



"Share The Care"
GENDER EQUALITY & SHARED
FAMILY RESPONSIBILITY IN
THE CARIBBEAN

The Administration of Family Justice: Child Support, Shared Family Responsibilities and Gender Equality

Barbados Research Report

SUMMARY

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1. Introduction

The research project ***Child Support, Poverty and Gender Equality in the Caribbean*** builds on past research showing that women's responsibility for child care is closely linked to their households' vulnerability to poverty. In an attempt to have this responsibility shared more equally, many women turn to the courts and public assistance programmes. With child support proceedings arguably the most significant component of the family justice system in the Caribbean, the project aims to:

- ***increase understanding of how this system functions in order to identify areas for reform and improvement;***
- ***promote the idea of shared family responsibilities, which is central to equalizing relations and opportunities between women and men; and***
- ***explore the extent to which the legal system can help bring this about.***

While studies suggest the growing importance of social – and not just biological – fathering to many men in the Caribbean, female-headed households, low marriage rates and what are sometimes described as 'absent fathers' continue to be common. It has been shown that female-headed households are more likely than male-headed ones to fall below the poverty line due to a combination of women's more limited and unequal employment opportunities and their disproportionate responsibility for the care of the vulnerable (not only children but also the elderly and sick). In addition to financial stress, women also often suffer from 'time poverty', lacking the opportunity for self-development activities and forced to balance multiple roles simultaneously.

Across the region, there are few public assistance or social protection programmes aimed specifically at alleviating the poverty of women's households. In the post-colonial environment, the state was called on to help ensure social mobility through the provision of education and health care for children. There is much less discussion of the role of the state in meeting livelihood needs connected to gender inequalities. Existing public assistance programmes are seen by many women as offering an alternative pathway for child support, and therefore economic stability. However, these make no special allowance for mothers who have exclusive responsibility for the care of their children, an approach that reinforces female poverty. This report is based on research in Barbados that examined:

- ***the manner in which applications for child support are resolved by the courts, the amount of the awards and their enforcement;***
- ***the criteria used and legal principles applied in resolving child support proceedings;***
- ***how gender and other ideologies inform the legal resolution of child support claims; and***
- ***women's access to public assistance programmes.***

It is hoped that the outputs of the research will be used as the basis for developing policy on law reform (both substantive and procedural), public assistance programmes, infrastructure development and capacity building to improve gender equity and the efficiency of the administration of justice in child support matters.

2. Methodology

A range of research methodologies was used. The quantitative component – the compilation of statistics based on a review of court records – gives a sense of the trends in use and outcomes of the court system, highlighting the ways in which cases of child support are managed and determined. For both the High Court and the Magistrates' Courts, three years of records (2001-2003) were examined. For the former, the research was able to compile data from the 750 files in which child support was dealt with by the courts. For the latter, since the number of applications is significantly greater, records were examined only from the St. Matthias Magistrate's Court, which was selected because of its wide and varied catchment area. A sample of records was taken over the three years, resulting in some 867 records from the Order Book being examined.

The qualitative component involved three types of methodologies: courtroom observation, focus groups and in-depth interviews. Five focus groups were convened between July-September 2005 with judges, magistrates, lawyers, probation officers and marshals, and interviews were held with court users randomly selected from High Court and Magistrates' Court records. Taken together, these provide a deeper understanding of the effectiveness of the court process and of the values and attitudes that shape both officials' and users' interactions with the system.

3. The Role of the State in Supporting Women and their Families

Child support is fundamentally tied to questions of caring labour and dependency, and thus linked to state policies around social security, welfare benefits and other forms of assistance for those who engage in caring work. The state is therefore central to debates around child support, and questions that arise include how much the state should commit to facilitating caring work through social security benefits and whether a custodial parent entitled to government benefits should be obliged to pursue legal remedies against the other parent.

The Barbados Welfare Department is currently the only real source of income support from the state on which a mother can rely. It provides service to a large and varied clientele through two main programmes: National Assistance and Family Services.

3.1 National Assistance Programme: A viable alternative?

Statistical data from the Barbados Welfare Department show that children, especially those under the age of 16 years, are the primary beneficiaries under the National Assistance Programme. For example, 3,349 children under the age of 16 were given monetary grants in 2004, as opposed to 550 adults. This approach is consciously geared at discouraging a supposed adult dependency on public assistance and rejects the notion that female adults are independently entitled to assistance by virtue of their single mother status and its inherent vulnerabilities.

A total of 40 National Assistance files were reviewed. The profile of the applicants revealed striking similarities. All of them were female, and they ranged in age from 19-50 years with the overwhelming majority falling in the 25-45 age bracket. Of these, 80 per cent were single (32/40), and either living on their own with their children or living with extended family, and 85 per cent were unemployed (which was generally expressly stated as one of the reasons for requiring National Assistance).

Since the underlying philosophy of public assistance programming and service delivery is that the family has prime responsibility for the care and support of its own members, welfare applicants must first seek child maintenance from the non-custodial parent before they qualify.

Almost every applicant in the files reviewed noted that the father was not supporting the child/children who were in her exclusive care and control. Reasons for this varied but generally demonstrated a failed attempt to secure child support through the court process or the impossibility of securing this because of the father's death, imprisonment or uncertainty as to his whereabouts. There were several references to failure to obtain support through the courts even where the magistrate had issued bench warrants for the arrest of the delinquent father.

A significant number of fathers were reportedly in jail, many for offences of a violent nature including murder. While none of these offences were in relation to the applicant herself, they understandably caused fear and apprehension. In direct interviews with women receiving National Assistance and a file review, the theme of domestic violence featured very highly.

The weekly benefits offered through the Welfare Department are low – children under 16 receive \$25 while those over 16 and able-bodied adults receive \$28. These sums cannot reasonably be expected to meet the daily and ongoing needs of people who are in desperate need of assistance from the state and are otherwise unable to cope. While clearly useful, welfare does not present a viable alternative to a parent's obligation to adequately support a child.

3.2 Family Services Division: The use of alternative dispute resolution (ADR)

The Family Services Division coordinates the Child Maintenance Programme, which facilitates the voluntary financial contributions of non-custodial parents to the support of their children. Those who use its services usually do so in order to obtain child support without going through the courts.

Over 90 per cent of the applicants to the programme are female, a high percentage of them are between the ages of 25-34 and many are in traditionally female jobs with relatively low-paying wages.

The programme takes an informal mediation approach. Although it focuses primarily on mutually acceptable terms for child support, issues such as access rights and unresolved conflict between the parties also play a critical role in the settlement discussions. Its strengths include the involvement and support of a department with skilled social workers; the facilitation of communication between the parties; the encouragement of voluntary support arrangements; the private and non-intimidating nature of the process; the

accessibility of the department at all stages of the process; and the facilitation of written Agreements that can be internally administered and monitored.

However, it also has a number of weaknesses, including the unenforceability of the Agreements; the lack of financial disclosure; the failure to reflect all the agreed upon terms in the final Agreement; and the lack of connection between the Agreements finalized through the Department and any subsequent legal process.

According to its reports, the programme receives in excess of 500 requests per year and therefore comes into frequent contact with fathers. A recent initiative has been the introduction of a fatherhood programme that includes a caring and nurturing component. This recognizes that enhancing fathers' parenting capacity is critical in any attempt to broaden definitions of child support to include care giving.

4. The Administration of the Family Justice System and Child Support

The administration of the family justice system in child support matters is central to the goal of gender justice. Some of the key issues in the context of Barbados that have emerged from this and other studies are considered below.

4.1 A dual family justice system

Historically there has been a dual system of family justice in child support matters in Barbados, with sharp distinctions in the nature of proceedings in superior and inferior courts. Access to justice has depended to varying degrees on the marital status and class of the parents.

Poor and unmarried women dominate the summary courts as applicants while the married and more affluent take advantage of the superior courts to resolve what are classified as matrimonial disputes.

The majority of the matters heard in the lower courts are child support applications, with those relating to children born outside of marriage far outnumbering those for children born within marriage.

In the cases reviewed, two thirds of the applicants to the High Court were women – 64.8 per cent (482) – whereas 35.2 per cent (262) were men, most of whom were seeking dissolution of the union as opposed to making a stand-alone child support application. In the Magistrates' Court, because only a 'single' woman is allowed to apply, almost all applicants were women (though some 48 were men who applied for suspension or discharge of applications).

Proceedings in the High Court are generally viewed by litigants, lawyers and court officials as being more dignified and private. Because of this perception of gravitas and dignity, judicial officers also think that men/respondents are more likely to comply with orders. In addition, the High Court processes are document-based – with applications accompanied by affidavit evidence that sets out need, assets, liabilities and extenuating circumstances if any – and therefore start off with a better knowledge of the parties and of matters related to the children. In contrast at the Magistrates' Court, applications have to be made personally by the applicants, a process that requires lining up in view of the public to commence the action. This undermines the concern for confidentiality that is a heightened one in small societies and is seen as

dehumanizing not only for the parties involved but also for children.

Another major difference between the two venues is that all orders for child support at the Magistrates' Court must be complied with through payments into the Court (with monies paid and withdrawn in cash). For both applicants and respondents this means, if they are employed, taking time off work on a regular basis – a process that has to be explained to employers with a further loss of privacy. Some of this can be offset by orders for attachment, but these can only be made against those working and, within that category, it would appear that the salaries of persons employed by the state cannot be attached.

It is for all these reasons that judicial officers, for example, agree that the dual family justice system is disadvantageous to users and in particular to women. It has played both a symbolic and material role in reinforcing the economic and social marginalization of poor women despite initiatives to strengthen the child support system through the passage of status of children legislation, remove some of the discrimination against children born outside of wedlock and their parents, increase the awards available to 'single' women and improve collection mechanisms.

4.2 Lack of guidelines on the quantum of awards

While the High Court specifies the bases for deciding the amount awarded in child support cases, there is no such guidance for the Magistrates' Court. The general principles that are broadly set out are the needs of the child and the income, assets and responsibilities of the parties. However, the findings suggest that one of the most significant factors in determining quantum is

finding a mean between what is requested and what is offered.

In this process, limited emphasis is given to fact finding – in relation to calculation of the needs of children, to income and assets or to ascertaining other obligations. There is a heavy reliance on what people say about their means in unsworn testimony (though means reports may also be prepared by the Probation Department).

Perhaps reflecting the perception that this is a court most used by persons of low-income status, the majority (79.2 per cent) of monetary awards made in the Magistrates' Court are for sums under \$300 per month and the monthly mean or average award is \$250. The average in the High Court is \$344.

There also seems to be a great deal of variability and subjectivity in understanding what constitutes a child's 'need' as opposed to a 'want' expressed by the parent/ mother. What appear to be accepted as core needs by probation officers are school supplies, medical costs and daily living expenses. The calculation of the latter, however, seems to be most informed by the costs of food, with less agreement that housing costs including utilities ought to be factored in.

Overwhelmingly both judges and magistrates promote resolution of child support applications through consensus with the parties. There is an implied assumption that parents should contribute equally to the needs of a child, regardless of income disparities. Similarly, no particular consideration is given to the unequal sharing of the physical and emotional care of children. Therefore in most cases, whatever the quantum awarded, parents are ordered to meet school, medical and dental expenses in equal shares. This is

detrimental to women, who usually earn less than the fathers of their children, have a smaller amount of disposable income because of their role as custodial parents and have the burden of the daily care of the children.

4.3 Poor compliance and enforcement

The enforcement of court awards is plagued by administrative and legal deficits that significantly contribute to non-compliance. These include the inefficient administration of records, poor enforcement mechanisms and long waiting periods before the enforcement of arrears begins. Delays in court matters are also related to overloaded court workloads, long time spans between court dates, requests for paternity tests, requests for means/ social service reports, lawyer dissatisfaction over a means report or non-service of applications by the Marshals Office.

One of the startling findings from the court records review is the extent to which applications for arrears dominate the Magistrates' Court's portfolio on child support – fully one half (50.2 per cent) of cases.

A culture of second chances pervades the system, and both here and in the High Court there is a very discernible tendency to give recalcitrant fathers an extension of time to make payments and/or to make them not in a lump sum but in instalments. There is an evident reluctance to imprison.

Issues of compliance are related to the socio-economic status of the litigants/ respondents. The men who are respondents in the Magistrates' Court tend to have a higher level of unemployment, underemployment

and/or casual employment. There is also the issue of responsibility for multiple children from different mothers. Still, the Courts take the view that parents are obligated to contribute to their children, whatever their employment status. This means that an order will usually be made even of a nominal sum. Questions that need to be addressed are what alternatives there are for the genuinely economically incapacitated father to contribute to child care; how the state machinery can be employed so as to support economic capacity building; and what the state's responsibility should be in contributing to child care in those circumstances.

The mechanisms for enforcement of maintenance orders are generally considered to be incomplete and inadequate. In the High Court, arrears are treated as a debt and non-compliance is considered contempt of court, which can lead to an order for imprisonment. The Magistrates' Court can also issue a warrant of committal and order imprisonment for a maximum of 42 days. Very few persons who fail to comply are in fact imprisoned, however, leading to questions of inconsistency and arbitrariness in cases where imprisonment does occur. It seems that it is those who are indigent and without family support who are most likely not to be given any leeway.

The advantage of the court process, it was repeated throughout the research, is the presence of enforcement mechanisms. However, given the significant non-compliance with court orders, the culture of second chances and the reluctance to use the ultimate weapon (of imprisonment), whether the court process is to be preferred over the mediated process is a question for further debate. It should also be noted that the costs and responsibility of

prosecuting arrears fall on the state machinery.

4.4 User dissatisfaction with the system

Lower court child support proceedings in relation to children born outside of marriage form many people's primary experience with the administration of justice. In-depth interviews with women and men showed that neither appears to feel well served by the current system. Women who were interviewed often noted that they only invoked court action for child support when they had absolutely no other choice. There is a pervading sense of frustration and a feeling that, while there is no alternative, the outcomes of court actions are often not satisfactory.

Women consistently complained about the difficulties and humiliations experienced in trying to collect child support payments, especially the requirement to stand in long lines to ascertain whether money has been deposited and then to receive payment.

There was also in the interviews a great deal of reflection on fathers' lack of involvement in the lives of their children.

On the other hand, many men attributed motives to the court action that are not related to children's needs and therefore there is hostility and resentment about having not only to go to court but also to pay child support. Some men felt the system was biased against them, particularly in relation to access, and/or that court actions were unnecessarily invoked when they already made contributions on request by the child's mother. There seemed to

be little appreciation of any obligation to make these payments and even less understanding of how the mother might feel in having to continually make such requests.

In some cases, however, fathers are very clear that child support is an obligation and one that they are willing to undertake even though the process might be painful.

4.5 Gender stereotyping

Stereotypical notions of gender ascribe to women the role of the primary caretaker of children. In the Caribbean with its diverse family forms, this has played out to give women the responsibility for not only physical and emotional care but also financial care.

The law is built on the assumption that children born out of marriage are the responsibility of the mother with whom they reside (a single woman), and as such she is the only one entitled to make an application for maintenance. Men cannot apply at the Magistrates' Court for custody, access or consequential maintenance. Frustration with this scheme is being increasingly articulated as gender roles become less rigid and as the value of shared family responsibilities becomes more accepted.

Child support proceedings are routinely described as warfare between women and men with the courts as battleground. Strong perceptions about the motives, behaviour and morality of women who initiate child support proceedings and men who are respondents to them influence the character of the proceedings. Those working in the family justice system acknowledge that the primary motivation for child support applications is the need of mothers who may be unemployed or employed in low paying

occupations. Yet, it was more usual for the focus group discussions to focus on other factors that might motivate women.

Women who initiate child support proceedings are often portrayed as vindictive, 'putting a man in court' in order to humiliate him and prompted by factors unrelated to the child's welfare, such as a new relationship started by the father. They are also portrayed as opportunistic, using child support proceedings to gain economic benefits for themselves. There is also a public belief that paternity is a contested matter in the Barbadian courts and that women often trick men into paying child support under false pretences, though in fact paternity testing and/or hearings are by far the exception.

These negative perceptions lead to women often being exhorted during court proceedings to be 'reasonable'. This can mean a number of things. A 'reasonable' mother is one who tries to get a job to 'help out'. It also means that a working-class mother should not indulge in 'extras' for the child unless she can personally afford it. The idea that child support proceedings are a venue for unseemly and irrelevant post-relationship disputes can also imperil women by making domestic violence and a violent father irrelevant to the determination of issues of support, custody and access.

There are also clear expectations about what it means to be a man. Judges and magistrates often tell respondents that being a man means taking some responsibility for supporting children. It also means not getting 'too emotional' or showing weakness. There is harsh censure of men deemed deviant fathers, usually those who are young, unemployed and with 'rasta hairstyles'. Conversely, considerable effort is made to support and accommodate men who

are not deemed hopeless 'low lives' and are engaged in activities that are viewed as worthy ones for men and that will improve their 'future'. The 'future' of mothers is little considered in the proceedings, as theirs is seen as more naturally connected to the raising of children.

Men give reasons for non-payment that are unrelated to inability to pay but go to the heart of masculinity. The simplest reason offered is that the relationship is over or that the woman is seeing someone new. A number of them say that the mother of the child shamed them by taking them to court or some other behaviour. Men also routinely say they cannot pay more because they have car loans, a business or are doing a course.

A crude notion of gender equality – that men and women should be treated exactly the same – has helped to inform the approach mentioned above that there should be a 'middle ground' between the parties in setting appropriate awards. However, to the extent that determining the award is a negotiation, the assumption is that men will lead the process. While judicial officers quite often ignore the mother in resolving questions of quantum of support, they almost always direct questions intently to the father about this.

4.6 Rethinking the use of mediation

This ethos of mediated consensus, which is increasingly shaping the administration of family justice, may lead to some inconsistency in the determination of awards. Since it has to function within the strongly held value systems of female responsibility for child care and male autonomy over

resource allocation, discussion is needed on what the principles of this mediation should be.

It must be accepted that parties are not necessarily evenly situated, that there are power differentials at work – caused, for example, by gender socialization, by economic circumstances, by emotional turmoil and by differences in perception, expectations and communication styles.

A recurring finding in research on mediation is that where the power differential is substantial, this usually has a significant effect on both the substance and process of the dispute. The more powerful side is likely to simply impose its solution on the other side, which will be forced to accept it because there is no other choice.

At the same time, since child support proceedings are often characterized by deep hostility and acrimony, which further undermine arrangements for care of and access to children, increased use of alternative dispute resolution methods could be beneficial.

5. Implications for Reform

Law reform in the context of human rights is central to any effort to reform child support. Obligations under the Constitution of Barbados and international conventions such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) call for equal protection of the law, removal of discrimination based on birth status and gender and protection for children against economic or other forms of neglect. A proper understanding of what equality and non-discrimination mean is required as purely formal equality,

where men and women are treated exactly the same, can further entrench gender inequalities. The welfare or best interests of the child – principles that are almost universally expressed in international treaties and in domestic law – also need to be defined. Often these will coincide with women's empowerment. Law reform ought to take account of issues of violence and abuse in contemplating questions of child support, custody and access.

Both the CRC and CEDAW speak of parents having common responsibilities for the development and upbringing of children. This, however, is a very difficult obligation to enforce on fathers who do disproportionately less caring work. It is equally important that child support laws should value the caring labour performed primarily by women and address the forms of dependency that arise from this.

Caring work must be seen as an economic contribution to the maintenance of children, and equally there should be recognition that it often produces or exacerbates dependency and the need for child support and other types of economic assistance.

A number of larger policy implications arise out of the realization of the extent to which women are relied on to get on with the job of child caring. These include making the efforts necessary to ensure a deeper commitment of fathers to their children and undertaking legal reform to give female and male parents/ guardians equivalent entitlements to apply for access, custody and maintenance. Questions also arise on how the court should deal with sharing the costs of court processes initiated by custodial parents (usually mothers) because of the absence of satisfactory contributions by non-custodial parents (usually fathers).

The implications are also for social service support to single parent households. The fact that financial support, however limited, is given in the name of minor children fails to acknowledge the needs of many women.

Reform is also needed in enforcement measures. A gap in the law that needs to be remedied is that the court cannot attach the earnings of public employees without their consent. Where persons are self-employed, other incentive measures have to be used – e.g., linking compliance with the ability to renew car licenses or passports. Also, consideration should be given to the seizure of assets as a means of enforcing awards.

It must be recognized, however, that compliance will only be assured if there is state and societal commitment to enforcement. This requires not only law reform but also a deeply held sentiment by all that evasion of child support obligations is morally reprehensible. One of the recommendations made by the report concerns the need to transform socialization practices and encourage cultural change, both through education and the media. Other recommendations to help redress some of the problems in the current system of dealing with child support include the introduction of a single legal standard for awards; simple, fair and consistent guidelines for child support; administrative reform; awareness raising and training; and enhanced social service support.