



MARTIN GEORGE & CO.

(M.A.G.C.O.)

Attorneys-at-Law

E Mail: mag4law@hotmail.com
Website: <http://martingeorge.net/>

PORT -OF SPAIN OFFICE:
#43 Dundonald Street,
Cor. Gordon & Dundonald Streets
Port of Spain,
Trinidad, West Indies.
Tel: (868) 624-7257
Tel / Fax: (868) 623-5187

TOBAGO OFFICE:
33 Bacolet Park
Scarborough,
Tobago, West Indies.
Tel: (868) 639-1809
Tel/Fax: (868) 639-1579

US MAILING ADDRESS:
11158 Highland Circle,
Boca Raton
Boca Woods
Florida,
33428 USA

MAGCO LEGAL LESSONS #30

LEGAL TOPIC: CHILD RIGHTS AND PROTECTION OF CHILDREN UNDER THE LAW

By: Sara Martinez
Attorney-at-Law
Martin George and Co.
Attorneys-at-Law

INTRODUCTION

In discussing the Protection of Fundamental Human Rights, it has been established that in relation to children, particular attention needs to be given to the rights afforded to them under the Law due to their vulnerability. Trinidad & Tobago has ratified the United Nations Universal Declaration and Convention on the Rights of the Child, however, International Treaties are not self-executing and as such Domestic Legislation was put in place to ensure the principles outlined in the Convention on the Rights of the Child were enshrined into Law at the local level. A “package” of children’s legislation was enacted by Parliament in October 2000. This package consisted of Legislation underpinning the establishment of the Children’s Authority, and establishing the various rights and principles outlined in the UN Convention on the Rights of the Child. It is important to note, however, that not all Legislation from this package is in force, and that there are other pieces of Legislation outside of these, which

Martin George LL.B. AMABE

**Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Khoorban LL.B (Hons) LEC
Janelle Ramsaroop LL.B (Hons) LEC
Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC
Priyatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant**



also address the Rights of the Child as listed in the UN Convention on the Rights of the Child.

CONVENTION ON THE RIGHTS OF THE CHILD

Under the Convention on the Rights of the Child, every person under the age of eighteen (or otherwise depending on the applicable law) is considered a child and therefore should be entitled to the rights listed. The Convention on the Rights of the Child states that States Parties shall respect and ensure the rights set forth in the Convention on the Rights of the Child to each child within the State, without discrimination of any kind, irrespective of the child's (or his or her parents or legal guardian's) race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status, and States Parties shall take all appropriate measures to ensure that the Child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. The Government of each State Party is responsible for Protecting the Rights outlined in the Convention on the Rights of the Child. There are fifty-four (54) Articles in the Convention on the Rights of the Child, and some of the rights listed are as follows:

1. Right to Life (Article 6):

"1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child."

2. Right to a Name and Nationality (Article 7):

"1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his parents."

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Khoorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC

Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

3. Right to an Identity (Article 8):

“1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.”

4. Right to Live with their Parents (Article 9):

“1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.”

5. Right to Freedom of Expression and Freedom to information (Article 13):

“1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.”

6. Right to Freedom of Thought, Conscience and Religion (Article 14):

“1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.”

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Khoorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC

Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

7. **Freedom of Association and Freedom of Peaceful Assembly (Article 15):**

“1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.”

8. **Right to Private life (Article 16)**

“1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.”

9. **Right to access to information and material (Article 17):**

“States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Khoorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC

Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.”

10. Right to Protection from Violence (Article 19):

“1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

11. Right to Special Protection and Assistance Provided by the State (Article 20):

“1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.”

13. Right to care if suffering from a mental or physical disability (Article 23)

“1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.”

14. Right to Healthcare (Article 24)

“1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Khoorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC

Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

15. Right to an Adequate Standard of Living (Article 27):

“1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.”

16. Right to Education (Article 28)

“1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.”

17. Right to enjoy their culture (Article 30)

“In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Khoorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC

Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

18. Right to rest, play and take part in cultural activities (Article 31)

“1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.”

19. Right to not have to do work that is dangerous (Article 32)

“1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”

20. Right to be Protected from sexual abuse (Article 34)

“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.”

21. Rights where accused of breaking the law (Article 40)

“1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Khoorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC

Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.”

Some Key National Laws Relevant to the above-listed rights are:

THE CONSTITUTION OF TRINIDAD AND TOBAGO

The Constitution of Trinidad and Tobago does not expressly recognise the CRC, however section 4 establishes the Fundamental Rights and Freedoms of Citizens of Trinidad and Tobago, including Children:

“4. 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, namely:

(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law;

(c) the right of the individual to respect for his private and family life;

(d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;

(e) the right to join political parties and to express political views;

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Khoorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC

Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

(f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;

(g) freedom of movement;

(h) freedom of conscience and religious belief and observance;

(i) freedom of thought and expression;

(j) freedom of association and assembly; and

(k) freedom of the press.”

Therefore, the Rights of the Child Under the CRC that are protected by the Constitution are:

1. The Right to Life
2. The Right not to be deprived of liberty except by due process of law
3. The right of the individual to respect for his private and family life;
4. The Right to Freedom of Thought and Expression
5. Freedom of Thought, Conscience and Religious Observance
6. Freedom of Association and Assembly

THE CHILDREN ACT CHAPTER 46:01

Section 4 of the Act facilitates the Prevention of Cruelty to Children. It provides:

“Where a person has responsibility for a child and-

(a) The person wilfully assaults, ill-treats, neglects, abandons or exposes the child or causes or procures the child to be assaulted, ill-treated, neglected, abandoned, or exposed in a manner likely to cause that child suffering or injury to his physical, mental or emotional health; or”

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Khoorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC

Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

Children are therefore protected from Violence under this Act, as outlined by Article 19 of the Convention on the Rights of the Child.

This Act Protects the Right of the Child to be Protected from Sexual Abuse. Part IV of the Act makes the Sexual Penetration of a Child, as well as the Sexual Touching of a Child, an offence. The Act also makes it an offence to abuse children through Prostitution and categorizes other Sexual Offences in relation to a Child. This Act therefore also is in accordance with the Right of the Child to be Protected from Sexual Abuse in Article 34 of the Convention on the Rights of the Child.

This Act also deals with the Employment of Children:

“105. Subject to section 106, a child under the age of sixteen years shall not be employed or work in any public or private undertaking, or in any branch thereof, other than an undertaking, owned and controlled by members of the same family; and any person who employs any such child, commits an offences.

106. Section 105 shall not apply to work done by-

(a) a child in school for general, vocational or technical education or in other training institutions; or

(b) a child at least fourteen years of age in undertakings, provided that the work is carried out in accordance with conditions prescribed by the Minister with responsibility for education after consultation with the organisations of employers and workers concerned and the work is an integral part of-

(i) a course of education or training for which a school or training institution is primarily responsible;

(ii) a programme of training mainly or entirely in an undertaking which programme has been approved by the Minister with responsibility for education; or

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Khoorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC

Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

(iii) a programme of guidance or orientation designed to facilitate a choice of an occupation or apprenticeship of any line of training, formal or informal.”

Therefore, a Child under the age of sixteen, shall not be employed save and except for in the above-mentioned circumstances. Therefore the Rights of the Child to Rest, Play and Take part in cultural activities, and also to not have to do work that is dangerous as outlined in the Convention on the Rights of the Child is addressed by this Legislation.

THE EDUCATION ACT CHAPTER 39:01

Section 76(1) states:

“(1) In this Act, the expression “a compulsory school age” means any age between five and sixteen years and accordingly a person shall be deemed to be of compulsory school age if he has attained the age of five years and has not attained the age of sixteen years, and a person shall be deemed to be over compulsory school age as soon as he has attained the age of sixteen years.”

Therefore, the Right to Education is protected for Children up to the age of sixteen under the **Education Act** as Education is made compulsory for children from the ages of five to sixteen.

YOUNG OFFENDERS DETENTION ACT CHAPTER 13:05

Section 7 of this Act states:

“(1) Where a person is convicted before the High Court on indictment of any offence other than murder, or before a Court of Summary Jurisdiction of any offence for which he is liable to be sentenced to imprisonment, and it appears to such Court-

(a) That the person is not less than sixteen nor more than eighteen years of age, and

(b) That by reason of his antecedents or mode of life it is expedient that he should be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime,

The Court may, in lieu of sentencing him to the punishment provided by law for the offence for which he was convicted, pass a sentence of detention under penal discipline in the Institution for a term of not less than three years nor more than four years.”

This is in line with Article 40 of the Convention on the Rights of the Child which states that State Parties are to recognize the right of every child accused of infringing a penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

CHILDREN'S AUTHORITY ACT Chapter 46:10

The purpose of the **Children's Authority Act** of Trinidad and Tobago is to promote the well-being of all children in Trinidad and Tobago; provide care and protection for vulnerable children; and comply with certain obligations under the United Nations Convention on the Rights of the Child.

(a) Section 6(1) of the states that it shall be the duty of the Authority to:

- a. *“Promote the well being of the child;*
- b. *Recognise and give effect to the right of the parent to be heard and the right of the parent to a fair hearing;*
- c. *Act as an advocate to promote the rights of all children in Trinidad and Tobago;*

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC

Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

- d. *Take all reasonable steps to ensure the availability of accommodation necessary for compliance with this Act;*
- e. *Take all reasonable steps to ensure the availability of staff required for proper implementation of the Act, inclusive of programmes for training;*
- f. *Take all reasonable steps to prevent children from suffering ill-treatment or neglect;*
- g. *Promote the contact between the child and-*
 - (i) *His parents;*
 - (ii) *Any person who is not his parent but who has parental responsibility for him; or*
 - (iii) *Any relative, friend or other person connected with him.*

Except where it is not reasonably practicable or is prejudicial to the welfare of the child;

- h. *Exercise such powers as are conferred on it by this Act and as may be necessary with respect to any child so as to serve the best interests of that child;*
- i. *Make use of such facilities and services available for children that are provided by other agencies or institutions, as appears reasonable necessary to the Authority.”*

The Act further states, in section 22:

“(1) Where the Authority is of the view that a child is in need of care and protection and that its intervention is necessary in the best interest of the child, it shall investigate the matter and it shall be lawful where appropriate, for the Authority to receive the child into its care.”

This Act therefore establishes the Children’s Authority to ensure that the rights of children are protected. The Children’s Authority is meant to safeguard children from abuse and neglect, and to provide care and protection for at-risk children. The

Principles which guide the Authority in the exercise of its functions are found in the UN Convention on the Rights of the Child.

While Domestic Legislation does not address every right outlined in the UN Convention on the Rights of the Child, the Principles outlined may still be used as guidance for the Protection of Children within Trinidad and Tobago. This is seen by the actions of the Children's Authority, which are guided by the principles set out in the UN Convention on the Rights of the Child

© 2020 MARTIN ANTHONY GEORGE & CO

Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC

Janelle Ramsaroop LL.B (Hons) LEC

Sarah Lawrence LL.B (Hons) LEC and Sara Martinez LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

Page 14 of 14