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**ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN
Subregional Headquarters for the Caribbean**

CARIBBEAN DEVELOPMENT AND CO-OPERATION COMMITTEE

**ASPECTS OF LAW RELATING TO THE STATUS OF WOMEN
IN THE CARIBBEAN WITH PARTICULAR REFERENCE
TO SELECTED CDCC COUNTRIES**

Prepared by

**Norma Monica Forde
Consultant**

The views expressed in this document are those of the author and do not necessarily reflect the views of the ECLAC Subregional Headquarters for the Caribbean.

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Introduction

This study seeks to record, generally, the law relating to the status of women in Caribbean countries and specifically in selected CDCC countries. The source of the law received in these countries, either through settlement, conquest, or cession, depended on the governing European power originally or finally. England, France, Spain and the Netherlands were at one time or the other settlers or conquerors in the region. Consequently, the basis of the legal systems is the English common law and the civil law derived from the European continent.¹ In an analysis of the relevant law this summarizing comment is made: "Common law and English Statutes have found their way into all the Caribbean Territories, although in Saint Lucia alone they are not yet the basic law. Traces of other systems continue, old French law, Roman-Dutch law and in a sense statutes which have been modelled upon legislation developed in other territories".²

The traditional approach in both the common and civil law systems has been to center authority and responsibility in the male member of the household.³ The reformed approach seeks to share the family authority and responsibility and to provide wider opportunities for family members through legal and social services. These family members will then be accorded the right and scope to make personal informed choices. In short, this new approach is intended to bring about a society in which the opportunity exists for equal involvement of men and women in the family, in the community and in national and international affairs. Change which is designed to affect any section of the society depends for its effectiveness largely on the society's amenability, as a whole, to such change. Legal reform is even more susceptible to dependence since its genesis, formulation and approval hinges on the actions of a fixed section of the society whose ideals and goals must be influenced by various interests, chiefly religious, political and economic.

"The law is stable yet it cannot stand still"⁴ is Geoffery Sawyer's statement. The principle embodied in this statement has been accepted by legislators through the ages. More specifically, acceptance of such a principle may have provided, consciously or unconsciously, the impetus for reform of the law relating to the status of women during the past decade. This principle must continue to inform our thinking now and in the future. This study plans to achieve its aim to provide a general survey of the legal status of women in the region, through broad comment and selected specific examples.

International and national constitutional guarantees

Nine of the 94 states which have ratified or acceded to the Convention on the Elimination of All Forms of Discrimination Against Women,⁵ are Caribbean. These countries are Barbados, Dominica, Dominican Republic, Guyana, Haiti, Jamaica, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines.⁶ Such overt international action must be indicative, generally, of a recognition of the importance of equal justice for all the citizens in these countries and specifically, of a commitment to ensure equal rights for women.

The convention consolidates in one document elements of previous instruments and declarations on the elimination of discrimination against women.⁷ It enjoins Member States "to take all appropriate measures" in their particular countries to achieve equal rights for men and women in the political, economic, social, cultural and civil fields.⁸ In sixteen of its thirty articles,⁹ the convention points to the most effective method of approaching the move towards equality. General direction followed by listed detail is the method employed in the articles. The listed detail may be subsumed under two heads, socio-cultural and legislative action. Suggested categorization is not intended to produce exclusivity. Legislative action may prompt, if not impose, socio-cultural change.¹⁰

In summary, states which are parties to the convention are expected to provide, for women and men, equal opportunities for education and employment. States parties are required to guarantee the right of women to full participation at all levels of the commercial, cultural and political life of their respective countries. Family responsibilities and benefits are to be shared equally. Discrimination is to be condemned. Legal protection of the rights of women is to be safeguarded through establishing the relevant institutions and enacting the relevant legislation and repealing discriminatory laws. Emphasis is placed on the special health care needs of women and on the requirements of rural women.¹¹

The convention is a comprehensive statement of the legislative and other measures which are necessary for the elimination of discrimination against women. It presents an ideal to which States parties are expected to aspire. The convention becomes effective either by direct internal application in countries whose legal system allows for confirmed treaties to have immediate effect,¹² or indirectly, by the enactment of municipal legislation.¹³ Legal proceedings based on provisions of the convention would give litigant wide grounds on which to initiate such proceedings. Resulting legal decisions would also be interesting and worthwhile.

States which are parties to the convention are urged to embody in their constitutions principles of equality and freedom from discrimination.¹⁴ Customarily, written constitutions include provisions which guarantee fundamental rights and freedoms to every individual regardless of race, place of origin, political opinions, colour, creed or sex. Each individual's exercise of his or her rights is subject to respect for the rights and freedoms of others and for the public interest. The enshrining of fundamental rights and freedoms in this way is a feature of the Constitutions of Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines and Trinidad and Tobago.¹⁵ In addition to preserving fundamental rights, provision is made for protection from discriminatory treatment by any law, the exceptions being in respect of non-nationals and areas of adoption, marriage, divorce and other aspects of personal law. Discriminatory is defined as "affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed." This format is employed in the Constitutions of Antigua and Barbuda, the Bahamas, Barbados, Jamaica.¹⁶ In the Constitutions of Belize, Dominica, Grenada, Saint Lucia and St. Vincent and the Grenadines the definition of discriminatory is widened to include description by sex, consequently ensuring that protection on grounds of sex is constitutionally guaranteed.¹⁷

Declarations concerning equality are found in some constitutions to the effect that every individual is entitled to equality before the law and to the protection of the law. Such a declaration is included in the Constitution of Trinidad and Tobago in the following form: "it is hereby recognized and declared that ... there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex, the following human rights and fundamental freedoms, namely ... the right of the individual to equality before the law and the protection of the law."¹⁸ The Guyana formula is this: "Women and men have equal rights and the same legal status in all spheres of political, economic and social life. All forms of discrimination against women on the basis of their sex are illegal".¹⁹

It is acknowledged that, generally, the constitution is the supreme law in a country and that any other law, which is inconsistent with the constitution, is void to the extent of that law's inconsistency.²⁰ The need to preserve existing law is evident, consequently, a feature of constitutions is a provision which saves existing laws. This "saving laws clause" is expressed as preserving "any existing law" or "any existing written law".²¹ The outlined enforcement procedures in constitutions offer a means of redress in cases where the individual's fundamental rights are contravened.²² However, the effect of savings law clauses may be to enable discriminatory laws to remain operative.²³

Undeniably, the inclusion of equal rights provisions in constitutions is vital. The structure of these constitutional provisions in regional constitutions is varied. Discussion is often focused on the merits of using one form of words or the other and on the value of specification as opposed to generalization. Undoubtedly, the more specific the terms which promote equality, without discrimination, for women, the less scope there is for ambiguous interpretation or the nuances of judicial pronouncement. Perhaps a re-examination by Caribbean countries of constitutional provisions is appropriate, at this time, in order to ensure that supreme law guarantees supreme protection.

In relation to the Dominican Republic, Haiti and Suriname, the published volumes "Constitutions of the World" record constitutions for these countries which purport to establish equality for all before the law and a right to equal protection from the law.²⁴

The Initial Report submitted by the Dominican Republic to the United Nations, pursuant to Article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women, confirms the application of the constitution and its emphasis on guaranteed individual and social rights.²⁵ Article 8 of the Constitution affirms: "the law is equal for all".²⁶ The report points out that "in speaking of the rights of citizens, the constitution refers to 'all Dominicans of either sex,' and within the general framework of its provisions it does not confer rights on men or women, but refers instead to all persons".²⁷ Further, conventions which are ratified and adopted by the public authorities, as stated in the Constitution, become a part of the internal law of the Dominican Republic.²⁸ Since the convention was ratified in that country in 1982 and has been adopted, the consequences must be that its provisions are directly justiciable in the courts.²⁹

No confirmed comment on the applicability of the published constitutions of the other two countries can be made at present.

The family

There has been significant change in the law which relates to the status of women within the family over the years. One reason may be that it is less difficult to reform the law which affects a closely knit group like the family. More realistically it may be suggested that contemporary circumstances have impelled action which is necessary if women are to share family responsibility with confidence. The areas of law which are mentioned in this section deal with marriage, financial provision for the family, parental authority and inheritance.

Marriage

The monogamous marriage is the norm. However, the high incidence of de facto unions or concubinage is noted.³⁰ The procedural requirements for contracting a valid marriage are similar throughout the region. The essential importance of the capacity to enter into and consent to the marriage is acknowledged. The parties must meet the age requirements, must not be in a subsisting marriage, must not be of the same sex and must not be within the prohibited degrees of relationships.³¹ There is clear acceptance of the need to avoid forced marriages contracted under duress and without free consent. Such marriages may be annulled. The statement in the law of the Dominican Republic mirrors the basic principle in the law of the other countries. "Marriage is an institution originating in a contract concluded between a man and a woman who have expressed their free consent to marry and who possess the capacity required for carrying out this act". "There is no marriage where there is no consent".³²

The Barbadian case Kinneally vs. Zazula demonstrates that even in a "death bed" marriage where some procedural requirements may be waived, the need for the consent of both parties is vital.³³

Throughout the region, the minimum age at which parties can enter into a legal marriage ranges from 12 to 18 years. Where no minimum age is specified the original common law age is applicable, 14 years for a boy and 12 years for a girl. No specified minimum age requirement is found in legislation in Dominica, Grenada, St. Kitts and Nevis and Trinidad and Tobago. In Belize, the age is 14 years.³⁴ Antigua and Barbuda and the Bahamas set the minimum age at 15 years, but in the Bahamas the Supreme Court may grant permission to marry, to persons between the age of 13 and 15 years "upon good cause".³⁵ The Guyana provision allows males of 16 and females of 14 to contract a valid marriage with the addition that a girl under 14 who is pregnant or has given birth to a child, may apply to the High Court for permission to marry.³⁶ In Saint Vincent and the Grenadines and the Dominican Republic the male must be 16 years while the female 15 years of age.³⁷ In Barbados, Jamaica and Saint Lucia legislation settled the minimum age for both parties at 16 years.³⁸ Between the minimum age and the age of majority, now generally 18 years, parental or judicial consent is necessary.³⁹ The Hindu and Islamic marriage statutes should be noted since they bring further variation to the law in this area.⁴⁰ Registration is a definite requirement for all marriages.

Legislation provides that if the parties knowingly and willfully contravene certain procedural requirements, the marriage will be void.⁴¹ However, the presumption of formal validity is not lightly rebutted by evidence only of procedural irregularity. In Da Silva vs. Da Silva an attempt was made to invalidate a marriage of 14 years duration for failure to comply with the relevant provision of the Saint Vincent Marriage Act, by showing that the

marriage had been solemnized at home between 6:30 a.m. and 7:30 a.m. and not at the Registrar's Office between 10:00 a.m. and 4:00 p.m. as required. The court held that the marriage was valid.⁴² The Barbados Marriage Act confirms that if the marriage was solemnized in good faith and the parties lived together and cohabited as man and wife such a marriage, despite procedural irregularity, will be accepted as a valid marriage.⁴³

The rules for concluding the contract of marriage with legal certainty have largely remained unaltered perhaps because they have been accepted as adequate. The United Nations Convention has restated the right of women freely to choose a spouse and to consent fully to marriage.⁴⁴ As a consequence States should ensure that their current legislation upholds these rights.

It is pertinent to consider two issues. The first relates to the variation in age requirements for contracting a valid marriage throughout the region. This may be an area in which some harmonization could be sought. It is clear that the several religious and cultural differences must be given adequate consideration in any plan for regional harmonization. The second issue highlights occasional comment concerning the disparity between the minimum age requirement for marriage and the age at which a girl may legally consent to sexual intercourse as directed by the criminal law legislation.⁴⁵ For example, a girl under 14 years of age cannot legally consent to sexual intercourse so as to exonerate a male person from guilt in a criminal offence. The exception is where the parties are married. The minimum age for marriage is 12 years.⁴⁶ In Guyana and Jamaica a felony is committed if the girl is under 12 years. In Barbados the age is 13 years and a girl under the age of 16 years cannot legally consent to indecent assault.⁴⁷

It has been mooted⁴⁸ that realistic rationalization of the age of consent and the minimum age of marriage, together with firm, constant enforcement of the law, could have some effect on the existing problem of teenage pregnancies. This is an idealistic suggestion. It must not be overlooked, though, that stipulating a minimum age for marriage is intended to regulate the stage at which a girl can validly become a partner in a family relationship. Insistence on setting an age below which a girl cannot legally consent to sexual intercourse is intended to set the boundaries of certain criminal offences and to protect young women from certain crimes which may be committed against them.

Maintenance

Financial provision for family members, wife and children, traditionally, was the responsibility of the husband. A blameless wife was entitled to maintenance from a defaulting husband for the benefit of herself and her children. Subsequent legislation extended this concept of maintenance based on misconduct.

Matrimonial offenses, for example, willful neglect to maintain, provided evidence on which a maintenance order against a husband could be based. A wife who committed adultery or was in desertion could lose the right to maintenance for herself and her children. In special circumstances only, was a husband entitled to initiate proceedings. Where the husband was the needy spouse because of impairment of his earning capacity through age or illness, the wife could be ordered to contribute to his maintenance.⁴⁹ This old approach is still applicable in some countries in the region, for example, Antigua and Barbuda and St. Kitts and Nevis.⁵⁰ A milder expression, failure to provide reasonable maintenance, is used in more modern legislation like that of Dominica, Grenada, Saint Vincent and the Grenadines and Trinidad and Tobago.⁵¹ In these countries both spouses share the obligation for maintenance of each other and their children. The contemporary approach is to move away from the fault for maintenance exchange and base reciprocal financial support on financial need. The Dominican Civil Code includes this article:

"Each of the spouses must contribute to the degree he or she is able, to the expenses of the household and to the education of the children".⁵²

The Barbados Family Law Act states:

"A party to a marriage or union other than marriage is ... liable to maintain the other party, to the extent that the first-mentioned party is reasonably able to do so".⁵³

And in a separate provision:

"The parties to a marriage or a union other than marriage are liable, according to their respective financial resources, to maintain the children of the marriage or of the union".⁵⁴

The shift from matrimonial fault to economic need should be followed in current legislation. The law should not be involved in apportioning blame in family matters, rather its role should be to ensure that as far as possible fair maintenance adjustments are made.

Maintenance claims may be made on two levels, in the High Court and in the Magistrate's Court. The benefit of seeking maintenance settlement in the Magistrate's Court is, that on summary proceedings, the matter may be speedily concluded. The disadvantage is that the remedy may be small periodic payments with a limitation on the amount which may be paid.⁵⁵ In the High Court, the amount of the payment is discretionary and payments may be periodic, in a lump sum or even secured. High Court proceedings, however, are more costly and not as swiftly concluded. Recent legislation is altering these distinctions and removing limitations on maximum payments.⁵⁶ Additionally, while the old imprisonment for debt approach is not completely absent from the region, the contemporary method of attaching income and pension or garnishing property is gaining favour as penalties for defaulters.⁵⁷

The question may be raised at this point as to whether the establishing of a Family Court with the attendant services would not be the solution to existing problems. The Jamaica Judicature (Family Court) Act of 1975⁵⁸ established such a court. However, it must be emphasized that this is a Magistrate's Court with circumscribed jurisdiction. Divorce, property distribution and inheritance matters are still brought before the High Court. The ideal would be a Family Court set up to deal with all family-related matters, or the combination of a Family Court and a Family Division of the High Court. The financial and personnel requirements of such ideal arrangements, no doubt, will be given serious consideration.

Matrimonial property

Allied to sharing maintenance responsibility is the sharing of ownership of matrimonial property. The modern view is generally accepted that both the husband and wife should determine, jointly where the matrimonial home is to be.⁵⁹ Matrimonial property includes, not only the matrimonial home, but other acquisitions such as the family car, furniture, savings and household effects. A claim to an interest in the matrimonial property may be brought by a husband or wife during a marriage, or divorce, or at the death of one of the parties. Determination of property distribution between partners depends on the legal matrimonial property system which is in effect in a particular country. In civil code countries, there is the community of property regime, automatic or optional. The Dominican Republic and Saint Lucia are civil code countries.⁶⁰ In common law countries, the separation of property regime is effective. The Caribbean countries follow the common law rules of distribution. Parallel with the separate property system is the exercise of the court's discretion applying either principles of equity or statutory authority.

Under the full community of property regime, all property owned by the spouses becomes common property and thus jointly owned by them both. There are variants of this system where only property acquired during the marriage belongs to the community and where gifts made to either spouse or inheritance received after the marriage are excluded.

The Civil Code of the Dominican Republic distinctly expresses its principle.

"The spouses mutually commit themselves to a life community. The spouses may not, independently of each other, dispose of the rights through which the family dwelling is secured nor of the chattels that furnish it".⁶¹

Hence on the dissolution of a marriage, community property should be partitioned between the partners, within a reasonable time.

The Saint Lucia Code after establishing the existence of what it terms the "legal community" proceeds with this definition:

"Legal community is that which the law in the absence of stipulation to the contrary, establishes between spouses, by the mere fact of their marriage, in respect of certain descriptions of property".⁶²

The code continues with an explicit interpretation of separate property as opposed to community property. The intention is to include in the community the property acquired by the parties together after the marriage as matrimonial property. Any other acquisition is seen as separate.⁶³ In Saint Lucia parties have the option to select the system, which they intend to govern property holding during marriage and consequently distribution on the dissolution of the marriage. The Divorce Act of 1973 authorizes the High Court to deal with both community and separate property for the benefit of the parties. This Act also provides for a spouse's contribution, which may not be in money, but only in services, to the improvement of separate property.⁶⁴

There is an obvious advantage to the community system since the method of equal property sharing is clear. The disadvantages relate to management of community property and which partner is to be responsible for such management. It is usually the husband. Additionally, the line between separate and community property may often become blurred. The liability of the property for one partner's debt is another issue and so is the right to contract out of the system if required.

In the other Caribbean countries, legislation gives the right to each marriage partner to seek a declaration of particular interests in property.⁶⁵ In Antigua and Barbuda, Guyana, Jamaica and St. Kitts and Nevis the court applies principles of equity. The application of principles of equity through the Law of Trusts has resulted in a complex set of rules which contribute to the uncertainty as to the outcome of claims in any particular case.⁶⁶ Reform of the law directed at clarifying property ownership and distribution has been effected in the Bahamas, Barbados, Dominica, Grenada, Saint Vincent and the Grenadines and Trinidad and Tobago. The reforming legislation gives the court a discretion to alter interests so as to provide a fair settlement among family members.

The legislation lists a number of factors which the court must consider before it reaches a decision. These include the duration of the marriage, the age of the parties, the present financial status and future prospects of the parties, the nature of the contribution to the acquisition and improvement of the property, even if such contribution is not monetary but as a "homemaker".⁶⁷ This method of assessment seems reasonable since the entire situation must be examined closely before a decision is reached. One area of dissatisfaction which appears to have been encouraged by decisions of the court is that property should be divided in fixed proportions.⁶⁸ The doctrine of legal precedent would in some measure be responsible for this formulation. It must be noted that the legislation does not include any proportional stipulation.

An allied problem arises when the property distribution requires the matrimonial home to be divided and one party is financially unable to compensate the other, in order to acquire the whole. Usually this results in the sale of the home and a division of the proceeds of the sale.

Each matrimonial property regime has its positive and negative aspects. What is important, however, is to ensure that there is a reasonable, uncomplicated, and equitable basis on which the allocation of acquired family assets can be made.

Dissolution of marriage

Dissolution of marriage by divorce is another area of the law which has been reassessed in recent years. Present day divorce law aims to end, with the minimum of ill-feeling, a marriage which has broken down irretrievably. The old fault grounds adultery, cruelty and desertion require one party to prove the guilt of the other before the court. One party petitions for termination of the marriage on the grounds of specified "matrimonial fault". One party holds that the other party is responsible for the marriage breakdown, one party is guilty and the other is innocent. The court is precluded from granting a divorce if there is evidence of connivance, condonation or collusion. Ancillary dealings such as

maintenance and custody of children are related to the blameworthiness of the parties. Proceedings follow this pattern in Antigua and Barbuda, the Bahamas, Belize, Guyana, Jamaica and St. Kitts and Nevis.⁶⁹ In the Bahamas, Belize and Jamaica another ground has been added which may be viewed as a measure of reform. If the parties have separated for three years in Belize and five years, in the Bahamas and Jamaica no fault has to be proved.⁷⁰

Wider divorce law reform replaces the several fault grounds with the single no fault irretrievable breakdown. However, in order to satisfy the court that the marriage has broken down irretrievably, the party petitioning has to present factual evidence of matrimonial fault such as adultery, cruelty and desertion. There are two which require no such evidence, namely, separation for two years with mutual consent and separation for five years. This is the effective law in Dominica, Grenada, St. Kitts and Nevis and Trinidad and Tobago.⁷¹ The Barbados legislation has attempted to remove the matrimonial fault element from the proceedings by allowing irretrievable breakdown to be evidenced by 12 months separation.⁷² The new legislation reflects concern for reconciliation in provisions which state that if at any stage it appears that there is a reasonable possibility of reconciliation between the spouses, the court may adjourn the proceedings. Further, legal representatives are required to certify that reconciliation has been discussed.⁷³ A beneficial result of diffusing the contention in divorce proceedings is that financial family provision, property division and custody matters are no longer solely dependent on blameworthiness.

There is yet acceptance of the view that the divorce law should not be reformed. Religious and social custom are reasons submitted to support the insistence on retaining legal provisions which publicly apportion blame for marital problems. It is also suggested that the reformed law makes it "easy" to petition for divorce, therefore, spouses will seek to end the marriage at the first sign of stress with the consequent increase in the number of divorces. This "floodgates" argument is constantly presented but not proved. Change in the law cannot be fixed with the responsibility for breakdown of marriage. However, the available law should be of a kind which, without acrimonious proceedings, may facilitate dissolution of a marriage which has broken down irretrievably and afford equitable, civil settlement of supplementary matters.

Inheritance provisions

The need for reasonable financial provision and satisfactory property settlement is as vital after the death of one of the partners as it is during their lifetime. The general principle is that a person of sound mind may direct, in a valid will, the devolution of his or her property after death.⁷⁴ Change in the law seeks to ensure that close family members are not disinherited. If they are disinherited, after application to the court, provision may be made for them. These two statements summarize the law in Barbados, Belize and Trinidad and Tobago.

In Barbados, a testator's spouse is entitled to a share of the estate as a prior legal right. The share in the testator's estate is fixed at one-quarter if there are children and one-half if there are no children. It is of no consequence that the testator expressed contrary intentions in the will. The spouse only loses this right if there has been a five-year separation before the testator's death or if the surviving spouse had been in desertion. Disentitlement, therefore, is linked to matrimonial fault. Retaining fault provisions in this Succession Act⁷⁵ seems incompatible with the general trend of family related legislation in Barbados. Another claimant, the dependant, is introduced in cases where the deceased person dies intestate. The dependant is a person who has been living with the intestate and, up to the time of death, was wholly or mainly maintained by him/her.⁷⁶ With respect to the children, a discretion is given the court to order maintenance for a minor or a child who is physically or mentally incapable of maintaining himself/herself. The test is whether the testator has failed in his moral duty to make proper provision for the child.⁷⁷

Belize and Trinidad and Tobago permit certain dependants to apply to the court on the ground that reasonable provision has not been made for them. Belize defines dependant to include the legal family.⁷⁸ Trinidad and Tobago, in its Succession Act,⁷⁹ purports to cater for a wider section of family members than Barbados or Belize. The definition of dependant is wide enough to include the legal and de facto spouse, a former spouse who has not remarried, in-wedlock children, out-of-wedlock children, children of the family and any person who immediately before the death of the deceased was wholly or partly maintained by the deceased. Any of these persons may apply to the court whether the deceased has made a will or not and claim that reasonable financial provision was not made. The court will then decide what, if any, portion of the estate of the deceased will be used to assist the applicant.⁸⁰

It is true that succession legislation and inheritance provisions erode, to some extent, the principle of free testamentary capacity but realism recognizes that the deceased's responsibility to maintain family members should not be terminated by death.

Children

The customary exclusive authority over his minor children which was legally vested in the father has given way to joint parental authority. Both parents are now eligible jointly and separately to exercise guardianship over the children of the marriage. Three examples support this statement. the Dominican Republic Civil Code affirms:

"During the marriage, the father and the mother exercise their authority jointly".⁸¹

The Trinidad and Tobago Family Law Act proclaims:

"... A mother shall have the same rights and authority as the law allows to a father".⁸²

The Barbados Family Law Act asserts:

"Each of the parties to a marriage or union is a guardian of every child of the marriage or union ..."⁸³

Similarly, both parents are responsible for the economic and social well-being of these children while they are minors. This responsibility may be extended beyond their minority if the children are mentally or physically incapacitated or if they are involved in education or training.

There is comprehensive legislation throughout the region, to deal with the maintenance of children.⁸⁴ Adopted children are regarded as legitimate in relation to their adoptive parents. Another category for which legal responsibility may be enforced is the child of the family. This is the child who, although not the child of both or either of the parties, has been accepted and treated as a member of the family. Trinidad and Tobago legislation speaks of such a child.⁸⁵ Maintenance statutes in Belize, Guyana and Jamaica insist that a man must accept responsibility for any child he comes to the family and finds.⁸⁶ The Dominica legislation clearly lists the duties of each parent towards their children.⁸⁷ The parent's obligations towards their children exist during the subsistence of the marriage and on dissolution.

Two areas merit attention. The first is to ensure that all monetary limits be removed from maintenance statutes so that the magistrate may exercise his discretion according to the circumstances. The second is that attachment of earnings be generally introduced as the means of enforcing payment by defaulting parents.

The de facto family

The existence of the de facto family in countries of the region cannot be overlooked. The nature of the legal recognition which should be afforded this family has been addressed. The response of lawmakers seems to indicate that imposing legal responsibility on parents for the welfare of out-of-wedlock children is more readily acceptable than the imposition of mutual legal obligation on the parties.

Out-of-wedlock children

Legitimation legislation is on the statute books throughout the region. This early legislation⁸⁸ allows for a child whose parents marry after his/her birth, if re-registered, to become the legitimate child of those parents from the date of the marriage. Modern legislation attempts to go further and remove the legal distinction between the in-wedlock and out-of-wedlock child. What this means is that when words such as child, issue, descendants are used in statutes and documents, these words are to be interpreted, prima facie, to mean all children. Such legislation has been enacted in Barbados, Belize, Guyana, Jamaica, St. Kitts and Nevis, Saint Vincent and the Grenadines and Trinidad and Tobago.⁸⁹ However, it must be pointed out that this does not make out-of-wedlock children automatic general beneficiaries. Paternity has to be established under the conditions stipulated in the legislation. These conditions permit admission of paternity in court orders, deeds, and registered documents to be accepted as positive evidence and proof. A wider provision is found in the Barbados Status of Children Act to the effect that where a man has, by his conduct implicitly and consistently acknowledged that he is the father of a child, a presumption of paternity will arise.⁹⁰ Judicial interpretation of this provision should be valuable and may encourage the wider inclusion in regional legislation of what may be considered a realistic and practical provision.

In respect of maintenance, a man is obliged by law to maintain his children whether born in or out of wedlock while they are "of tender years," usually until they reach 14 to 16 years. This obligation extends to older children who may be physically or mentally ill or who are still in the process of being educated. Such legislation is effective in Dominica, Grenada, Guyana, Jamaica, Saint Vincent and the Grenadines.⁹¹ A woman also has a responsibility to maintain her children, especially where there is no other existing legal parent. In Antigua and Barbuda and the Bahamas a magistrate may prohibit a parent from leaving the country if adequate provision has not been made for the child.⁹² Affiliation proceedings also provide an available, if difficult, means of obtaining maintenance for an out-of-wedlock child. The Saint Lucia Code gives a child the right to establish, judicially, his paternity or maternity. Acknowledgement achieved in this

fashion gives the child a right to demand maintenance from each parent.⁹³

It may be said that current legislation aims to give legal status and maintenance rights to out-of-wedlock children. Succession rights will follow if paternity is established. These succession rights will benefit both the father and child since both will be able to inherit from the other. In addition, the Trinidad and Tobago Succession Legislation, through its purported wholly or partly maintained category,⁹⁴ may assist an unnamed out-of-wedlock child to be granted reasonable maintenance from a parent's estate. This arrangement will exist whether the parent has left a will or not. In Barbados, a child in similar circumstances may only benefit where the deceased has not left a will.⁹⁵

De facto partners

Generally no support obligations are imposed on parties living in common law unions, since such relationships lack the legal validity of the conventional contract of marriage. Changes have been made, however, in Barbados and Trinidad and Tobago.

The Barbados Family Law Act has introduced the "union other than marriage". The definition given in the Act is this:

"Union other than marriage ... means the relationship that is established when a man and a woman who, not being married to each other, have cohabited continuously for a period of 5 years or more and have so cohabited within the year immediately preceding the institution of the proceedings".⁹⁶

Parties who so qualify are eligible, on the breakdown of the relationship, to make claims for maintenance and property distribution on terms similar to those detailed as applicable to de jure partners.⁹⁷

In Succession legislation in Barbados and Trinidad and Tobago "spouse" has been defined to include a single man and a single woman living together as man and wife for a continuous period of five years.⁹⁸ Consequently, qualifying de facto partners may inherit from each other. Again the broad categorization of a wholly or partly maintained dependant may assist a spouse on intestacy in Barbados and intestacy as well in Trinidad and Tobago.⁹⁹

Law and society

This broad head makes it possible to review any or every area of the law. Arbitrary selection results in the choice of the following areas for comment; education, employment, particular criminal law areas and citizenship and nationality.

Education

The law in the countries in the region revealed no legal restrictions which would inhibit the right to education for women. Constitutions, local laws and declarations proclaim the right of equal access to education for all.¹⁰⁰ Nonetheless, practical and functional problems cannot be disregarded. It may be conceded that existing limitations are more likely to be linked to traditional and cultural attitudes than to legal disability. Several programmes have been introduced with a view to improving education and training opportunities for both men and women. These include co-education, adult education projects, special education classes, training sessions and seminars organized by governments, universities and other private agencies. Skills training programmes focused on supplying young persons with the technical and practical skills needed in the working world have been viewed with favour.¹⁰¹ Care must be taken to make sure that facilities and qualified personnel are made available equally. Competent, impartial counselling is important so that female students are not only channelled into safe traditional areas of educational activity, but are encouraged to develop and extend their inherent abilities.

Employment

The law surrounding employment is varied, sometimes complex and expectedly planned to facilitate and benefit the employed person. Legislation has been designed to regulate working conditions and wages, to guarantee the worker's safety and to make certain that merited remuneration is paid. Employed women benefit from the labour laws since social security, compensation for injuries, severance payment and protection of wages legislation is planned to assist all workers.¹⁰² Additionally, this general worker protection policy has been extended to include statutes dealing with the employment of women, with maternity leave and with the conditions of service for domestics. Constitutions in the region affirm the right of all persons to equal and non-discriminatory treatment. The Guyana Constitution makes a declaration on the right to work.¹⁰³ Labour legislation like the Antigua Labour Code, the Dominica Labour Standards Act and the Jamaica Employment (equal pay for men and women) Act mandate equal opportunity and equal wages for men and women.¹⁰⁴ The concept of equal pay for equal work is accepted throughout the region. The practical application of

this concept may need monitoring. The more recent principle which advocates "like pay for like work" examines the amount of work which is done even if in different jobs, rather than equating remuneration for similar jobs. This approach has not yet found its way into regional legislation.

The Domestic Employees (hours of duty) Act as amended, regulates the working hours and minimum wages of domestic workers in Barbados.¹⁰⁵ In the Dominican Republic a large number of women are employed in domestic service but the Labour Code does not insist on their eligibility for any work-related or social benefits.¹⁰⁶ Usually, women in domestic service are not protected by the law, are often poorly paid and do not normally qualify for national social security schemes. This is an area of women's employment which deserves attention.

Maternity protection has been given serious consideration in the region. The regulated formulae vary but the underlying principle of the law is that the employed woman should not be financially disadvantaged, dismissed, or demoted during the period of pregnancy and absence from work due to confinement. For example in Barbados, Belize, Grenada and Jamaica maternity leave statutes detail the conditions under which maternity leave must be granted. In this legislation the pregnant woman's job and seniority rights are given legal protection.¹⁰⁷ Maternity benefits are payable to women based on a formula which takes into account the duration of their employment and the number of contributions to the social security scheme. A contributory system of social security has been introduced throughout the region.¹⁰⁸ In Antigua and Barbuda and Barbados the uninsured, non-contributing spouse of an insured man may be paid maternity benefits.¹⁰⁹ Maternity is protected on several levels in the Dominican Republic. The Constitution guarantees protection when it provides that "maternity whatever the condition or status of the woman shall enjoy the protection of the public authorities."¹¹⁰ The Labour Code protects her job and further states:

"During the period of her pregnancy a woman may not be required to perform work requiring a physical effort incompatible with her condition of pregnancy."

"If as a consequence of pregnancy or child birth the work performed by a woman is harmful to her health, and if this fact is substantiated in a certificate issued by a physician, her employer is required to assist her in changing her job."¹¹¹

The Pre-and Post-Natal Leave Law mandates the 12 weeks maternity leave which is a feature of the legislation in other Caribbean countries and safeguards the pregnant woman's employment and status.¹¹²

Despite the equality in employment provisions, the old approach, which has lingered, is to prohibit women from being employed in certain undertakings and during the night.¹¹³ In the Dominican Republic this principle is expressed in unique fashion.

"Women may not engage in work that is not appropriate to their sex."¹¹⁴

Barbados has removed the night-work prohibition, but requires the employer to satisfy a government official that adequate transportation to and from work and suitable rest periods and rest rooms are provided for both men and women. The Employment (miscellaneous provisions) Act applies to what is termed "any industrial undertaking" and defines this to include mines, quarries, manufacturing industries building, civil engineering work.¹¹⁵

The issue now is whether the protective attitude which found expression in the prohibitions is still necessary. Perhaps the initial legal protection from informed involvement should be replaced by the right to be equitably involved. The emphasis should be transferred from the paternalistic to the practical.

Criminal law areas

The criminal law deals with offenders both men and women in the same way according to the crime which has been committed. Nevertheless, the protectionist attitude towards women is evident particularly when dealing with sexual offence. The law takes the view that women of all ages should be protected from sexual abuse. Consequently, safeguards in the form of sanctions for named sexual offences are written into the legislation.¹¹⁶ The offence of rape may be singled out for comment since it continues to provoke passionate discussion. Trinidad and Tobago's Sexual Offences Act of 1986 presents this up-to-date definition of the offence:

"A male person commits the offence of rape when he has sexual intercourse with a female person who is not his wife either -

- (a) without her consent where he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it: or
- (b) with her consent where the consent -
 - (i) is extorted by threats or fear of bodily harm to her or to another; or
 - (ii) is obtained by personating her husband: or
 - (iii) is obtained by false and fraudulent representations as to the nature of the act."¹¹⁷

The definition found in the criminal code of the Bahamas, Grenada and Saint Lucia is substantially the same and so is the law applied in the other Caribbean countries on the basis of precedent.¹¹⁸ The Trinidad and Tobago Act introduces the element of recklessness as to consent and accepts the threat of harm to another person. However, the Act stops short of giving a non-consenting wife the right to accuse her husband of rape except in cases of legally sanctioned separation of the parties. The offence is then called sexual assault.¹¹⁹

The difficulty experienced by the prosecution in securing a conviction for rape is real enough. Firm and definite proof must be demonstrated to the court before an accused person is convicted of rape. The matter of consent of the victim is magnified. The absence of corroborative evidence weakens the victim's case. The emphasis placed on the character and behaviour of the victim sometimes creates the impression that the victim is on trial and not the offender. Suggested reform constantly revolves around whether trial should take place in closed court, whether evidence concerning the victim's previous sexual experience should be admissible and whether media publication of rape trials should be restricted. The Trinidad and Tobago Sexual Offences Act has addressed these three concerns. The result is that rape and sexual assault cases and any offence involving children are to be heard in closed court unless there is contrary direction from the court. Evidence of the victim's past sexual history is prohibited, again subject to the court's discretion and media publication is prescribed unless the court gives permission to publish "in the public interest."¹²⁰

Sexual offences legislation is long overdue and should now be given priority in the region. The Trinidad and Tobago Act may be used as a model for an even more comprehensive approach to modernizing the law in this area.

In most of the countries in the region abortion is a crime. There are three separate offences involved; where the woman herself tries to cause a miscarriage, where another person takes similar steps and the offence of supplying the means to procure a miscarriage when it is known that this is intended.¹²¹ The view is generally held that exceptional circumstances will be accepted as a good defence. These circumstances may be established where a doctor in good faith, performs an abortion to preserve the life or health of the woman.¹²² The Medical Termination of Pregnancy Act in Barbados has removed abortion in specified circumstances from the sanction of the criminal law. Briefly, the Act permits the termination of pregnancy of not more than 12 weeks duration for reasons which may be summarized as necessity, eugenic and juridical. No offence is committed where the termination is undertaken to safeguard the life or health of the woman, where there is substantial risk that if the child were born it would be seriously handicapped mentally or physically and where the pregnancy has resulted from an act of rape or incest sufficient to cause mental injury. Termination of pregnancies of longer duration than 12 weeks is restricted to cases in which up to three doctors consider it immediately necessary or life threatening. Counselling services are provided. Written consent of the woman is required, or the consent of a parent or guardian of a minor or a mentally incompetent person.¹²³

Termination of pregnancy is an emotive issue and rarely are supporters or opposers willing or perhaps even able to reach a compromise. Persuasion is ineffectual and logic is dismissed. Realism must see the difference between termination under medically controlled conditions and "back-street operations." The human rights angle still leaves unanswered the question, whose human rights?

Prostitution itself is not a crime, but surrounding offences such as procuring, soliciting, living on the earnings of a prostitute and keeping a brothel are subject to criminal sanctions. The Trinidad and Tobago Sexual Offences Act provides a definition of prostitution but restates the law as it is in effect in other countries of the region.¹²⁴

The matter of physical violence against women is currently occupying the attention of national and international agencies. Studies are being undertaken and seminars are being held. These actions provide immediate information and awareness, but sustained effort appears not to be maintained. The law dealing with assault and battery is applicable to cases of such violence, however, obtaining the necessary adequate evidence from the parties involved

is often difficult. The Saint Vincent and the Grenadines Domestic Violence and Matrimonial Proceedings Act 1984 provides a remedy for a party to a marriage who is the victim of domestic violence. The High Court may order an injunction restraining the party from using violence against the other party or against a child, or excluding the violent party from the matrimonial home. Additionally, the judge may order the arrest of the defaulting partner if there is convincing evidence that actual bodily harm has been caused.¹²⁵ The Act extends this legal protection to a man and a woman living together in the same household as husband and wife consequently, de facto partners¹²⁶ are not excluded. This legislation would assist in dealing with the allied problem of violence against children. The net is widened by the inclusion of the de facto household. This kind of legislation should be carefully considered by all countries in the region.

Sexual harassment is another subject which evokes emotional response. The law may be involved where the harassment extends to assault or battery. Where words or conduct are relied on to prove harassment greater difficulty arises. There is often public comment without firm evidence to support the claim of sexual harassment. Perhaps some attempt should be made to collect and collate information which will prove, with more clarity, the extent of the problem.

Citizenship and nationality

The Constitution and Citizenship, Nationality and Immigration Legislation are the sources of law to which attention is directed when dealing with the matter of citizenship. Two areas are emphasized here because it is with these that several women are concerned. These two areas are: citizenship by descent, where citizenship rights depend on a parent and citizenship by registration where one spouse is entitled to register as a citizen of the country of the other spouse.

The tradition is that citizenship by descent depends on the male partner where the parents are married. The woman is only allowed to transmit citizenship where the child is born out of wedlock.¹²⁷ There is a move away from the conventional approach in some countries. For example, the Constitutions of Dominica, Guyana, Saint Lucia and Saint Vincent and the Grenadines grant women the same right as men to transmit citizenship to their children.¹²⁸

Citizenship by registration also originally depended on the male partner. The customary approach is seen in legislation which allows a woman to register as a citizen of her husband's country while denying a man the privilege of relying on his wife's citizenship.¹²⁹ The husband of a citizen has the same procedural path to registration in Dominica, Guyana, Saint Lucia and Saint

Vincent and the Grenadines.¹³⁰ Countries which maintain the custom which denies women the right to transfer entitlement to citizenship to child or husband should seriously consider amending such discriminatory legislation. The practical effect of this change for each particular country must not be overlooked.

Conclusion

It can fairly be stated that countries in the Caribbean have made some effort to improve the legal status of women since 1975. There has been a measure of law reform, more extensive in some countries, more restricted in others. The pace of social law reform tends to lag when economic activity demands the prior attention of lawmakers.

Those countries which have ratified or acceded to the convention have publicly proclaimed their intention to ensure that their laws accord with the standard set by the convention. States Parties are required to report to the United Nations on the progress made in the implementation of the convention. This requirement should prompt participating countries to re-think their laws and practices. For this reason some other methods should be devised to encourage submission of up-to-date reports. Face-to-face discussion with state representatives and agencies, interchange with credible non-governmental organizations, positive dissemination of information concerning the convention, exchange of comparative material between countries are the suggestions which are now offered.¹³¹ Some States Parties have registered reservations to specific articles of the convention. The principles related to reservations are clear. Reservations modify a treaty in relation between the reserving party and other parties. Reservations to fundamental provisions could result in incompatibility with the object and purpose of the treaty.¹³² The reservations which have been made to the Convention by one country in the region refer to nationality and to settlement of disputes between parties by arbitration and by the International Court of Justice. Reservations may always be withdrawn.

Throughout this paper suggestions have been made which could lead to improvement in specific areas. It is hoped that these will be considered. General proposals follow.

It is suggested that countries in the region be urged to ratify or accede to the Convention on the Elimination of All Forms of Discrimination Against Women. The convention will then provide a reference point against which developments in the country may be tested. It is proposed that countries re-examine their laws with a view to replacing the general with the particular. The division of family property at the dissolution of marriage through divorce, or death, should be reviewed to make certain that the law allows for equitable distribution having regard to family needs. The

responsibilities and benefits which are known to be of importance to the stable de facto family should be given legal recognition and enforceability. The existing social services should be extended, where possible, in order to take account of the particular circumstances of children and senior citizens. Any necessary regulation should be made to ensure that the equal right to education employment and health care is more than a statement of the law.

It is a truism that the law can lead the way to change in a society; however, individuals need the security of information concerning changes in the law. They need access to advice and opportunity for litigation in order to be satisfied that acceptable conclusions have been reached in their contentious situations. These two statements lead to the proposals that information specialists constantly enlighten the public concerning changes in the law and that "legal aid" be made available in all areas related to family matters.¹³³ Several bodies and institutions have been set up to advise governments on improving the status of women and to receive information from women about matters which concern them. These bodies usually take the form of departments or bureaus within a government ministry.¹³⁴

Resulting personnel and administrative difficulties are not therefore unexpected. Appointing independent advisory councils is a device which has been followed, with some success, in particular countries.¹³⁵ Where the membership is selected with care and objectivity, such bodies could provide additional expertise which would enhance that which is already present in permanent government organizations. Thought must be given to the terms of reference and funding of any council which is established. Further, law commissions with the authority to examine and make recommendations in respect of all legislation are important institutions. Law commissions are not intended to suggest only substantive law reform, but they are also in a position to access technical difficulties which may only become apparent when new legislation is applied in practice. Law commissions work, without fanfare, to assist legal departments and lawmakers.

Governments and agencies in the region have displayed genuine interest in matters which have influenced change in the status of women since 1975. This must be a continuing process.

Notes

1. Patchett, K.W. "Reception of Law in the West Indies", UWI. Law Library R.L. 414.
2. Ibid p. 27.
3. The husband administered the property, was fixed with maintenance duties and guardianship responsibilities.
4. Sawyer Geoffrey, "Law in Society", Oxford 1967 p. 141.
5. Adopted in December 1979, in force September 1981.
6. The countries which have ratified or acceded to the convention are Barbados 1980, Dominica 1980, Dominican Republic 1982, Guyana 1980, Haiti 1981, Jamaica 1984, St. Kitts and Nevis 1985, St. Lucia 1982, St. Vincent and the Grenadines 1981.
7. For example, the Declaration on the Elimination of Discrimination Against Women 1976, the Instrument on Political Rights of Women 1952.
8. The Convention, articles 1,2,3.
9. The remaining 14 articles deal with procedures.
10. For example legislation may provide access to health care and family planning.
11. The Convention Articles 12 and 14
12. The Convention has direct internal effect in the Dominican Republic, Report to CEDAW p. 5 and in other Caribbean Basin countries such as El Salvador.
13. In the Commonwealth Caribbean countries local legislation has to be enacted since the convention is not applicable directly.
14. The Convention Article 2.
15. Antigua and Barbuda, the Antigua Constitution Order 1967 (as amended) Art. 1; Bahamas, the Constitution of the Commonwealth of the Bahamas 1973, Art. 15; Barbados, The Barbados Independence Order 1966 (as amended) Art. 11; Belize, The Constitution of Belize 1981 Art. 3; Dominica, The Commonwealth of Dominica Constitution Order 1978, Art. 1; Grenada, The Grenada Constitution Order 1973,

Art. 1; Guyana, The Constitution of the Co-operative Republic of Guyana Act 1980, Art. 40; Jamaica, The Jamaica (Constitution) Order in Council 1962, Art. 13; St. Kitts and Nevis, The St. Kitts and Nevis Constitution Order 1967, Art. 1; Saint Lucia, The Saint Lucia Constitution Order 1978, Art. 1; Saint Vincent and the Grenadines, The Saint Vincent Constitution Order 1979, Art. 1; Trinidad and Tobago, The Constitution of the Republic of Trinidad and Tobago 1976 (as amended) Arts. 4 & 5.

16. Ibid. Antigua Art. 12, Bahamas, Art. 26, Barbados Art. 23, St. Kitts and Nevis Art. 13, Jamaica Art. 24.

17. Belize Art. 16, Dominica Art. 13, Grenada Art. 13, St. Lucia Art. 13, St. Vincent and the Grenadines Art. 13.

18. Trinidad and Tobago Art. 14.

19. Guyana Art. 29.

20. The format in the constitutions is similar, an example is Barbados Art. 1.

21. Examples are: Barbados Art. 26, Bahamas Art. 30, Belize Art. 21, Guyana Art. 152, St. Lucia schedule 2, s. 2, Trinidad and Tobago Art. 6.

22. The format in the constitutions is similar, for example, Guyana Art. 153.

23. A challenge in the courts on the constitutional discrimination ground was decided against the person complaining when the existing laws were upheld in a Saint Lucia teachers case and a Guyana out-of-wedlock case.

24. "Constitutions of the World", edited by Albert P. Blaustein and Gisbert H. Flanz published by Oceana Publications, Inc. New York, Volumes IV, VII, XV.

25. Dominican Republic, Initial Report August 31, 1987, English version.

26. Constitution of the Dominican Republic, Art. 8.

27. Dominican Republic Report, p.11

28. Dominican Republic Constitution Arts. 3 and 42.

29. Dominican Report pages 7 & 10

30. Term concubinage used in Dominican Republic's Report e.g. p.5. Barbados uses the phrase "union other than marriage" in legislation, Family Law Act 1981, s. 39.

31. A subsisting marriage will not only annul the purported marriage but may lead to prosecution for the offence of bigamy. The English case *Corbett vs. Corbett* [1971] p. 83 insists that the parties must be biologically male and female. The parties must not be closely related either by family or marriage.

32. Law no. 659 of July 1944 para. 1 and para. 3 cited in Dominican Report p. 22 - p. 23.

33. *Kinneally vs. Zazula* (1975) 25 W.I.R. 29, some procedures are waived for a "marriage in extremis" such as prior publication, special hours and buildings.

34. Belize Marriage Act cap. 140 s. 4 (1)

35. Antigua Marriage Act cap. 347, s.24 as amended 1968-22; Bahamas Marriage Act cap. 88, s.49 as amended 1967-7.

36. Guyana Marriage Act Cap. 45:01 s. 32.

37. St. Vincent Marriage Act cap. 151 s. 3; Dominican Republic Law 659 as amended by no. 4999 of 1985, Report p. 26.

38. Barbados Marriage Act cap. 218A. s.4; Jamaica Marriage act, Vol. XII s. 3; St. Lucia Civil Code, cap. 242, art. 81.

39. This rule excepts widows, widowers and divorced persons.

40. Hindu and Muslim legislation in Guyana, Jamaica and Trinidad and Tobago. In Guyana Amerindian marriages are dealt with in the Marriage Act cap. 45:01

41. For example Guyana Marriage Act s. 72; Trinidad and Tobago Marriage Act cap. 45:03, s.36.

42. *Da Silva v. Da Silva* (1981) 28 W.I.R. 357.

43. Barbados Marriage Act. s.34.

44. The Convention Art. 16 (b).

45. Usually titled Offences Against the Person or Criminal Offences Acts.

46. Trinidad and Tobago, Sexual Offences Act, 1986-27, 56, also supra.

47. Guyana, Criminal Law (Offences) Act, cap. 8:01, s. 70; Jamaica, Offences Against the Person Act, Vol. XIII, s. 48; Barbados, Offences Against the Person Act, cap. 141, s.

48. Public comment in newspapers and radio programmes particularly in Barbados.

49. For example Antigua Magistrate's Code of Procedure Act, Cap. 48, s. 119. Note that a list of matrimonial offences such as adultery, cruelty, desertion are listed in the early legislation.

50. Antigua and Barbuda legislation *ibid*; St. Kitts and Nevis Magistrate's Code of Procedure Act, cap. 45.

51. Dominica by the Divorce and Matrimonial Courses (Declaration of Data) Act 1984 - 18 has accepted the English law up to June 1, 1984. St. Vincent and the Grenadines by a similar Act 1984 - 32 has also accepted the English law up to the same date. Grenada has referentially imported the English law. Trinidad and Tobago, Family Law (guardianship of minors, domicile and maintenance) Act 1981 - 22, s. 24. Dominica also has a comprehensive Maintenance Act, 1982 - 6.

52. Dominican Republic Civil Code, Art. 214.

53. Barbados Family Law Act s. 50 (1)

54. *Ibid.* s. 51

55. For example Dominica Maintenance Act 1981 - 6 s. 9 speaks of a sum not exceeding \$30.00 a week.

56. Trinidad and Tobago Maintenance Act *supra* s. 25.

57. Belize, Family Maintenance Act cap. 136; Trinidad and Tobago Maintenance Act *supra* s. 28; Barbados Family Law Act *supra* s. 87 and Family Law Rules 1982 s. 101 - s. 108.

58. 1975 - 41 as amended 1978 - 22 and 1982 - 8.

59. Family residence through mutual agreement, see Dominican Report p. 22. In the English case Dunn vs. Dunn [1984] 2 All. E.R. 822, there is comment on p. 823 to the effect that the choice is mutual. This principle would be applied in Caribbean countries.

60. Haiti and Suriname must be civil code countries also but detailed information is unavailable.

61. Dominican Report p. 23, citing article 215 of the Civil Code.

62. St. Lucia civil code cap. 242, Part III arts. 1188 and 1190.

63. *Ibid.* 1192 and 1198.

64. St. Lucia Divorce Act 1973 - 2, s. 45.
65. For example Antigua Married women's Property Act cap. 352 s. 19 as applied in Davis vs. Davis (1969) 14 W.I.R. 141.
66. For example the parties have to show who made a contribution, at what time and to the acquisition of which property.
67. Matrimonial Proceedings and Property Act cap. 45:51, s. 27 Trinidad and Tobago for example.
68. The 1/3 rule and the 1/2 rule indicate that 1/3 or 1/2 of the property is the starting point which the court considers when ordering property distribution.
69. Antigua, Matrimonial Causes Act, cap. 52; Guyana, Matrimonial Causes Act, cap. 45:02; St. Christopher Matrimonial Causes Act, cap. 50.
70. Bahamas, Matrimonial Causes (Amendment) Act, 1983 - 9; Belize, Supreme Court of Judicature (Amendment) Act, 1985; Jamaica, Divorce Act, Vol. V. s. 19.
71. Trinidad and Tobago Matrimonial Proceedings and Property Act, op. cit.
72. Barbados Family Law Act op. cit. s. 27.
73. Reconciliation is a feature of all the reformed divorce legislation.
74. Generally see Parry and Clarke, "The Law of Succession", London 1983.
75. Barbados Succession Act cap. 249, Part X and Part XI, s. 102.
76. Ibid s. 57.
77. Ibid. s. 100.
78. Belize Wills Act cap. 165, s. 34; Trinidad and Tobago Succession Act 1981 which has not yet been proclaimed.
79. Trinidad and Tobago Succession Act, Ibid. s. 95.
80. Ibid Part VIII s. 94 TO s. 116
81. Dominican Republic Civil Code art. 372, Report p. 23.

82. Family Law (Guardianship of Minors, Domicile and Maintenance) Act, 1981, s. 4.

83. Barbados Family Law Act, op. cit. s. 40.

84. For example Dominica Maintenance Act, 1981 - 6; Guyana Maintenance Act cap. 45:03; Grenada Maintenance Act cap. 180; Jamaica Maintenance Act, Vol. XII.

85. Trinidad and Tobago Family Law Act, supra. s. 24; Succession Act, s. 95.

86. Belize Family Maintenance Act, cap. 136; Guyana and Jamaica supra.

87. Dominica Maintenance Act supra.

88. For example Barbados in 1931, St. Vincent in 1930.

89. Barbados, Status of Children Reform Act, 1979-32; Belize, Status of Children Act 1980-32; Guyana, Children Born out of Wedlock (removal of discrimination) Act, 1983-12; Jamaica, Status of Children Act 1976, 36; St. Kitts and Nevis, Status of Children Act, 1983; Saint Vincent and the Grenadines, Status of Children Act, 1980-18; Trinidad and Tobago, Status of Children Act, 1981 - 17.

90. Barbados Status of Children Reform Act, s. 7 (1)

91. Dominica Maintenance Act, supra. s. 3 and Guyana Maintenance Act cap. 45:03 s. 2 are examples.

92. Antigua Maintenance of Children Act cap. 49.

93. Jamaica, Affiliation Act, Vol. I is typical, see also St. Lucia Code, cap. 242 art. 208.

94. Trinidad and Tobago Succession Act op. cit. (not proclaimed)

95. See note 76.

96. Definition in Barbados Family Law Act, s. 39.

97. Decisions in Barbados court on de facto spouses in a "union" include Vanderpool vs. Squires 1985, Benn vs. Pilgrim 1985, Gittens vs. Tull 1985 See Barbados Supreme Court Judgements.

98. Barbados Succession Act s. 2; Trinidad and Tobago Succession Act s. 2.

99. See notes 95 and 76.

100. For example, Guyana Constitution op. cit. Art. 27; Dominican Republic Report p. 13.

101. Several programmes have been mounted. See Dominican Report p. 10 and p. 16 - 17.

102. Antigua Labour Code 1975-14.

103. Guyana Constitution, art. 22; Dominica Protection of Employment Act, 1971 - 1; Bahamas National Insurance Act 1972 - 21 (as amended)

104. Antigua Labour Code supra; Dominica Labour Standard, Act, 1977 - 2; Jamaica, Employment (equal pay for men and women) Act Vol. III.

105. Barbados Domestic Employees (hours of duty) Act.

106. Dominican Report p. 18 nearly 1/4 of total number of economically active women work as domestics.

107. Barbados, Employment of Women (maternity leave) Act, cap. 345A; Grenada, Maternity Leave Law 1980 - 53; Jamaica Maternity Leave Act, 1979 - 44.

108. For example Jamaica National Insurance Act, Vol. XIII; Barbados, National Insurance and Social Security Act, cap. 47 (as amended).

109. See Antigua, Social Security (Amendment) Act 1976 - 24, s.2 for example

110. Dominican Republic Constitution Art. 8

111. Dominican Republic Labour Code Arts. 211 and 212.

112. Dominican Republic Pre-and Post-Natal Leave Law No. 4099 of 1955.

113. Grenada Employment of Women, Young Persons and Children Act, cap. 105 is an example.

114. The night work prohibition may be influenced by the relevant I.L.O. Convention. Dominican Republic Report p.17 "Women may not engage in work that is not appropriate to their sex."

115. Barbados Employment (miscellaneous provisions) Act, cap. 346

116. Examples are - Bahamas Penal Code, cap. 48; Guyana Criminal Law (Offences) Act, cap. 8:01; Jamaica, Offences Against the Person Act. Vol.XIII.

117. Trinidad and Tobago, Sexual Offences Act, 1986 - 27, s. 4.
118. Bahamas Penal Code supra. Art. 326 is an example.
119. Trinidad and Tobago Sexual Offences Act, supra. s. 5.
120. Ibid. s. 29, 30, 32.
121. For example, Jamaica Offences Against the Person Act supra.
122. An English case R.V. Bourne (1939) 1 K.B. 687 reached this decision.
123. Barbados Medical Termination of Pregnancy Act, 1983 - 4.
124. Trinidad and Tobago Sexual Offences Act op. cit. s. 2, 22, 23, 24
125. St. Vincent and the Grenadines, Domestic Violence and Matrimonial Proceedings Act 1984 - 5.
126. Ibid. s. 3, (2)
127. For example Bahamas and Barbados.
128. As in Guyana Constitution Art. 44.
129. Dominican Republic Report p. 16.
130. See Constitutions e.g. Guyana Art. 45.
131. An interesting conference was held in Brazil in 1987 during which the convention was given wide publicity. Outside the region a congress was held in Moscow in 1987.
132. See generally Greig "International Law", London 1970 p. 363 et seq.
133. Barbados Community Legal Services Act 1981 - 33 provides for limited assistance in family matters.
134. Dominican Republic, Department for the Advancement of Women, St. Lucia Department of Women's Affairs are examples.
135. For example, Canada.





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