



Special Rapporteur on the Human Rights of Migrants

ENDING IMMIGRATION DETENTION OF CHILDREN AND SEEKING ADEQUATE RECEPTION AND CARE FOR THEM

Introduction

1. Living Water Community (“LWC”) is a faith based not for profit organisation based in Trinidad and Tobago and partners with UNHCR and UNICEF. LWC supports the most vulnerable and destitute persons in society and has a dedicated “Ministry for Migrants and Refugees” which provides reception, legal and case management services to migrants and refugees.

Legislation or Policy that Restricts or Prohibits the Use of Immigration Detention of Minors and Families

2. There is no specific legislation or amendments to same implemented in Trinidad and Tobago to deal with the issue of immigration detention of minors and their families. Places of detention include, the Immigration Detention Centre (“IDC”), the Maximum Security Prison (“MSP”) the Youth Transformation and Rehabilitation Centre (“YTRC”) and police stations. A closer look at the following pieces of legislation and documents however provide useful guidance on detention of minors:
 - i. Constitution of the Republic of Trinidad and Tobago Chapter 1:01 (“the Constitution”);
 - ii. Children’s Act Chapter 46:01 (“the Children’s Act”);
 - iii. Children’s Authority Act Chapter 46:10 (“the Children’s Authority Act”);
 - iv. Children’s Community Residences, Foster Care and Nurseries Act Chapter 46:04 (“the Children’s Community Residences Act”);
 - v. Immigration Act Chapter 18:01 (“the Immigration Act”); and
 - vi. A Phased Approach to the Establishment of a National Policy to Address Refugee and Asylum Matters in the Republic of Trinidad and Tobago (“2014 Refugee Policy”).
3. The **Constitution** provides remedy by way of Habeas Corpus for unlawful detention, furthermore, **Section 5 (2)**, states:

“Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not -

- (a) authorise or effect the arbitrary detention, imprisonment or exile of any person;...*
- (b) impose or authorise the imposition of cruel and unusual treatment or punishment;*
- (h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.”*



4. It is worth noting that the Constitution does not discriminate on the basis of nationality, therefore, nationals and non-nationals alike enjoy the same rights afforded under the Constitution. **Chapter I, Part I, Section 4** states:

“It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms...”

5. Notwithstanding this, migrant children and their families find themselves in the custody of the authorities for breaching regulations under the Immigration Act, the most common being entering through an irregular port of entry.¹ Once this occurs, there is arrest and subsequent prosecution under the courts as these offences are criminal in nature under the laws of Trinidad and Tobago.
6. Many times, parents find themselves in one of the state prisons once convicted by the courts and are separated from their children. The maximum sentence and fine for this offence is fifty dollars fine and three years imprisonment². Where no legal guardian is available while the parent is incarcerated, the Children’s Authority would intervene and assume custodial care and control of the child.

Non- Custodial Alternatives to Immigration Detention of Children

7. Under **Section 3 (1)** of the **Children’s Act** a child is defined as someone under the age of eighteen years old. The following non-custodial arrangements are found under **Section 59** of the **Children’s Act**:
- i. Dismissal of the charge;
 - ii. Discharge of the minor on his entering into a recognisance;
 - iii. Supervision of a probation officer;
 - iv. Placement of the minor in the care of a fit relative or person;
 - v. Commitment of the minor to a Community Residence;
 - vi. Order of the child to pay a fine;
 - vii. Order of the parent or guardian of the minor to give security for good behaviour of the minor;
 - viii. Supervision orders;
 - ix. Order that the minor be deemed in need of care and protection and referred to the Children’s Authority, which shall investigate and seek any appropriate order of the Court;
 - x. An order for counselling, any other rehabilitative intervention or treatment or for psychological evaluation and resultant assistance;

¹ Immigration Act Chapter 18:01, Section 40.

² Ibid, Section 40 (j).



- xi. Community service;
- xii. Provision of bail; and
- xiii. Placement at a Rehabilitation Centre.

8. The **Children’s Community Residences Act** also makes the provision for foster care under **Section 28**.

9. In addition to the aforementioned pieces of legislation, the **Immigration Act at Section 17 (1)** provides an alternative to immigration detention for children and their families. **Section 17** states:

“...a person taken into custody or detained may be granted conditional release or an order of supervision in the prescribed form under such conditions...”

10. The right to liberty and security of the person are fundamental human rights³, reflected in the Universal Declaration of Human Rights,⁴ the Convention on the Rights of the Child (“the Convention”),⁵ the Constitution⁶ and the international prohibition on arbitrary detention.⁷

11. The Convention provides guidance in the treatment of minors, including ensuring that a child is not separated from his or her parents⁸ and ensuring that a child who is deprived of his or her family environment shall be entitled to special protection and assistance provided by the State.⁹ Local case law also provides some guidance on detention of children.¹⁰

12. While however, the measures mentioned above can enhance the protection of the rights of migrant children and their families including the discretion of the courts to make orders that are tailored to the overall psychological and physical needs of the child, implementation continues to remain a challenge.

13. Additionally, migrant children who now find themselves in a foreign country far removed from their country of origin although sometimes benefitting from non-custodial options, - and depending on the circumstances of the case, community residences and/or ongoing supervision, - may also need special attention due to their particular circumstances.

³ The American Declaration on the Rights and Duties of Man, Article I.

⁴ The Universal Declaration of Human Rights, <http://www.un.org/en/universal-declaration-human-rights/>, Article 3.

⁵ The Convention on the Rights of the Child, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, Article 37.

⁶ Chapter 1, Part I, Section 4 (a).

⁷ International Covenant on Civil and Political Rights Article 9 (1), <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.

⁸ The Convention on the Rights of the Child, <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>, Article 9 (1)

⁹ Ibid, Article 20 (1).

¹⁰ Claim No. CV2016-04370, In the Matter of the Action of the Children’s Authority of Trinidad and Tobago to Place the Claimant in a home that is not a Community Residence and Subject the Claimant to Conditions Amounting to Solitary Confinement, paragraph 20.



Good Practices or Measures Taken to Protect the Human Rights of Migrant Children and their Families while their Migration Status is Being Resolved

14. The Children's Authority of Trinidad and Tobago ("the Authority") is a specialised agency with the responsibility for the care and protection of children, especially those who are at risk or have been victims of abuse or neglect. The Authority advocates for the rights of children, and encourages and supports them to enjoy their childhood. The organisation's overarching objective is to utilise child-friendly and progressive solutions to address children's issues and rehabilitate them so that their full potential is realised.¹¹
15. An Emergency Protection Order may authorise the removal of a child from any place or the detention of a child at a community residence at any time. Under the **Children's Authority Act Section 25E (1) & (2)(b)**, an Emergency Protection Order can be made where the the Court is of the view that:

*“(a) the child is likely to suffer physical, emotional, mental or psychological harm;
(b) enquiries as to whether the child is suffering or is likely to suffer physical, emotional, mental or psychological harm are being frustrated by access to the child being unreasonably refused and the applicant has reason to believe that access to the child is required as a matter of urgency....”*
16. A Case Management system is also used by the Authority and the Office of the Prime Minister which includes identification, assessment, medical screenings, psychosocial support and placement of migrant children in appropriate community residences.
17. The **Family Law (Guardianship of Minors, Domicile and Maintenance) Act Chapter 46:08** was enacted to regulate the authority of parents as guardians of their minor children, their power to appoint guardians, and the powers of Courts in relation to the guardianship, custody and maintenance of minors and with the welfare of the child being the paramount consideration in decision making.
18. The Trinidad and Tobago Police Service has a dedicated Child Protection Unit ("CPU") to deal with cases where minors are involved. All police officers are guided by the **Judge's Rules for Children 2016** when treating with child offenders. Under **Rule VI 1 (a) and (b)**, a police officer shall not interrogate a child arrested in the absence of a parent or guardian *and* a Duty Counsel or private Attorney - at - Law. Therefore the Legal Aid and Advisory Authority of Trinidad and Tobago must be contacted for *pro bono* representation by the police if the minor is unrepresented by an attorney.

¹¹Children's Authority of Trinidad and Tobago, <https://tchildren.org/about-us/who-we-are>.



19. In 2004 a Family Court was established which eventually led to the **Family Division and Children Act, Act No. of 2016**, where jurisdiction for all family matters and children matters are exercisable in a Division of the High Court. Therefore, minors who are charged with immigration related offences will be brought before a specialised court.
20. Apart from the above-mentioned legislative frameworks and rules, one of the most important mechanisms for the protection of minors and families has been through regular stakeholder engagement by LWC with the Ministry of National Security (“MNS”), the Immigration Division, the Refugee Unit, UNHCR and the Ministry of Education (“MOE”).
21. Between 2014 and 2017 through collaborating with these stakeholders, a Refugee Policy was adopted by Cabinet, the Refugee Unit of the Immigration Division was established and Interim Standard Operating Procedures¹² were mutually agreed upon by MNS, the Immigration Division, LWC and UNHCR.
22. Furthermore, this collaboration has resulted in the agreement of a phased strategy to allow for the transfer of knowledge and expertise on refugee status determination to Trinidad and Tobago provided by UNHCR, which would allow for the Government to develop adequate institutional processes in order to treat with refugee cases.¹³
23. A Child Protection Working Group (the “Working Group”) chaired by UNICEF, Trinidad, was also recently established and met for the first time in February of this year. This working group involves key stakeholder representatives including, LWC, UNHCR, IOM, the Counter Trafficking Unit (“CTU”) under MNS, the Authority and the Office of the Prime Minister.
24. LWC has observed that minors are not permitted to sign Orders of Supervision granted by the Immigration Division for conditional release when detained, however, accompanied children are placed on these documents as a derivative of their parent or legal guardian. In instances where minors are unaccompanied, Immigration Officers make efforts to contact the Authority or find suitable care for the child.
25. In the past where persons have been granted refugee status, the Refugee Unit of the Immigration Division would facilitate family reunification, this process has however changed and persons must now apply for a “Minister’s Permit.”¹⁴ This Minister’s Permit was granted by the MNS in

¹²Joint Select Committee Tenth Report on Human Rights, Equality and Diversity on the Treatment of Detainees at the Immigration Detention Centre, Fourth Session of the Eleventh Parliament (2018/2019), Interim Standard Operating Procedures for the Protection of Asylum - Seekers and Refugees in Trinidad and Tobago, Appendix XI, 181.

¹³ A Phased Approach Towards the Establishment of a National Policy to Address Refugee and Asylum Matters in the Republic of Trinidad and Tobago,
<http://www.acnur.org/fileadmin/Documentos/BDL/2016/10346.pdf?file=fileadmin/Documentos/BDL/2016/10346>.

¹⁴ Immigration Act Chapter 18:01, Section 10.



June 2019 to Venezuelans living in Trinidad and Tobago during a special Amnesty which gave those who were approved the right to live and work.¹⁵

26. LWC has dedicated legal officers, social workers and counsellors whose core functions include child protection and advocating for the release of migrant children from situations of detention. Services include legal counselling, offering psychosocial support, referrals to health care services, financial assistance to families and continued collaboration with the respective agencies to ensure that children receive utmost care and protection.
27. LWC has also implemented informal education services to migrant children through the use of SKY Schools. Additionally, LWC's parish community through stakeholder engagement with the MOE, continues to advocate for children to be admitted into local schools regardless of the barrier created by the Immigration Act.¹⁶

Challenges and/or Obstacles in the Development and/or Implementation of Non-Custodial Alternatives to Immigration Detention of Children and their Families

28. Some challenges in implementing non-custodial alternatives to immigration detention of children and their families include:
 - i. Lack of legislation on Refugee Law;
 - ii. Neither the Immigration Act nor the Children's Act speak to migrant children and special procedures for treating with those who end up in the custody of the authorities;
 - iii. Challenges in persuading other actors to join the Working Group;
 - iv. Lack of suitable community residences, foster care situations and shelter options dedicated to minors with irregular migratory status due to institutions being overwhelmed by cases of both local and migrant children and lack of resources from the Government to fund these institutions. Furthermore, these placement options are not always equipped with the capacity to support minors in meeting psychological, educational, health and cultural needs as language is a major challenge for those who do not speak English;
 - v. Although there is legislation enacted for non-custodial placement options, implementation is not always effective. Placement options are also temporary in emergency settings, furthermore, when space is available, there can also be long waiting periods for placement. Migrant children especially those unaccompanied are viewed as the most challenging for the Authority because of difficulty in finding alternative placement options that are not regarded as detention;

¹⁵ Trinidad Express, Venezuelan migrants to get 6 - month extension, January 17, 2020, https://trinidadexpress.com/newsextra/venezuelan-migrants-to-get-6-month-extension/article_4adbfc5e-3922-11ea-a8a5-b3ba6aefc2f2.html.

¹⁶ Immigration Act Chapter 18:01, Immigration Regulations, Section 9 (6) (a), 56.



- vi. Systematic challenges in releasing minors into the care of their parents and/or guardians as adults may not have documentation to prove relation; and
- vii. Continued prosecution and sentencing of adults with children for immigration related offences due to lack of amendments to the regulations of the Immigration Act.

Support other Stakeholders (other than Government) could Provide to Strengthen the Development and/or Implementation of Non-Custodial Alternatives to Immigration Detention of Children and their Families

29. Although, there have been strides to develop and implement legislation for refugees, more is needed in advocating for these changes including various legislative amendments to give effect to international best practice guidelines.
30. Additionally, international organisations can assist the Government by supporting with resources. Trinidad and Tobago is a small island nation state, and has been affected by the outflow of migrants from neighbouring Venezuela. It is estimated that there are 42,593 persons in Trinidad and Tobago in need of international protection¹⁷, this is a large number for a country with a population of about 1.39 million people.¹⁸
31. To give effect to the aforementioned, the Working Group with its mandate to build stakeholder capacity through sharing information can undertake the following:
 - i. Coordinate interventions, avoid duplication and ensure timely response;
 - ii. Develop tools and a harmonised approach, and seek consensus on issues;
 - iii. Create partnerships (especially with the Immigration Division) and linkages for better prioritisation of available resources;
 - iv. Commit to and endorse minimum standards for child protection interventions;
 - v. Monitor progress and report on activities and needs;
 - vi. Identify child protection concerns and contribute to advocacy initiatives which address them;
 - vii. Coordinate technical capacity building and strengthening efforts; and
 - viii. Clarify procedures for referring urgent child protection cases and identify/address factors that may compromise immediate access to response services (such as when incidents occur at night).

¹⁷ UNHCR, Population Statistics, http://popstats.unhcr.org/en/overview#_ga=2.269254322.2113446785.1589456932-1389759833.1589456932&_gac=L1.16199636.6.1589456932.Cj0KCCQjw2PP1BRCiARIsAEqv-pTWgJBo5pROEHqF-ujHnfVNketWP3ySOKLIFeFIQG9wTy7PgKJGqWQaAipuEALw_wcB.

¹⁸ Worldometers, Trinidad and Tobago Population (1950 - 2020), Wordometers, <https://www.worldometers.info/world-population/trinidad-and-tobago-population/>.



Conclusion

32. Although Trinidad and Tobago has legislation for the care and protection of minors and there are many non - custodial options available for their placement, more directions are needed in relation to immigration specific issues including improvement in effectively implementing already established laws. An interagency approach is strongly needed to resolve these issues.

Respectfully submitted by:

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