centres.

**(d) Standard of living (Article 27 Paras 1-3)**

325. It is the responsibility of the state, the parents and the guardian of the child to ensure that the child receives an adequate standard of living. The incidence of poverty exists within the state. This is especially so in rural communities. The state is frequently challenged by the forces of nature and the population has to survive on meagre resources and limited opportunities. Vincentian families particularly those resident in the rural communities face many difficulties in meeting the needs of their children.

326. The state has been relentless in its bid to stamp out poverty from the state and to lift the living standards of the average Vincentian particularly the child. The education revolution has been remarkably successful in terms of raising the awareness of the average Vincentian to his circumstances. The State has adopted a no child left behind policy as it seeks to expose all children of the state to secondary education. In the past many children did not progress beyond the primary school level. The state through the Ministry of Education now maintains a no tolerance approach to this. The state has from time to time made grants to all school children in the state. It has its one laptop per child programme in progress.

327. The state through the Ministry of Housing, Informal Human Settlements, Physical Planning, and Lands and Surveys is presently fulfilling its objectives pertaining to the national low income housing project. Through this project many low income Vincentian families have been able to obtain homes at low cost through the Ministry of Transport. The Ministry has added a no-income housing aspect to the project. Through this persons with real property can obtain a home built by the state at no or negligible cost. The state assesses the circumstances of the individual applicant and determines what is suitable in the particular case. Many children have experienced improved living standards through this project. Areas such as Diamond, Byera, Peters Hope, Green Hill, Brighton, Ottley Hall, Clare Valley and other areas have been the locale of the state's housing development project.

328. The Ministry of Health and the Ministry of National Mobilisation through their various agencies have embarked upon projects to ensure that the Vincentian child is exposed to an adequate standard of living. The work of the Family Affairs division is pivotal in such instances and as already noted it provides food, clothing, shelter and financial assistance in appropriate instances. It was also seen that the Ministry of Health through the clinics and health centres provides food baskets and conduct home visits to assess needs and circumstances that may require direct intervention. The state has managed to maintain adequate standard of living for its children and that the programmes of the several Ministries involved have been successful.

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**8. EDUCATION LEISURE AND CULTURAL ACTIVITIES**  
**(Articles 28, 29 and 31)**

329. The Government of the state passed the Education Act in 2006. This is a major piece of legislation comprising of 154 sections. It repealed the Education Act of 1992 and seeks to put in place the state's objective of delivering education to all sectors of Vincentian society. The state recognises its people as its most important resource and is determined through education to realise the full potential of its people.

**(a) Education, including vocational training and guidance (Articles 28, 29, 31)**

330. The Education Act 2006 came into operation on the 27<sup>th</sup> December 2006. Section 3 of the Act stipulates the goals and objectives of the state in relation to education. The general goals and objectives stipulated at Section 3(2) are the following:

3(2) The general goals and objectives are-

- (a) to establish a varied, adequate and comprehensive education system that is characterised by excellence;
- (b) to promote the education of the people of Saint Vincent and the Grenadines by establishing education institutions or schools which will foster the spiritual, cultural, moral, intellectual, physical, and social development of the community;
- (c) to frame all educational policy so as to provide a more valid, comprehensive and relevant educational service directly related to the changing needs of Saint Vincent and the Grenadines;
- (d) to effectively execute the educational policy of the Government;
- (e) to promote lifelong knowledge; and
- (f) to establish a co-ordinated system organised in accordance with this Act.

331. The specific goals and objectives of the legislation are stated at section 3(3) as follows:

3(3). Without prejudice to the generality of subsection (1) the specific goals and objectives are-

- (a) to encourage the development of basic knowledge and skills in all persons including but not limited to-
  - (i) literacy, listening, speaking, writing, numeracy, mathematics, analysis, problem solving, information processing and computing,
  - (ii) critical and creative thinking skills for the modern world;
  - (iii) an understanding of the role of science and technology in society and related skills,
  - (iv) appreciation and understanding of the creative and performing arts,
  - (v) physical development and personal health and fitness;
  - (vi) The creative use of leisure time, and
  - (vii) Technical and vocational skills.
- (b) to develop a sense of self-worth and self discipline in all persons through a positive educational environment;
- (c) to promote understanding of the importance of the family and the community;
- (d) to provide opportunities for everyone in Saint Vincent and the Grenadines to reach their maximum potential;
- (e) to promote understanding of and respect for the constitution, laws and national symbols of the state;
- (f) to promote the principle of gender equality;
- (g) to promote knowledge and understanding of the history, language, culture, rights and values of Saint Vincent and the Grenadines and its changing role in contemporary society;
- (h) to increase awareness and appreciation of the natural environment of Saint Vincent and the Grenadines and the need for its protection by all persons;
- (i) to promote a Caribbean identity by encouraging regional co-operation and integration;
- (j) to promote national pride, social cohesion and discipline;
- (k) to develop an understanding of the historical and contemporary role of labour and business in society; and
- (l) to prepare students for participation in life in Saint Vincent and the Grenadines and in global society having regard to the changing nature of that society.

332. Section 14 of the Act provides a right to all persons in the state to an education subject to available resources. Under the interpretation provision at section 2 the compulsory age is described to mean from five years to sixteen years and section 15 of the Act makes it the responsibility of the Chief Education Officer to provide for every person of compulsory age who resides in the state an educational programme. Such programme may be in a public school or assisted private school, a private school, special education or a home education programme.

333. In the case of a student directed to enrol in a programme in a private school the state shall pay the fees and other costs consequent on the student's attendance at the programme. Under section 16 neither the student nor his or her parents may be charged tuition fees nor other costs for attendance at a public school or an assisted private school except a student who is not a citizen of a member state of CARICOM or of a commonwealth country who may be charged such fees. Students may however be charged for books and specialised services.

334. Under section 21 subject to the Act a parent of a child of compulsory school age may choose for his or her child education in a public school, an assisted private school, a private school or home education in accordance with section 111.

335. Under section 28 of the Act a child may be admitted to a public pre-primary school or an assisted private primary school if the child has attained the age of three years but will not attain the age of five years during the academic year. A child may be admitted to a primary school or assisted private primary school if the child has attained the age of five years at the beginning of the academic year or will attain that age within the academic year. There is an exception to the age prescribed for admission if the child has to the satisfaction of the chief education officer demonstrated that he or she is competent to be admitted.

336. As it relates to secondary schools a child may be admitted to a public secondary school or an assisted private secondary school if the child has attained the age of eleven years at the beginning of the academic year or will attain that age by the following September. A child below the stipulated age may be admitted to such schools with the written permission of the Chief Educational Officer on grounds of exceptional ability and consistently high academic performance. A child shall not be retained in a public or assisted private secondary school without the written permission of the chief education officer.

337. Section 27 of the Act which deals with non-discrimination was dealt with at paragraph 56 and 57 above. The Act makes it the duty of the parents of a child of compulsory school age to cause the child to regularly attend school. Such a child may be excused from school by reason of school closure, illness, physical or mental disability, permission by the principal, participation in celebrations, observances or religious activities, expulsion pursuant to the Act, home education or special education, engagement in work experience or other educational activity authorised by the principal or successful completion of compulsory school attendance.

338. A parent may apply to the Chief Education Officer for a certificate of exemption from attendance under the Act. The Act provides at section 41 for school attendance officers to assist in the enforcement of compulsory school attendance. Such officer may apprehend and deliver a child found to be absent from school and who is of compulsory school age to the school he is to attend or to his parents. The officer may enter premises and make enquiries or question a child who appears to be of school age but is not attending school. At section 47 a parent who neglects or refuses to cause the child to attend school without an excuse under the Act commits an offence punishable by a fine of one thousand dollars.

339. Section 56 of the Education Act provides for the stages of education. The three basic categories are primary education, secondary education, and tertiary education. The Minister may include early childhood education special education, adult education and distance education. All categories have been included in the education system of the state. As has been indicated the state is pursuing its early childhood education policy. Public pre-primary are now departments of most public and public assisted primary schools. Specific provision is made for this at section 57 of the Education Act which at section 58 provides for a board of management of pre-primary and primary schools established by the Minister of education in the state. Section 60 similarly provides for the board of management of public secondary schools. The board of management of public schools shall ensure under section 69 of the Act that the premises of the school are kept in a sanitary condition satisfactory to the minister.



340. Under section 74 of the Act no person can operate a private educational institution or school within the state unless a permit is held by that person issued by the Minister of education. Prior to issuing a permit under the Act the Minister is mandated by section 76 to cause the proposed school premises to be inspected and may not issue the permit unless satisfied that the premises are safe and suitable, contains suitable furniture and equipment, provides adequate and suitable accommodation, provide efficient and suitable instruction, the school has access to adequate land for the recreation of students, neither the proprietor nor the principal has been convicted of or pleaded guilty to an offence under the Act or a criminal offence in relation to the operation of a private educational institution or school in the five years preceding the application for the permit, the institution will have adequate human and material resources and the prescribed fees have been paid.

341. The Minister of Education may determine the maximum number of students who may be admitted to the services provided by the private educational institution or private school and the capacity of the facilities. Section 82 of the Act specifically deals with vocational permits and requires that such permit must specify the vocational programmes the institution is authorised to perform and any supplementary vocational training for which the permit is issued.

342. By virtue of section 85 of the Act Private educational institutions or private schools are required to keep a general liability insurance policy or other form of indemnification in the maximum amount prescribed by the Minister. Under section 86 such institutions are required to inform the Minister once a year of the names and qualification of staff members and of any change in the name of the institution, of any amalgamation sale or transfer affecting the institution or school, that the institution is unable to provide all or any of the services that it is permitted to provide or of any change which renders the information provided for the issue, renewal or modification of the permit inaccurate.

343. Sections 87 and 88 provides for visits to private educational institutions and private schools. Such visits which may be made during school hours may be conducted by the Minister the Chief Education Officer or any other person authorised in writing by the Minister. Such visit would be an inspection under the Act and the proprietor of such an institution or school must keep it open during school hours to such a visit. After such a visit the Minister if satisfied that such institution or school has ceased to be conducted in accordance with the provisions of the Act may serve upon the proprietor a notice to conduct the school pursuant to the Act.

344. The health and sanitary facilities for private educational institutions and private schools are required to be the same as for other educational institutions and schools according to section 93 of the Act. To prevent the spread of any disease or danger to health the Minister may order the closure of any private educational institution or school or any classroom at such institution or school.

345. The Act requires that a teacher employed in a private school must possess the minimum level of qualifications required by a teacher in an equivalent public school under section 94. The Chief Education Officer has the power under the section to declare a person who does not possess the minimum qualifications to be unfit for employment as a teacher in a private school or educational institution and that person may not be employed.

346. Assisted private educational institutions and assisted private schools are dealt with at Division 4 of the Act. Under section 95 such schools are those receiving funds or any other assistance from the state for, maintenance of the institution or the school, provision of furniture or equipment, building of an extension to the institution or school or its rebuilding, the payment of the salaries of the staff of or for any other purpose approved by the Minister. Other assistance includes the provision of teachers by the state.

347. An assisted private educational institution or assisted private school shall come into existence by agreement between the minister and the proprietor of the institution as provided for in section 96. The

agreement which shall be in writing must specify the duration of the agreement and the conditions, terms, rights and responsibilities of the respective parties. Under section 98 an assisted private institution or school is managed by a board of management as if it were a public school. A religious denomination may however establish a board of management for each of its assisted private school and such board shall manage the school in accordance with the Act.

348. Part V of the Act deals with public educational institutions. The Minister of education has responsibility for the establishment of such schools and a teachers college or technical college may be established as a part or department of another public educational institution. The term public educational institution includes vocational schools. In relation to such institutions independently established the Minister of education may by order publish in the gazette the curriculum, criteria for admission, fees, appointment of staff, the awarding of degrees or diplomas and matters of management. Under sections 103 and 104 of the Act he may make regulations in relation to matters pertaining to the professional behaviour of academic staff, conduct and discipline of students and trainees, conduct of members of the public and matters of technical and vocational education and training.

349. Specific provision is made for the provision of teachers colleges at section 105. The Saint Vincent and the Grenadines community college which, is established by Act number 28 of 2005 is not affected by the Education Act 2006. The college is established as a body corporate governed by its own rules and regulations.

350. Early childhood education is dealt with under the Education Act at Part VI Division 1. The Act provides that such services may be provided by the Minister or private schools. The Minister may establish a council on early childhood education to advice on rules and guidelines. It is the responsibility of the Minister of Education to provide regulations under the Act pertaining to early childhood education.

351. Home education is dealt with at Part VI Division 2 of the Act. In accordance with section 111 a parent of a child of compulsory school age may provide, at home, a home education programme for the child. Prior to commencing such a programme and in every year the parent must register the child with the chief education officer. An educational plan must be prepared and lodged with the chief education officer complying with the following:

- (a) The initial plan must be prepared and provided to the Chief Education Officer three months prior to the commencement of the home education programme;
- (b) The plan shall include a description of the learning activities for the student that will comply with the goals and objectives set out under section 3 (3);
- (c) The plan must be based on the national curriculum as established by the Minister under Part VIII; and
- (d) The plan shall be for a maximum period of three academic years with details for each year; and may be extended subject to the approval of the Chief Education Officer.

352. Despite the home education programme the child may be required to attend courses provided by the Ministry and subject to conditions receive educational resource materials provided by the Ministry and may use facilities and equipment of a public school or an assisted private school.

353. The Chief Education Officer shall in respect of a child engaged in a home education programme do the following under the Act:

- (a) Assessment of the child's achievement on a regular basis and communicate the result to the parent;
- (b) Advise the parent if, in the opinion of the Chief Education Officer, the child is not making progress in the programme; and
- (c) Provide the parent with recommendations which will assist the child to improve his or her level of achievement.

354. Special education is dealt with at Part VI Division 3 of the Act. Section 112 makes it the responsibility of the Minister of Education to provide a special education programme for any student of compulsory school age which programme may be provided beyond such age for a student who by virtue of intellectual, communicative, behavioural, physical or multiple exceptionalities is in need of special education. A student in need of special education shall have the programme delivered in the least restrictive and most enabling environment that resources permit and that is considered practicable by the Chief Education Officer after consultation with the principal and professional staff of the school and the students' parents, having due regard to the educational needs and rights of other students. The special education may take the form of an individual education plan tailored to the specific or individual needs of the student. The cost of providing and developing the individual education plan shall be apportioned between the parents and the Ministry as prescribed by regulations.

355. Under section 113 of the Act the principal shall having consulted with professional staff and the parent of a student, whether attending or not attending school for any reason, determine whether the student has special education needs and the appropriate programme to meet those needs. The parent of the child must be informed and the parent's consent obtained for an assessment to be undertaken. The assessment must be on a multi-disciplinary basis and the results shall be provided to and explained to the parents of the child. The parent of the child must be consulted prior to a determination being made and during the implementation of the special education programme. A parent may make the request for a determination and has a right of appeal. A determination for special education is not restricted to a child with disability.

356. The Act sets out the qualifications required for a person to be employed as a teacher in a public school or assisted private school. At section 119 the teacher must be eighteen years of age and passed at least six GCE 'O' Level or CXC subjects including English language or its equivalent to be a primary school teacher. To be qualified as a secondary school teacher a person must also pass two GCE 'A' level subjects or their equivalent. The Minister of Education may vary the qualifications and may prescribe equivalent qualifications. Applications for appointment as a teacher must be made to the Chief Education Officer but appointments are made by the appropriate Service Commission.

357. In relation to the effect of disease section 33 of the Act provides that a student who is suffering from or who has been exposed to a contagious disease shall not be admitted to or be permitted to remain in any educational institution or school. Where the principal of an educational institution or school is informed or has reason to suspect the presence of contagious disease in the institution or school he shall immediately report the same to the parents of the students concerned, the chief education officer and the chief medical officer. The Minister of Education may direct the temporary or permanent closure of a school as a result of the outbreak of any contagious or infectious disease under section 35 of the Act. In an emergency situation the principal may close the educational institution or school temporarily then inform the Chief Education Officer as soon as practicable thereafter. In the case of a permanent closure the Minister is mandated by the Act to provide alternative accommodations to the students affected by the closure.

358. In relation to discipline Part III Division 5 contains the provisions that deal with the subject matter. Under section 50 it is the principal of a public school or assisted private school who may after consultation with the school's board of management, if any, make rules governing the attire, conduct and discipline of students. The rules so made must be circulated to the parents of the students and do not pass into effect unless approved in writing by the Chief Education Officer. The Act require that the rules made affecting the students be posted in conspicuous places within the school and shall be reviewed with the students of the school at the commencement of each academic year. The rules are to be applied without discrimination to all students and shall be consistent with the Act and the regulations.

359. Section 51 sets out the general power of punishment in relation to students attending a public school or assisted private school. Such punishment as is approved by the chief Education Officer may from time to time

as the occasion arises be administered in schools. Degrading or injurious punishment shall not be administered. A teacher, in the presence of another teacher may detain a single student after school hours after prior notice of the detention is given to the parent of the student.

360. Under the Act section 52 deals with the subject of corporal punishment in schools. Corporal punishment is not encouraged by the state for the purpose of enforcing discipline in schools. As mentioned earlier this has been the cause of litigation in the courts of the state as such forms of punishment can easily be considered as inhumane and degrading. It is not an easy task to render corporal punishment that falls outside such classification especially in the context of a school environment. Section 52 provides the following:

52. (1) Subject to subsections (6) and (7), a principal may direct that corporal punishment be administered as a last resort to a student-

- (a) in accordance with subsection (2); and
- (b) if no other punishment is considered suitable or effective in the particular case.

(2) Corporal punishment may be administered-

- (a) by the principal, deputy principal, or a teacher specifically designated by the principal for the purpose;
- (b) in the principal's office or other private room in the school in the presence of another teacher;
- (c) using an instrument prescribed by the legislation; and

(d) in conformity with any written guidelines issued by the chief education officer.

(3) Where corporal punishment is administered an entry shall be made in the punishment book which is to be kept in the school for the purpose of indicating the nature and extent of the punishment and the reason for administering it.

(4) A person other than a parent, or a person mentioned in subsection (2)(a), who administers corporal punishment to a student on school premises commits an offence and is liable on summary conviction to a fine of one thousand dollars.

(5) A person who administers corporal punishment to a student on school premises contrary to paragraph (b), (c) or (d) of subsection (2) commits an offence and is liable on summary conviction to a fine of one thousand dollars.

(6) The Minister may, by an order published in the Gazette, suspend or abolish corporal punishment in all schools and a person who administers corporal punishment contrary to such order commits an offence and is liable on summary conviction to a fine of two thousand dollars.

(7) An order made under subsection (6) shall be laid before the House of Assembly within three months of the date of its making and is subject to annulment by a resolution of the House of Assembly supported by the votes of a majority of the members present and voting.

361. In relation to suspension a principal may suspend a student for up to two school days for any breach of the responsibilities specified in section 17. These responsibilities include observance of the code of conduct for students and other rules and policies for students specified by the Ministry, regular and punctual attendance of classes, participation in educational programmes, diligence in pursuing the prescribed curriculum, participation in extra-curricular activities, cleanliness, general deportment, attire, courtesy, and respect for the rights of other persons. Upon suspension the parents shall be informed and a meeting shall be convened as soon as possible with the parents and student.

362. If there is no resolution in two days the principal shall readmit the student or suspend the student for an additional number of days not exceeding seven for further review with the student and parents and to determine appropriate corrective action. If there is still no resolution of the matter then the matter shall be reported to the Chief Education Officer in writing and that officer shall proceed with the matter in accordance with section 55 of the Act.

363. In cases of gross misconduct, persistent breaches of school rules, unreasonable refusal to be inspected, examined, immunised or treated by a medical practitioner or registered nurse, destroying or damaging school property without lawful excuse, assault on a principal, member of staff or other employee of the school, student of the school or any other person lawfully present in the school, possession of an article made or adapted for use for causing injury or possession of alcohol or illegal drugs or substances a principal may suspend a student for a period not exceeding seven days in accordance with section 54 of the Act.

364. When there is a suspension under section 54 the principal must inform the parents of the student in writing and also submit a written report to the school's board of management if any and the Chief Education Officer. The principal must then meet as soon as possible with the student and that student's parents to review the circumstances surrounding the suspension and to determine corrective action which may include counselling. If there is no resolution within the ten days then the principal shall so inform the chief education officer who shall proceed in accordance with section 55 of the Act.

365. Under section 55 of the Act the Chief Education Officer after receiving notification under sections 53 and 54 and after consultation with the principal and board of management of the school if any extend the suspension for a specified number of days to enable enquiries to be made. Upon making enquiries the Chief Education Officer may order the re-admittance of the student or that the student be transferred to another school including a special school. The Chief Education Officer may however expel the student on the recommendation of the principal in particular cases.

366. In the event that the Chief Education Officer orders expulsion he must make arrangements for the alternative education of the student. A parent of a suspended minor student or a parent or sponsor of a suspended student over eighteen years of age may make representations to the Chief Education Officer within seven days of the suspension with respect to the suspension. The Chief Education Officer shall make a decision within ten days of the representation being made and during this time the student shall remain suspended. The Chief Education Officer shall inform the student, parent or sponsor of a student of the right to appeal to the Minister against his decision.

#### **(b) Aims of Education ( Article 29)**

367. The Goals and objectives of education within the state have been comprehensively set out in the Education Act and referred to herein at paragraphs 329 and 330. Under section 4 of the Act the Minister is responsible to devise and execute an education policy designed to give effect to the goals and objectives set out in section 3 of the Act. The Act also provides for a Chief Education Officer at Part II Division 2 and an Education Advisory Board at Division 3 of the same part.

368. Under section 4(2) of the Act the Minister is stated to have the responsibility to:

- (a) devise a system of education designed as far as possible to ensure that the intellectual and vocational abilities, aptitudes and interests of students find adequate expression and opportunity for development;
- (b) establish public education institutions or public schools in such places as the Minister thinks fit and determine their location and classification;
- (c) assist private educational institutions or private schools in accordance with this Act;

- (d) establish and maintain, or assist in the establishment or maintenance of facilities for special education and educational institutions or other facilities for tertiary, adult and continuing education as the Minister considers necessary, including teachers' colleges, technical colleges and training centres;
- (e) take such action as the Minister considers necessary for ensuring an adequate supply of teachers' colleges and training centres;
- (f) provide to prescribed students or prescribed classes of students and subject to prescribed conditions, any form of assistance needed to enable such students to take full advantage of the educational facilities available;
- (g) evaluate the work of public schools and assisted private schools with particular reference to the curriculum to be followed and make provision for the examination and testing of students and the awarding of certificates;
- (h) refer children who have been identified by the Chief Education Officer as having learning difficulties to appropriate medical, education and social services or other agencies, where they exist for remedial treatment or assistance;
- (i) provide educational opportunities to meet the requirements for higher education and in particular take any steps needed to meet the Government's obligations to the Caribbean Examinations Council, The University of the West Indies and any other institution of higher learning or training; and
- (j) actively encourage the formation, functioning and development of students' councils in public schools and of a National Student Council.

369. Importantly, In addition to his responsibilities the Minister has the following powers under section 5 of the Act:

- (a) require persons of compulsory school age to attend schools established and conducted under this Act;
- (b) regulate the operation of educational institutions and schools;
- (c) make provision for the professional training of teachers for the entire system of education, and specify standards for the recruitment of teachers, their training, professional development and conditions of service;
- (d) prescribe the grades or classes of teachers in public schools and assisted private schools;
- (e) designate the grades or classes and special programmes to be offered in public schools and assisted private schools;
- (f) prescribe by regulations the forms and notices required for the administration of this Act;
- (g) constitute committees or other bodies in addition to the bodies established under this Act, to provide advice from time to time on educational and related matters;
- (h) prescribe lists of textbooks for public schools and assisted private schools so as to ensure conformity with national standards of education, except that in the case of an assisted private school which is established and managed by a religious denomination, textbooks for religious education may be determined by the denomination which established the school;
- (i) determine the level and nature of assistance to assisted private educational institutions or assisted private schools and regulate such assistance;
- (j) establish or disestablish public educational institutions or public;
- (k) schools including institutions or schools for technical education and inaugurate classes or discontinue classes in those institutions or schools when necessary;
- (l) prescribe, in accordance with this Act, core and foundation curricula for schools;
- (m) publish in the Gazette a list of all educational institutions and schools in Saint Vincent and the Grenadines;
- (n) provide for such matters and do all such things as are expedient from time to time for carrying out the Minister's responsibilities for education and training.

370. The Minister is mandated by section 6 of the Act at the end of each academic year to prepare an annual report on the state of education in Saint Vincent and the Grenadines and such Minister must within twelve months of the of the end of the academic year for which the report is prepared table the report in the House of Assembly.

371. Under section 7 the Chief Education Officer is the person responsible for the day of day administration of the Act. That officer is required to perform the following:

- (a) ensure that educational institutions and schools are administered in a proper and efficient manner;
- (b) develop administrative principles and procedures for implementing general policies and administering the educational system;
- (c) develop and direct the training of all professional and educational personnel;
- (d) initiate, organise and conduct courses of induction and training for untrained teachers;
- (e) initiate, subject to the provisions of this Act, curriculum innovation and reform and establish appropriate procedures for evaluating the instructional program at schools and educational institutions;
- (f) ensure that public educational institutions and public schools are provided with the necessary tools, equipment and supplies;
- (g) ensure the observance of the provisions of this Act and the regulations pertaining to the conduct of educational institutions and schools;
- (h) advise the minister as required on matters affecting education in Saint Vincent and the Grenadines; and
- (i) Perform such other functions conferred by this Act or the regulations or such functions as the Minister may assign to the Chief Education Officer from time to time.

372. The Education Advisory Board is established under section 9 of the Act to advise the Minister of Education on matters connected with education, matters respecting the performance of any of the Minister's responsibilities or powers under the Act and on any other matter relating to the promotion of education on which the Minister requests the advice of the Board. Before advising the Minister and to better achieve the goals and objectives of the Act the Board may hold public hearings on its own accord or on the advice of the Minister who is not bound to accept the advice of the Board. Instead of obtaining the advice of the Board the Minister may appoint special committees to advise him on specific matters.

373. The Act also contains provision at sections 24 and 25 of the Act for the establishment of Parent Teachers Associations and School Committees to assist schools with the furthering of the objectives of education in the state.

#### **(c) Leisure recreation and cultural activities (Article 31)**

374. Under section 122 of the Education Act 2006 the Minister of Education is mandated to establish a national curriculum which in addition to the goals and objectives specified in section 3 of the Act is intended to promote the spiritual, moral, cultural, intellectual and physical development of students.

375. It is the policy of the state to ensure playing fields and recreational facilities are an adjunct to each educational institution or school or that there is access to such a facility in reasonably close proximity to the institution. The responsibility for sports is vested with the Ministry of Tourism Sports and Culture. There are many culturally diverse events within the state in which the youth play a crucial and major part. The Ministry provides for several national youth and cultural events apart from which schools and educational institutions provide their own in house sports programmes under the supervision of the Ministry. The mandate for sports in the state is held by the National Sports Council. This body is established by the **National Sports Council Act**

**Cap 409** of the Laws of the state. The Council provides a comprehensive programme for schools including inter schools athletics, cricket and netball competitions from which many persons excel and proceed to represent the state. These competitions are well established and supported in Vincentian society.

376. In terms of cultural activities the state is culturally diverse. There are two major yearly cultural festivals being the Carnival celebrations in June and July and the National Nine Mornings Celebrations which is celebrated during the Christmas season. These festivals fall under the Ministry of Tourism and Culture which through the Department of culture manage these events. In the Carnival celebrations there are specific segments for the children of the state to express their talents and cultural inclinations. There are the Kiddies Carnival, Junior Calypso and Soca, and Junior panorama events. In the Nine Morning festivities the theme most of the time centres on the children who dominate the event by their participation. There is also an internationally recognised Regatta held on the isle of Bequia and the "Easterval" celebrations in the Southern Grenadine islands every Easter.

377. There are societies and institutions within the state that are concerned with the training of young people or make their development their priority. Some of these institutions are governed by legislation as in the case of the Boy Scouts by the **Boy Scouts Association Act Cap 450** and the **Scouts Association (Saint Vincent and the Grenadines) Incorporation Act Cap 460**. In the case of Girl Guides they are governed by the **Girl Guides Association Act Cap 452** and the **Saint Vincent and the Grenadines Girl Guides Association Act Cap 458**.

378. There is also the Cadet force established by the **Cadet Force Act Cap 381** which caters especially to the training disciplining and education of young persons in a quasi military style environment. Several organisations such as the Saint Vincent and the Grenadines Football Federation cater for the development of young Vincentians having an interest in the sport. This organisation is also governed by its own legislation being the **Saint Vincent and the Grenadines Football Federation (incorporation) Act Cap 457**.

379. Many other sporting disciplines such as squash, tennis, rugby and volley ball are governed by their own associations and have events and exercises to attract the interest and talents especially of the children of the state. Recently the Saint Vincent and the Grenadines Tennis Association launched its Grass Roots Tennis Club aimed at attracting and developing young children in the sport of tennis.

380. The state has succeeded in its bid to provide learning resource centres in every community throughout the state. These centres are managed by the state and their facilities include libraries, computer rooms, learning areas and recreational activity areas. These centres are utilised by both government and non-governmental bodies to provide leisure, recreation and cultural activities to the community. The centres particularly during the summer months provide activities especially for the leisure and recreation of the children of the state. The **Public library Act Cap 412** governs the provision of free reading material to the state. There is the central public library situated in Kingstown and several district libraries throughout the various communities. These provide a valuable service to the children of the state and promote the habit of reading even in these modern technologically advanced times when reading for recreation and leisure is not always the preferred alternative.

381. The conduct of classes and the hours of classes leave opportunities for the recreation for the child during and after school hours. Section 36 of the Education Act provides for the hours of instructions to be divided into two sessions per day in all schools with an interval between the sessions. Under that section it is further provided that the timetable in every school shall be arranged with due regard to the necessity for recreation and relaxation.

382. Section 38 of the Education Act specifies that the vacations to be observed shall be a maximum of three weeks at the end of the first term of the academic year, two weeks at the end of the second term of the academic year and eight weeks at the end of the final term of the academic year subject to the power of the



minister to amend those provisions during a specific academic year. By section 39 Saturdays and Sundays are considered holidays. During such periods many opportunities are available through several agencies for the leisure and recreation of the child.

## **9. SPECIAL PROTECTION MEASURES**

**(Articles 22, 38, 39, 40, 37 (b)-(d), 32-36)**

### **(a) Children in situations of emergency**

#### **1. Refugee children (article 22)**

383. It continues to be the position with respect to the state that there is no record of refugees children. The situation in terms of specific legislation dealing with refugee children remains unchanged since the initial report. Persons considered to be refugees or seeking asylum in the state will be dealt with under the Immigration restriction Act Chapter 114 of the Laws of the state. The matter is dealt with by the Governor General under sections 8, 13 and 14 of the Act. The reference under the Act is to prohibited Immigrant rather than refugee or asylum seeker. It is within the discretion of the Governor General whether or not to allow such a person to remain in the state.

#### **2. Children in armed conflicts (Article 38) including physical and psychological recovery and social re-integration (Article 39)**

384. As with refugee children the incident of armed conflict is unknown to the society of Saint Vincent and the Grenadines. The position remains the same as with the initial report in that the state has not implemented any measures whether legislative or administrative to deal with such children.

### **(b) Children involved with the system of administration of juvenile justice (Article 40)**

385. The Juveniles Act, The probation of Offenders Act, The corporal punishment of Juveniles Act and the Criminal Code and Criminal Procedure Code Cap 172 the laws of the state deals with the issue of Juvenile Justice in the state. Much of the legislative provisions have been previously referred to above as they relate to the treatment of Juvenile Offenders within the state and the rights of the juvenile when involved in the system of the administration of justice.

386. The Juveniles Act which at section 18 sets out the methods of dealing with a juvenile who has been found guilty of an offence by a juvenile court. The court may dismiss the case despite the finding of guilt, make a probation order, make a supervision or probation order, commit the juvenile to the care of a fit person willing to care for him, order a parent or guardian to enter into recognisances for the good behaviour of the juvenile, commit the juvenile to an approved school or adjudge the parent or guardian of the child liable to pay compensation or costs enforceable by a warrant of distress. Before an order can be made under the provision the parent or guardian must be present or is summoned to appear before the court.

387. Under section 27 of the Juveniles Act a police officer may apprehend a person without warrant who within his view commits or whom he reasonably believe has committed an offence involving bodily injury and specific other offences under the Criminal Code. Where the officer holds a reasonable belief that the offence has been committed he must further reasonably believe that the offender will abscond or his name and address is not known or cannot be ascertained. Under section 28 the court may hear a case in the absence of a juvenile against whom such offence was committed if the court is satisfied that the case can be proceeded with and determined despite the absence. Section 29 bars the presence of juveniles other than an infant in arms from

proceedings in court except during such time that the juvenile is required to be present as a witness or for the purposes of justice.

388. The court under section 30 has power to determine the age of a person whether charged with an offence or not by making due inquiry and may presume an age before ascertaining the true age of the person. Under section 31 the court must determine the capacity of a child of tender years to give evidence by determining whether the child is of sufficient intelligence. By section 32 the court has the power to clear the court when a juvenile is giving evidence.

389. The Law makes provision for a juvenile to be committed to an approved school or to the care of a probation officer. Such orders may restrict the liberty of the child. As noted earlier a child over sixteen years of age may be sent to prison or sentenced to death. The rules governing the **Prisons Act Cap 393** of the laws of the state provides for the separation of juvenile and young prisoners from adult prisoners.

**(c) Children in situations of exploitation (Articles 32-36 and 39)**

390. Section 4 of the Constitution of the state prohibits slavery and forced labour in the state. **The Employment of Children and Young Persons Act Cap 209** of the Laws of the state remains the principal legislation dealing with the employment of children within the state. There are two definitions under the Act in relation to a child within the meaning of the convention. A child is a person under the age of fourteen years and a young person is defined as being under the age of eighteen.

391. No child may be employed in an industrial undertaking provided such undertaking is a recognised school approved and supervised by public authority. A young person may not be employed by night in an industrial undertaking except where such employment is permitted by the Convention permitting the Night work of Young Persons Employed in Industry which is contained in the schedule to the Act. Section 4 of the Act prohibits the employment of a child on board a ship. Children are not to be employed in the state unless as permitted by the Act. Service to a parent or guardian in light agricultural or horticultural work on a family land or garden or participation without fee or reward in an entertainment the net proceeds thereof being meant for non profit purposes is permitted.

392. The incidence of drug abuse and drug related violence remains a problem in the society. The state has actively combated the scourge of drug abuse through the **Drug (Prevention of Misuse) Act Cap 284**, the **Drug trafficking offences Act Cap 173** and the **Proceeds of Crimes and Money Laundering Act Cap 181**. These Laws do not specifically make provision for children but it has often been the case that children have been charged as offenders under such legislation. In such circumstances where the child is a juvenile the Juveniles Act will be brought into effect. In other cases the child is treated as a regular offender.

393. There are many educational and promotional programmes within and without the school system promoting awareness against drug abuse in the state. There are counselling programmes in private institutions and within the family court itself to assist young persons convicted of drug offences and other related offences. The DARE programme put on by the Police service continues to exist in the state.

394. The criminal code makes provision that criminalises sexual coercion of a child under the age of 15 which is the age of consent in the state as previously noted. Prostitution is against the law of the state and it is also an offence to procure a child. Homosexual conduct is also criminalised by the code. Further the code makes it a crime to abduct a child for the purpose of trafficking or for any other purpose.

**(d) Children belonging to minority or an indigenous group (Article 30)**

395. There has been no record of discrimination or unfair treatment of a child because that child belongs to a minority or indigenous group. The Constitution maintains its protection against discrimination on the basis of religion, race, ethnic origin and creed as seen above. There is no legislation dealing with indigenous or minority groups.

## CONCLUDING REMARKS

396. The state party is presently in the process of implementing key legislation in the realm of children and family all with the intent of further implementing the terms and having the purpose and spirit of the same experienced by the populace. Much of the legislation was passed before the state's ratification of the Convention. Very important and far reaching legislation such as the Domestic Violence Summary Proceedings Act and the Family Court Act came into existence in the post ratification period. Recent reforming legislation such the Education Act is comprehensive and intended to be compliant with the Convention. The state sought to reform its constitution which is its supreme law. Such reform would have had far reaching implications for Children and family law as the proposed document placed strong emphasis on the child and the family and was futuristic in its outlook for Vincentian society. The document however failed to receive the assent of Vincentians who voted to retain the current Westminster style constitutional model.

397. There remains a need in the legislation for a comprehensive outlook at the definition of the child. The definition differs according to the legislation much of which were passed before the ratification of the Convention. Recent movements on the legislative agenda however will soon put this to rest. The recently enacted Status of Children Act 2011 has sought to complete what its predecessor the Status of Children Act sought to do. It removes the previous emphasis of the Act from declarations of paternity to declarations of parentage. The subtle discriminatory effect with respect to persons seeking a declaration with respect to a mother has been removed. It also removes the duality of a declaration simpliciter and a declaration with intent to claim an interest in property. It also incorporates the universally accepted definition of a child.

398. The Ministry of National Mobilisation has direct responsibility for the child and it has been active in moving measures forward so as to cause implementation of the terms of the convention. Through the OECS Family Law and Domestic Violence project it has caused the drafting and tabling before the House of Assembly the Children (Care and Adoption) Bill. This Bill is a comprehensive piece of legislation that is comprised of 144 sections. It is drafted in the context of the compliance requirements of the Convention and seeks to overhaul and replace the somewhat outdated Adoption Act. The Bill has passed through all the stages of parliament and is awaiting proclamation to officially become law in the State.

399. The primary purpose of the Bill is to protect the child from abuse and neglect and to ensure that the best interests of the child is given paramount consideration in all matters relating to the child. It places the child at the forefront of all matters affecting the child and the convention's definitions are adopted throughout the Act. It creates a directorate of family services thereby giving recognition to the Family Affairs Division and its role in administering legislation and other matters concerning the child. It provides for participation of the child in matters concerning the child's welfare. Importantly it provides extensively for the care and protection of the child and for investigation, assessment and reporting on matters pertaining to the care and protection of the child through the directorate. With respect to Adoptions the process is tightened under the Bill and significantly there is a prolonged interim period before an order is made final.

400. The Bill is a welcomed change from what previously transpired. The Ministry of National Mobilisation is empowered through such legislation to more effectively render the services it is mandated to provide to the Vincentian public. The Bill is just one at the forefront of a proposed comprehensive legislative reform policy in the areas of Law relating to the Child. There is work presently ongoing with respect to creating a comprehensive reform of Juvenile Justice within the State. Together with the legislative scheme there is simultaneous work to develop or provide the administrative and infrastructural framework to support such a scheme.

401. A new and welcomed feature of these new legislative agendas is the sensitisation of the relevant stakeholders and the children of the state if the meaning and intended purpose of the legislation that affect them. This creates a sense of awareness and receptiveness and fosters the implementation process. This was done for the Status of Children Act 2011 and the Children (Care and Adoption Act 2010). The process was so successful that immediately areas were recognised for further legislative intervention, by way of regulation to bolster and strengthen the new laws.

402. The Children of the state who participated in the exercise enjoyed it thoroughly and fully participated with the questions interventions and enthusiasm. It is intended that all future legislation involving the children of the state will go through a similar consultation and sensitisation procedure before being enacted. The children of the state were also consulted with respect to this report and a synopsis of some of their comments and queries follow in the next section.

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### COMMENTS OF THE CHILDREN OF THE STATE

403. In the process of the consultation with the children of the state it emerged that most were concerned with the incidence of child abuse particularly physical abuse. The principal areas queried or commented upon were:

- (a) Abortion
- (b) Sexual abuse by a parent resulting in pregnancy – it was asked as to how such a child would be dealt with by the state and how the state will deal with the parent
- (c) The state's role where a child is abandoned by parents or guardians
- (d) How would the state deal with a child who runs away from home
- (e) How would the state deal with a child whose mother dies in child birth and there is no parent or guardian to care for the child
- (f) How is the state dealing with teenage pregnancy
- (g) What provisions are there to help children on drugs overcome the habit apart from punishing them
- (h) How does the state provide for mentally challenged children
- (i) How does the state deal with the health care of children whose parents are unable to provide such care
- (j) How does the state deal with parents whose negligence results in injury to the child
- (k) How does the state deal with children placed for adoption but who have not been adopted
- (l) How does the state deal with children whose intelligence exceed their age
- (m) How can a situation where a child through judicial process is named the child of a man who is not the father and the child establishes a relationship with that man but later discovers that another person is the father
- (n) Do adopted children have a right to re-establish themselves with their biological parents if they and the child agree
- (o) How does the state deal with a child living in a household where the father is physically abusing the mother
- (p) How does the state deal with parents who keep their children from school
- (q) Can a child refuse to attend school
- (r) How can a state have so much power over a child when the parents gave birth to that child
- (s) Can parents go to court to get back an adopted child
- (t) Will the father of a child who was born because of unlawful sexual intercourse with the mother have any right to the child
- (u) Can parents force a child to take a drug or other substances to improve that child's performance in school

- (v) Will the police entertain a report from a child of abuse by one parent to another if the abused parent does not want to report the abuse
- (w) Is there anything in place to monitor abusive teachers
- (x) Are there provisions in place to ensure that parents show love and spend time with their children
- (y) Will the wishes of a child be considered where a decision has to be made as to which parent the child should reside with
- (z) What can be put in place to prevent the court being tricked as to what really happens in the home
- (aa) Are there measures in place to prevent bullying and physical or sexual abuse by one child to another
- (bb) Is there a limit to the time a child can report sexual abuse.
- (cc) There is an urgent need for a juvenile detention centre
- (dd) How will the state deal with the child of a mother who is herself a child below the age of sexual consent
- (ee) Are provisions in place for dealing with HIV/AIDS amongst children

