

Opening Remarks at “Justice Reform: Protecting the Vulnerable” Conference in Anguilla¹

by

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¹ These were the Opening Remarks given at a Conference held under the theme “Justice Reform: Protecting the Vulnerable” on Friday, June 22, 2018 at the La Vue Hotel in South Hill, Anguilla.

Protocols.

Introduction

I am honoured to have been graciously asked by the Honourable Attorney General, Mr. John McKendrick QC, to chair the day's proceedings. I must first congratulate the Attorney General and his entire team for their efforts in organising what I fully expect to be a day of stimulating, informative and necessary discussions centred on justice reform in Anguilla. I also wish to express gratitude to the Governor for his kind hospitality in facilitating my visit.

Today's proceedings are being held under the theme "Justice Reform: Protecting the Vulnerable". The United States Agency for International Development defines "vulnerable people" as "Any group or sector of society that is at higher risk of being subjected to discriminatory practices, violence, natural or environmental disasters, or economic hardship than other groups within the state; any group or sector of society (such as women, children or the elderly) that is at higher risk in periods of conflict and crisis." It is accepted at the international level that vulnerability is connected to the risk of deprivation, losing rights and entitlements, being physically or psychologically hurt or even losing life due to various threats in the surrounding environment.

While this concept of vulnerable populations has been traditionally associated with emergency preparedness situations, it can also be adapted to assess those situations where legal, social and economic deficiencies create a risk for certain segments of our populations. In this sense, the concept of vulnerability is used in a much more expansive context than merely having limited financial resources, and it also encompasses not having access to laws and public policies that provide the systemic protection that children and other vulnerable groups, such as women and the mentally-ill, need for their rights to be realised. The characterisation is also particularly important when it comes to crafting legislative policies. This is because acknowledging the most vulnerable groups means that policies and laws can be developed to specifically address their needs, which will increase the overall well-being of not just those identified groups, but the population as a whole.

Taking Human Rights Seriously

Since the post-colonial era, there have been significant advances in the political, economic and social spheres in the region. However, our judicial and legal systems have at times struggled to keep up with these advancements. It goes without saying that, in this era of globalisation, an important dimension of economic development is an efficient and effective legislative framework that gives effect to the rights and protections of all citizens, including the most vulnerable groups. Comprehensive reform initiatives equip us to deliver quality legal and judicial services to an evolving society. As a member of the judiciary since 1982, I have seen how the laws evolve and, more importantly, how our judiciary responds to these changes in the exercise of its functions. It is innate in human development to aspire to improve upon what is there. As the judiciary faces new challenges due to a changing world, it must be prepared to respond to these new needs. There has been significant advancement in our political, economic and social structures in the region. If the judiciary and legislative frameworks are left behind, the benefits of the other areas cannot be fully maximised. The motivation then flows from a personal commitment to see excellence in our legal systems and to ensure that the people who our laws are intended to benefit are satisfied that their rights are being protected and can receive justice in our courts in instances where they feel they have been short-changed.

The issue of legislative reform has been high on our regional agendas over the years. Much of this is due to countries beginning to take the rights of children, women and other vulnerable groups in our society very seriously. Also, many countries in the region have committed to obligations at the international level in ratifying international instruments relating to human rights. Although Anguilla is under the jurisdiction and sovereignty of the United Kingdom, it is not a part of the UK. It is self-governing, and it has its own domestic laws. UK laws do not apply to Anguilla unless explicitly extended. As a territory, Anguilla does not ratify international conventions or treaties; but, if requested by the United Kingdom or by the territory, a convention can be extended if the territory complies with necessary legal aspects. In this regard, the following human rights treaties have been extended by the UK to Anguilla:

- International Convention on the Elimination of all Forms of Racial Discrimination;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

- Convention on the Rights of the Child;
- Convention of 25 October 1980 on the Civil Aspects of International Child Abduction;
- and
- Convention relating to the Status of Stateless Persons.

These commitments and obligations are consistent with the underlying values expressed in the Anguilla Constitution Order 1982. Chapter I titled “Protection of Fundamental Rights and Freedoms” contains specific provisions to protect human rights, and to combat discrimination. It provides that every person in the country is entitled to the fundamental rights and freedoms of the individual, whatever his/her race, place of origin, political opinions, colour, creed or sex: life, liberty, security of the person, the enjoyment of property and the protection of the law, freedom of conscience, of expression and of peaceful assembly and association, and respect for private and family life. To this end, since the year 2000, some of the domestic legislation relevant to the rights of children which have been enacted in Anguilla include:

- Adoption of Children Act (2000)
- Age of Majority Act (2000)
- Anguilla Belonger Commission Act (2006)
- Child Abduction and Custody Act (Revised Regulations under Child Abduction and Custody Act R.S.A. C. C32) (2008)
- Criminal Code (2010)
- Employment of Women, Young Persons and Children Act (2000)
- Fair Labour Standards Act (2000)
- Health Authority of Anguilla Act (R.S.A. C. H3) and Health Services Fees and Charges Regulations (2010)
- Immigration and Passport Act (2006)
- Juvenile Act (2000)
- Juvenile Courts Act (2000)
- Labour Department Act (2000)
- Maintenance of Children Act (2000)
- Marriage Act (2010)
- Probation Act (2011)

The enactment of these pieces of legislation is proof that Anguilla has been proactive in facilitating a legislative environment that provides protection for the most vulnerable members

of its society. It is against this backdrop that one of the central aims the proceedings here today is to create awareness of the development of some critical reform measures impacting vulnerable groups in Anguilla. This includes the creation of a proper family court in Anguilla to safeguard children and to take effective measures to protect victims and witnesses in the family and criminal justice systems. The development of dynamic and necessary solutions to reform our legal system is no easy feat. It requires cross-disciplinary, holistic, cultural and societal approaches. Indeed, reforming the justice system is but one piece of the larger puzzle. Change must also manifest itself on an individual and societal level. A forum such as this one provides us with such an opportunity. We can collectively join forces with stakeholders in the sharing of views, providing accurate and factual details and assessing where we are and how we should move forward. I therefore encourage you all to be open and to use the communication opportunities that will be discussed as the day goes on to contribute to the central discussion.

Child Protection Bill

The proposed Child Protection Bill aims to give effect to Anguilla's obligations concerning the well-being, development and protection of children in terms of the United Nations Convention on the Rights of the Child. This is specifically expressed in section 2 of the Bill. The UN Convention on the Rights of the Child is itself a landmark instrument in articulating the fundamental rights of children both within the family and beyond in settings such as schools and early childhood centres. Under the aegis of this Convention, children were to be no longer seen as possessions, chattels or appendages of their parents. Within the Convention, children have the right to be protected from all types of abuse, including abuse that may occur in their families, and to live in settings other than those provided by their families. One commentator has observed:

“It affirms the rights of parents with respect to children, and of children with respect to parents in the context of the best interests of the child. The Convention promulgates standards and goals of equal rights for all children to life, liberty, dignity, and personal and cultural identity; to optimum development, health, education, care and protection; to freedom from exploitation and neglect; and to civil and political rights.”²

² Gil, D. G. (1991), Children and work: Rights to become creative and productive, *School Psychology Review* 20(3): 393.

The Child Protection Bill continues a similar landmark trajectory in Anguilla since it is being heralded as the most comprehensive and ambitious legislation to be enacted in Anguilla relating to the rights and protection of children. The legislation aims to set the standard for the manner in which matters relating to children will be dealt with in the future in the courts. Under the legislation, Social Workers in the Department of Social Development will have more provisions at their disposal to keep children safe from harm and to intervene on behalf of children to prevent abuse. Additionally, the legislation will enable children to give evidence without having to face the alleged perpetrator in Court. The substantive provisions aim to improve the capacity of the judicial and legal system by prescribing laws that address issues specific to children and families and seeks to strengthen the institutional capacity to facilitate greater access to justice in matters involving children in a more holistic manner than has been provided for in the past. Some of the significant provisions include:

- Part 5 which identifies circumstances in which a child may be considered to be in need of care and protection;
- Part 6 which provides for mandatory reporting of child harm, records of reports and subsequent action and protection of persons who make reports; and
- Part 10 which provides for the orders which may be applied for to secure the care and protection of a child.

The Schedule makes amendments to various pieces of legislation, to repeal and amend a plethora of obsolete and derogatory provisions relating to children, such as referring to out of wedlock children as “the bastard”. The amendments create a more modern framework for the grant of paternity orders and maintenance orders by the magistrate, pending the enactment and implementation of full maintenance of children legislation. It also provides that the High Court shall be known as the Family Court Division when it exercises jurisdiction for all family matters and matters relating to children.

The Bill also brings Anguilla in conformity with accepted international standards of child protection. For instance, section 3 (1) of the Bill provides that:

“This Act must be interpreted and applied so that in all matters concerning the care, protection and well-being of a child arising under this Act or under any proceedings,

actions and decisions by an organ of state in any matter concerning a child or children in general, the best interests of the child concerned is the paramount consideration.”

The significance of this particular provision cannot be understated. The best interests of the child is a child rights principle which derives from Article 3 of the UN Convention on the Rights of the Child, which says that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. Assessing the best interests of a child means to evaluate and balance “all the elements necessary to make a decision in a specific situation for a specific individual child or group of children”. These substantive provisions of the Bill serve to further advance the rights of children legislative framework which Anguilla has been actively building over the years in several respects, such as establishing compulsory education from 5 to 17 years, abolishing corporal punishment in schools and creating alternatives to prison.

Criminal Justice Reform Bill

The Criminal Justice Reform Bill address a number of important issues targeting, once again, the more vulnerable members of Anguillan society. Given the time constraints, I will not attempt to highlight all of the amendments which are consolidated in the proposed legislation but I will note that the Bill looks at prescribing special measures for vulnerable witnesses; limitations on the ability of those accused of sexual abuse from being able to directly ask questions of complainants; and the admission into evidence of ‘achieving best evidence’ interviews, for children, in particular, to help them give carefully thought through evidence.

Moving Forward

When it comes to the process of both passing and ultimately implementing legislative reform packages, especially ones as wide-ranging as the package which is currently being proposed, there may be some challenges. However, I wish to caution that any such challenges are no different from those associated with changes in general. Certainly, the judiciary with rich traditions may very well be one of the last institutions to accept change easily. However, I do not think there will be any significant resistance to the substantive provisions of the proposed legislation and the overarching themes they seek to address. I am encouraged just by the level of interest and engagement I see reflected in the attendance at these proceedings today. Despite

this, I am mindful of the fact that people are generally sceptical about changes. As a practice, people are comfortable with what they know and have become accustomed to. Overcoming such scepticism may very well be one such challenge. This is one reason why today's proceedings are such a great platform for mass education. The facilitation of such an event indicates that there is a policy of listening intently to all voices and making everyone a part of the consultation process. I am satisfied that success stands a better chance when all voices with interest in these reform initiatives are heard.

I also wish to say a few words in relation to the judicial process. It has been my experience that, in undertaking reformatory efforts, we need to cast the net far and wide and be willing to be innovative. We do not have to be slave to traditional processes as we look at ways at improving our court procedures and practices. I am a strong advocate for utilising a concept which has proved highly successful in transforming civil litigation in criminal proceedings – judicial case management. Such a system properly, if properly applied, produces many beneficial results. In the pre-trial stages it could assist in rationalising the relationship between the charge and the available evidence. This will allow some supervision of and accountability for the prosecutorial role and could impact on guilty pleas, cases which are identified for ADR practices, and restorative justice, and the removal of cases where the available evidence cannot support a conviction at an early stage. It can also result in the reduction of time between the laying of the charge and the trial by fixing time standards from the inception of proceedings.

These case management activities must be supported by technology systems. We at the Caribbean Court of Justice (CCJ) have adopted this approach in sponsoring the creation of APEX, which is a special-purpose, not-for-profit, agency, that is committed to delivering technology-based solutions and services to support court ecosystems. Under APEX, the CURIA e-Filing and Case Management suite was introduced in January last year at the Court and has completely transformed our judicial and registry operations. It has contributed to the Court having no instance of chronic case backlogs.

I also believe that any reform measures which are being implemented must be accompanied by performance measures. A critical component of the process of improving the delivery of justice is that each court must establish measurable performance standards. This is something that we have done at the CCJ, an activity which has been supported by one of the features of the CURIA

case management software – sightlines. This is a dedicated tool for performance measurement and generating statistical and other performance-related reports. We have deployed this, and I can attest from personal experience that our Court has been able to effectively manage many of the problems that plague courts in the region. I absolutely believe that the adoption of similar measures by the region as a compliment to reform initiatives will have a profound impact on both the timeliness and quality of justice delivery.

On that note, I am pleased to open the day's proceedings with our first presentation.