

9. Gender analysis of child support in the Caribbean: legal, socio-economic and cultural issues for consideration

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This chapter vividly highlights the extent to which childcare is a feminised responsibility with the expectation that children are the primary responsibility of mothers. Indeed, the great majority of applications made to the courts in the Caribbean are made by mothers. The chapter is based on research undertaken by the authors with support from IDRC and UNICEF and published by the UNIFEM Caribbean Office in 2008 as 'Child Support, Poverty and Gender Equality: Policy Considerations for Reform'.

Background

There is already state investment in the resolution of issues relating to, primarily, financial support to the care of children. This investment is evident in justice processes, including legal aid programmes and in public assistance programmes. However, state involvement is predicated on the assumption and indeed active encouragement that parents carry the main responsibility for the care of children. This position is a historical one, where the state sought to devolve responsibility for the care of families squarely onto the private sphere.

In the Caribbean, this burden is a particularly feminised one as women are the primary caretakers of children, a fact coded into the language of 'female-headed households'. Such households are not usually ones where women are understood as the primary authority figures with the presence of a residential partner. Rather, the singular feature of such households is the absence of a residential adult man living in partnership with the woman head. Single women-headed households now account for almost half of all households in many parts of the Caribbean.

There are few areas where the courts are used more than for resolution of child support disputes. Most people's interactions with the court system, with the concepts of justice and rule of law, are tied up in working out parental obligations for caring for children – be it financial and/or custodial. Yet this is a system attended by deep dissatisfaction. Users of the court system complain about inadequate and discriminatory laws, delays, the low level of awards, inefficient administration, distant and hostile judicial officers and impunity for non-compliance with court orders. These complaints remain

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mostly unaddressed. Law reform in the Caribbean in this area has been at best piecemeal, but more generally absent.

The inadequate legal framework is matched by a social protection system that pays little attention to the needs of single parent, low-income households. Childcare is not only a peculiarly feminised experience in the Caribbean; it is also a privatised responsibility, with only limited experience of the state having a role to support families and children who live in poverty. There is little by way of public assistance or social protection programmes aimed specifically at alleviating the experience of poverty in women's households.

Still, what public assistance programmes exist are perceived by many women as offering an alternative pathway for child support and therefore some measure of economic stability. The role of public assistance in the area of child support is therefore critical. However, research in the region has suggested that public assistance laws and policies make no special allowance for mothers who have exclusive responsibility for the care of their children. The programmes do not address the feminisation of poverty.

Solutions to the poverty of women's households in the Caribbean ought to be informed by an appreciation of the root causes of the economic insecurity of single female-headed households. Men's failure to make regular payments, or hostility to make child support payments at all, is a feature of Caribbean family relations. And there can be no doubt that the intersection of multiple social and economic realities creates a policy challenge. Significant proportions of children do not live in two-parent households. Many people have children with more than one partner, and as a result non-custodial fathers may have children living in more than one household and mothers may have children who do not necessarily share the same father. As Wyss points out 'complicated residential patterns beget complicated income and resource pooling patterns'.¹

Social welfare provision and child support are inextricably linked. Although the two systems do not necessarily work together as an integrated system for the benefit of economically marginalised families, they converge to ensure that the cost of care-giving remains primarily a private matter. In other words, both judicial proceedings and social welfare services underscore private parental responsibility to support dependent children.

For women and men who have children together, the mutual consideration required to meet and treat the best interests of children with sincerity and commitment may not exist because of a possible brief or fragile inter-personal relationship. Complex and fluid partnering dynamics also help to explain the contestation around child support. In the Jamaican context, resource transfers from men to women is in part a transfer of resources from 'babyfathers' to 'babymothers', rather than a transfer from fathers to

1. Brenda Wyss (1999) 'Culture and Gender in Household Economies: The Case of Jamaican Child Support Payments'. *Feminist Economics* 592, pp.1–24.

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children. This is an important distinction, which can help to explain the cessation of support when the intimate relationship between parents ends. Gender-based ambivalences about roles and expectations of women and men for childcare also complicate the efficacy of purely legal solutions.

Fathers of the children of single poor women are also likely to be from a similar social background. High levels of unemployment, casual employment and informal sector employment leave such men with fluctuating incomes, which in any event cannot be attached at source – an enforcement mechanism which features strongly in the jurisdictions discussed above.

Who should be responsible for the care of children? How should the responsibility be apportioned between parents and between parents and the state? These questions are fundamentally linked to women's empowerment and gender equality. To the extent that public policies applied by the courts take for granted and therefore reinforce unequal gendered reality, economically marginalised women and their households will continue to experience deprivation, including poverty transmitted inter-generationally.

Persistent dualities

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

Two jurisdictions in relation to child support developed. First, there was the summary court jurisdiction, transferring responsibility for the poorest from the state to families. The summary jurisdiction ultimately focused on giving 'single women' access to the courts for child support, and was premised on women's assumed primary responsibility to care and support their children. By placing limits on 'single men's' right to apply for child support, custody and access in the courts, the law reinforced rather than challenged existing inequalities in the burden of care. These summary proceedings had a strong quasi-criminal flavour, and historically criminal sanctions were imposed on both mothers and fathers who were not in compliance with the law.

In the superior courts, child support was generally secondary relief in adult-centred proceedings, including divorce, separation and spousal support. This superior court matrimonial jurisdiction was ideologically, though not practically, at the centre of family justice, and marital relationships had primacy in the family justice system.

Notwithstanding, this duality has been maintained in most Caribbean countries, even with the passage of status of children legislation. As a result, in most Caribbean countries married persons and their children (and 'unions other than marriage' in Barbados) have simple access to the superior courts for relief, while other families are confined to resolving child support questions in the summary courts.

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Dualities in the legal process persist, even where formal discrimination in the laws has been removed. Proceedings in the lower courts are generally less forensic, with less documentary evidence of means and needs provided to the courts. Record keeping is generally less well organised in the summary courts, making it difficult to track the progress of individual cases over time.

In Trinidad and Tobago, for example, where formal dualities have been removed, in practice the High Court is dominated by child support applications that are ancillary to divorce proceedings. Very few applications are made to the High Court in respect of families not based on a marriage. Magistrates bear much heavier caseloads, despite their complex and multidimensional responsibilities in family matters and the relative dearth of lawyers. With more time to devote to each case, superior court judges are generally more responsive to the needs and concerns of litigants.

Even where law reform has eroded some dualities, as in Trinidad and Tobago, many Caribbean countries have retained overlapping and multiple jurisdictions in child support, with different criteria applying depending on which statute and which provision is invoked. That lack of coherence in the legal principles undermines the goal of equal protection of the law.

Despite improvements in the justice sector, including the Family Court Pilot of Trinidad and Tobago, there is consistent dissatisfaction with:

- Inefficient administration leading to delays (over-burdened courts and service of documents in particular),
- Limited fact finding on means of parties,
- High levels of judicial discretion,
- Significant involvement of non-judicial officers in dispute resolution,
- Low levels of awards,
- Significant non-compliance with court orders, and
- Limited avenues for enforcement (imprisonment still being the primary method, with Attachments of Earnings order little used and unavailable to persons in the informal sector, as well as to public servants in Barbados).

In addition, relations between women and men are often fraught, characterised by anger, resentment and distrust. In many ways, courts are called upon to manage this discord, and this role can overshadow the court's central role of ensuring an equitable sharing of the care responsibilities between parents.

Social protection systems only partially address the needs for resource support by low-income families, particularly those headed by single mothers. One of the most contested issues is the requirement that women use the court system as a pre-condition for qualification for public assistance.

Gendered realities and conflict dominate the legal process

Socio-economic status of applicants

The applicants for child support are overwhelmingly mothers whose income is often lower than that of the fathers against whom orders were being sought.

The menace of domestic violence

Domestic violence is a prominent feature of many intimate relationships in the Caribbean. Applications for protection orders take up a significant part of magisterial time, and the spectre of domestic violence lurks in child support cases. In some instances, there were protection order applications pending between parties in child support proceedings. A review of national assistance in Barbados found a significant number of fathers who were reportedly in jail, many for offences of a violent nature, and in direct interviews with women receiving national assistance the theme of domestic violence also featured highly.

Apart from the violation of personal security, domestic violence in a stark way undermines the capacity of women to physically and financially take care of their children. Additionally, the threat and/or experience of abuse effectively interferes with the ability and will of mothers to demand timely, reliable and fair monetary contributions for the care of children.

In addition, the adverse judgment that child support proceedings are a venue for unseemly and irrelevant post-relationship disputes can make domestic violence and a violent father seem irrelevant to the determination of issues of support, custody and access.

Courts as sites of gender conflict

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. Child support proceedings are routinely described in ways that suggest gender conflict between women and men, with the courts as a battleground, negotiating the detritus of failed and fragile intimacies. Furthermore, those involved in the administration of child support claim consistently that children do not come first, rather that the latter are subordinated to man–woman conflict.

The initiation of stand-alone child support proceedings in summary courts generates strong hostility and resentment on the part of many men. Many complain that such proceedings are motivated by vindictiveness on the part of the mother, are fundamentally unfair where the father has been providing some support, and that the process makes them feel like a criminal.

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Mothers, on the other hand, say that they are often the recipients of strong reactions of hostility and resentment on the part of fathers, who sometimes make the pursuit of the action difficult by making service difficult, denying paternity or failing to appear in court. Mothers described irregular and inadequate support and the changing and growing needs of the child as major motivations for litigation. Women consistently complained that men who provided adequately during the intimate relationship changed the regularity and quantum of support after the relationship ended.

Once initiated, both men and women describe high levels of dissatisfaction with the court process, but offer very different reasons for their dissatisfaction.

Gender ideologies

It is suggested that better trained judicial officers and social workers are less likely to be guided by dominant ideologies that reinforce gender inequalities.

Negative perceptions about the initiation of child support proceedings by mothers can place a burden on those mothers to overcome deeply entrenched presumptions by proving that they are not being unreasonable.

There is also harsh censure among some judicial officers and social service personnel of men deemed to be deviant fathers, usually described as men who are young and unemployed with 'Rasta hairstyles'. Conversely, considerable effort is made to support and accommodate men who are not deemed hopeless 'lowlifes', and are engaged in activities that are viewed as worthy, progressive ones for 'men' and that will improve their 'future'. For many decision-makers, the 'future' of mothers is little considered in child support proceedings, as theirs is seen as more naturally connected to the raising of children. Men, on the other hand, are assumed to have independent lives that should be facilitated.

In sum, the lives of women are still expected to be centred on their children, yet the legal system puts little value on those relationships of dependency. Men, on the other hand, get rewarded for being attentive to their children. The discourse of independence has also now been impressed on women, so that while the caring work of women is both assumed and discounted, the expectation that they are equal economic providers has gained ascendance.

Embattled enforcement and poor compliance

Compliance with child support orders is weak throughout the Caribbean, and summary courts spend a significant amount of judicial time dealing with arrears. There is wide acceptance that the collections systems in the summary courts are ineffective and that they unnecessarily burden applicants.

It is evident that coercive enforcement mechanisms like imprisonment do little to produce compliance. There are a number of possible explanations for this. First, imprisonment

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does not serve as a deterrent when judicial officers and law enforcement officers fail to use it consistently, or treat it as a last resort and give men, particularly men with some means, second chances to comply with orders. Second, to the extent that the use of imprisonment is viewed by many men and others as unfair and demeaning, especially when they are genuinely unemployed and without resources, it puts the legitimacy of the entire child support system in question and undermines the likelihood of compliance.

Poor collections system

Child support is marked by dual collection systems. Orders made by the High Court are paid pursuant to arrangements agreed to by the parties. It is different in the magisterial jurisdiction, where payments into court are mandatory. This insertion of the state into the payment in and out of court is a source of significant discontent.

The justification for the payment into court requirement is the connection with court-driven enforcement procedures. Non-compliance automatically triggers the issuance of warrants. The advantage of this is that the costs of enforcement are borne by the state, as non-compliance is seen as a contempt of court. However, this requirement of court-connected payments undermines privacy, is time consuming and timeliness of pay out is dependent on court administrative processes.

Uneven use of attachment

Timeliness of meeting payment obligations can be enhanced through the use of attachment processes. However use of this method is uneven for a number of reasons. First, attachment is seen as a possibility only if there is an attachable source of income, as in the case of salaried persons. Therefore, attachment has not been used for self-employed persons or for casually employed or unemployed persons. In addition, it would appear that attachment is not legally possible for certain classes of public officers in certain Caribbean jurisdictions.

Otherwise, attachment is less used than it could be as procedures are complicated. To meet the court order it requires a computation of protected earnings and deductible earnings, rather than a straightforward deduction.

Poor social welfare response to female poverty and dependency

The underlying philosophy of public assistance programming and service delivery is the primacy of familial responsibility for the care and support of its own members. Accordingly, entitlement to cash grants or any other form of assistance is only possible where child support from the father cannot be realised. Applicants are required, therefore, to pursue child support before final consideration is given to a request for public assistance.

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It is at this intersection of public assistance and the courts that women most acutely experience frustration over societal expectations that must carry the burden of care of children. Public assistance grants are not only small, but likely to be withdrawn if the woman makes an application to the courts for child support. The irony, however, is that court awards, particularly those made in the magistrate's court or those made in relation to economically marginalised fathers, are unlikely to take women and children out of poverty. Yet the making of the award reduces eligibility for a grant, so strong is the ideology of the primary role of parents.

There is reluctance in the provision of social welfare to acknowledge that the assumption of childcare responsibilities by women generates economic dependency and vulnerability. Sex discrimination may manifest itself not only in terms of unequal access to available benefits, but also in the very language of the legislation and the application of its provisions.

One of the most disturbing indicators of deeply entrenched discrimination was the head of the household philosophy seen in Trinidad, which evidently translated into a presumption of male household leadership. This triggered a number of programmatic features that were blatantly sexist and inequitable, requiring urgent redress both in terms of policy changes and legal reform.

In Trinidad, the 'deserting father' category of public assistance applicants is riddled with difficulties, and by the very nature of the category has a disproportionately negative impact on women. However, it is important to note that the creation of this category of applicants has also excluded fathers who have custody of their children from applying for public assistance in circumstances where the non-custodial mother has 'deserted', and makes no financial contributions to the support of the children. This is undeniably another manifestation of gender inequity deserving urgent attention.

The exclusion of unemployment as a ground for public assistance in Trinidad seriously prejudices women who are not working because of the burden of caring for families. Barbados does not exclude unemployment, thereby recognising that this is generally a significant factor contributing to poverty, especially given the particular vulnerabilities of women with childcare responsibilities.

The inadequacy of public assistance grants is perceived by not only the recipients, but also by social welfare officers who readily concede that welfare on its own is not a viable option for women with children to support. This assessment of insufficiency also extends to child support payments.

Despite the acknowledged inadequacy of both potential sources of support, the research findings upon which this chapter is based revealed that the possibility of combining both income sources was rarely offered as a solution to easing the many financial stresses experienced by impoverished women and their families. The situation in Trinidad demonstrated that most welfare officers viewed receipt of child support, regardless of its quantum, as an automatic barrier to qualifying for public assistance.

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The treatment of child support and public assistance as mutually exclusive is evidently a serious impediment to realising effective responses to female poverty, and deviates from the main consideration of 'need', which is supposed to be the overriding criterion in determining welfare eligibility.

Realistically, the granting of a child support award through the court often does little to remove that element of 'need', yet it could potentially serve as a useful source of supplementary income. The feature of 'topping up' inadequate child support payments with public assistance grants would therefore be a positive step in the right direction, one that moves towards improving the economic conditions of female caregivers and their families.

Consensus-driven pragmatic resolution of child support disputes

Child support determination is very much shaped by a desire to arrive at a consensus between the parties. In many cases, the court takes the parties into a mediation mode in which the applicant states what she wants and the respondent says what he is willing to pay. Many judicial officers work around these figures, adjusting 'based on all the circumstances of the case', or more crudely splitting the difference between what is asked and what is offered.

There is a strong sense in which women are expected to be reasonable, though factors for assessing the reasonableness of responses or of demands have less to do with evidence of children's needs and parties' abilities than the imperative of quickly reaching a resolution. The need to reach a resolution is one that seems to be driven by concerns over delays, by concerns that consensus will result in higher rates of compliance, by realism about the means of parties, as well as by the need to get through long court lists.

Although the means of the parties is a fundamental ingredient of judicial decision-making in child support cases, less formal evidence of means is available to all the courts than might be expected. Related to this, there is less forensic evaluation, such as evidence given under oath or evidence of proof of income, than one might expect in a legal process. Given the large caseload of magistrates, there is little time for careful fact finding. In the High Court, the situation might be explained by large numbers of consent orders on child support in divorce applications.

The users of the court system directly and indirectly criticise these methods, which from the applicants' side do not adequately respond to children's needs and from the respondents' side fail to properly establish the means of the parties.

Endnote

The extent to which legal frameworks have credibility depends of how closely they match cultural norms or make strong statements about the need to transform dominant

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and harmful cultural norms. The legal system can be understood as having three core components – the substantive (content of the law), administrative (access to justice components) and cultural (the way people feel about the law).

In relation to the cultural, parental responsibility for children is a highly contested area in the Caribbean, with clearly visible schisms between women and men over the nature of this obligation. The extent of non-compliance or uneven contributions to children suggests that legal reform will have to be accompanied by sustained and impressive social communication strategies, which can transform the notion that childcare is the female realm of responsibility and that father contributions are discretionary, to be accomplished with residual income.

There is much sociological literature that speaks to the centrality of women in social reproduction, including the seminal and aptly titled study 'My Mother who Fathered Me'.² These studies document the burden of care, women's survival strategies, the phenomenon of male familial mobility and multiple households. This reality is not an uncontested one. While women-headed households signify to some extent women's relative autonomy, they also carry the higher likelihood of experiencing poverty and the transmission of inter-generational poverty. It is not just the drawing down on resources that social reproduction entails creating the likelihood of poverty, but also the gendered reality of many Caribbean women who work in the lowest paid sectors of the economy.

The care of children necessarily, then, involves something of a struggle between mothers and non-residential fathers to define and attain adequate levels of financial contribution to the care of children. In this struggle, the courts – and particularly the magistrates' courts – are key arbiters of disputes over monetary flows. Significantly, they are also the location of social values about the allocation of responsibility for the care of children.

Stereotypical notions of gender ascribe to women the role of the primary caretaker of children, which in many families means physical, emotional and financial care. Women are expected to get on with the job of childcare, including making the efforts necessary to realise a deeper commitment on the part of fathers to their children. The burden of resolving adequate provision for children rests squarely on women.

The current research clearly establishes that mothers initiate most of the applications for child support. This brings the consequential burden of seeking legal representation (particularly in the High Court) and the costs of doing without it where it is unaffordable. Where it is available, legal aid is heavily relied on by applicants for child support; nonetheless, some applicants find the process of qualifying arduous and complex and never apply for legal aid.

The increased use of DNA testing has reduced the burden on applicants of proving paternity, but applicants still bear the burden of delays in proceedings due to non-service of documents on evasive respondents. The burden is two-fold: the unavailability of support while proceedings are being determined, and the direct costs of multiple visits to court in terms of lost

2. Edith Clarke (1999) *My Mother Who Fathered Me: A Study of the Families in Three Selected Communities of Jamaica*. Kingston: University of the West Indies.

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earnings, absence from work and transportation to and from court. In some jurisdictions, it is also expected that mothers will partly bear the burden of locating elusive and non-responsive fathers.

During child support proceedings women disclose means in larger numbers than men, and therefore carry the burden of proof of need. At the same time, given the emphasis on consensus, in only the rarest of cases will costs be ordered to recompense the applicant for the incurring of unavoidable costs in sorting out issues that are in the best interests of the child.

While the state assumes formal responsibility for enforcement of child support orders in the lower courts, ultimately mothers are put to considerable trouble to realise the child support. In some jurisdictions, like Trinidad and Tobago, the High Court must make a separate order in respect of arrears. Notoriously, due to ineffective collection systems, mothers often make many wasted trips to the courts to find out if the sums awarded have been deposited. The evidence from this study is that female family members (mothers and sisters) of fathers also assume the burden of resolving child support matters, often paying outstanding child support at the moment that the threat of imprisonment looms.

Given the dominance of the ethos of parental responsibility to support dependent children, a further burden is placed on mothers to exhaust the thorny legal process before applying for public assistance, which in most places provides small sums of support.

The difference made by the Trinidad and Tobago Family Court

The Trinidad and Tobago Family court makes a difference to both process and outcome. In general, cases are being decided more quickly, being heard for the most part by one judge, thus facilitating consistency. Judicial officers in the Family Court appear to have the time, temperament, talent and specialised training to properly carry out judicial decision-making.

However, such improvements are much more evident in the High Court jurisdiction. Both the Family Court and the ordinary magistrate's courts are plagued by long lists, delayed service of documents and high number of dismissal of matters and little legal representation. Added to this is an absence of dedicated process servers and consequential reliance on the over-burdened police process branch.

This component of this research suggests that physical improvements in the surroundings of the court, and even the presence of social services within the building, are not in and of themselves dispositive of the problems experienced by users of the magisterial court system. Rather, systemic changes are needed, including those that would allow for a similar reduction in the caseloads of magistrates and greater efficiency in the service of court documents.

