



## **THE MINISTRY OF ATTORNEY GENERAL AND LEGAL AFFAIRS**

### **MINISTERIAL RESPONSE**

The Eight Report of the Joint Select Committee on Human Rights, Equality and Diversity on an Examination of the Perceived Inequality Faced by Single Fathers in Trinidad and Tobago with Specific Focus on Custody Matters, Policies and Access to Programmes and Services.

## **I. Introduction**

The Eight Report of the Joint Select Committee on Human Rights, Equality and Diversity on an Examination of the Perceived Inequality Faced by Single Fathers in Trinidad and Tobago with Specific Focus on Custody Matters, Policies and Access to Programmes and Services was presented in the Senate on September 21, 2018, and in the House of Representatives on September 26, 2018.

Standing Orders 100(6) and 110(6) of the Senate and House of Representatives respectively, require the Minister with responsibility for the Ministry/Body reported on by a Joint Select Committee to present to each House a paper responding to the recommendations/comments contained in the Report.

This report is the Ministerial Response to the recommendations and comments as presented in the Eight Report, to be presented to the Parliament, through the Attorney General and Minister of Legal Affairs.

## **II. Summary of Issues Identified, Recommendations and Responses**

During the Committee's inquiry into the Perceived Inequality Faced by Single Fathers in Trinidad and Tobago with Specific Focus on Custody Matters, Policies and Access to Programmes and Services the following issues were identified and recommendations proposed that require written responses by the Attorney General and Minister of Legal Affairs. The responses of the Attorney General and Minister of Legal Affairs to these recommendations are contained hereinafter in this report.

### **Issues Identified**

**Objective 4: To Evaluate Current Laws Which May Impact on the Custodial Rights of Single Fathers in Trinidad and Tobago (page 47 of the Eight Report).**

#### **Custody Matters**

4.32. The Committee was informed that Sections 21 and 21A of the Births and Deaths Registration Act, Chap. 44:01 provides a loophole to exclude a father from the birth certificate due to the requirement for joint requests from both parents and that the father must show proof of paternity.

4.33. In addition, Section 22(2) of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Chap. 46:08 provides discretion to the mother of a minor rather than the mother or father of a minor for an application of a paternity order. SFATT expressed that there was a negative cultural stereotype against a male who seeks confirmation of paternity which impacts the equality of treatment of the father by the Court.

4.34. Additionally, in a case where a person engages in an extramarital affair, the father of the child is presumed to be the husband, as such the husband is placed as the father on the birth certificate.

### **Maintenance Orders**

4.35. The Committee acknowledged SFATT sentiments that prior to a maintenance order coming into force, that there is a need for confirmation of paternity by mandatory scientific deoxyribonucleic acid (DNA) confirmation given that there were past incidents of men who paid maintenance for non-biological children.

4.36. The Committee was informed by SFATT of instances where the maintenance amount continues to accrue for men who are incarcerated although Section 27(5) of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Chap. 46:08, states, “Where in any proceedings for the enforcement of a maintenance order made by a Magistrate’s Court under this Act the defendant is committed to prison then, unless the Magistrate otherwise directs, no arrears shall accrue under the order during the time that the defendant is in prison.”

4.37. The Committee was informed that the Court has the ability to suspend the payments of maintenance under Section 21(2) of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Chap. 46:08 and noted the SFATT’s sentiments that this power should be exercised in cases where fathers have become temporarily unemployed and unemployment due to medical reasons.

4.38. The Committee was informed by SFATT of the underutilized non-imprisonment option under Section 27(2)(a) of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Chap. 46:08, that allows for the recovery of outstanding maintenance payments by “*distress and sale of the goods and chattels of the defendant*”.

4.39. The Committee noted that there was a need for the implementation of Section 19 of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Chap. 46:08, in the judgments of maintenance orders which highlight the circumstances the Court must consider when issuing a Maintenance order payment.

### **RECOMMENDATIONS MADE WITH REFERENCE TO THE AGLA:**

#### **First Recommendation to the AGLA (page 48 of the Eight Report):**

- **The Committee supports SFATT recommendation 13 in Appendix V and recommends that the MAGLA amend the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Chap. 46:08 to include mandatory DNA test for paternity prior to the issuance of a maintenance order and penalties for breaches of Court Orders related to custodial arrangements.**

**Response:**

The Attorney General and Minister of Legal Affairs notes that section 23 of the *Family Law (Guardianship of Minors, Domicile and Maintenance) Act*, Chap. 46:08 sets out the evidential standard which a Magistrate's Court must take into account before it can issue a paternity order under section 22 of the said Act.

Section 23 states: “A Magistrate's Court shall not make a finding of paternity under section 22 based upon the evidence of one witness only unless that evidence is corroborated by some other material evidence.” The wording utilized by this section makes it mandatory for the Magistrate to consider “some other material evidence”. The wording utilized here (i.e. “some other material evidence”) is wide enough to allow the Magistrate, in individual matters before him, to exercise his judgment on what “other material evidence” would satisfy him in order for him to grant a paternity order. While it is true that section 23 does not specifically require the Magistrate to consider the results of DNA testing, the section also does **not** preclude or prevent the use of DNA testing in proceedings before the Court. It is therefore open to a man who suspects that a child may not be his to raise this concern with the presiding Magistrate. The presiding Magistrate may then, utilizing his discretionary judgment under section 23, determine if “some other material evidence”, in this specific instance, should include DNA testing.

It should be noted that while the Attorney General and Minister of Legal Affairs agrees that the use of DNA testing would provide strong scientific evidence of the paternity of a child, it is also not necessary to specify that the testing **must** be done in order for a Magistrate to be able to consider the results of DNA testing. Additionally, due to the cost appurtenant to paternity testing, a mandatory requirement for the same could place persons under financial constraints in cases where there may be “some other material evidence” which could suffice in establishing paternity one way or the other.

**Second Recommendation to the AGLA (page 49 of the Eight Report):**

- **The Committee recommends improved monitoring mechanisms of maintenance payments by the Courts and the MAGLA in order to ensure compliance with Section 27(5) of the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Chap. 46:08.**

**Response:**

The Attorney General and Minister of Legal Affairs notes that the provisions contained within the recently passed and assented *Electronic Payments into and out of Court Act, 2018*, would go a considerable way towards improving the monitoring mechanisms of maintenance payments by the Courts. It is worth noting that the said *Electronic Payments into and out of Court Act, 2018*, seeks to, among other matters; modernize the systems and procedures used in making payments into Courts. The said Act makes provisions for the making of maintenance payments

and the ability for these payments to be made electronically. The new systems which this Act will usher in, once fully operationalized, represent a very significant step forward in the operations of the Judiciary and in its ability to receive and track payments. It is hoped that upon full proclamation of the said *Electronic Payments into and out of Court Act, 2018*, that the concerns which are expressed by the Committee above would be addressed in a significant way.

**Third Recommendation to the AGLA (page 49 of the Eight Report):**

- **The Committee recommends that the MAGLA review the proposed legislative amendments provided by SFATT in Appendix V [to the Eight Report].**

**Response:**

Please see the attached table entitled “*Table Considering the Recommendations Made by the SFATT*” which comments upon the proposed legislative amendments provided by the SFATT in Appendix V to the Eight Report.

**III. Conclusion**

The Attorney General and Minister of Legal Affairs shares in the concerns of the Committee that steps must be taken by the State and its respective entities to address the perceived inequality faced by single fathers in Trinidad and Tobago, with specific focus on custody matters, policies and access to programmes and services. The Attorney General and Minister of Legal Affairs is of the view that the legislative agenda being pursued by the Government should go some way towards ameliorating the perceived inequality faced by single fathers in Trinidad and Tobago.

**Table Considering the Recommendations Made by the SFATT**

<b>No.</b>	<b>Recommendation</b>	<b>Response of the Ministry of the Attorney General and Legal Affairs</b>
1.	Legislation which allows for criminal liability for parental kidnapping.	<p>The Ministry of the Attorney General and Legal Affairs notes that, Trinidad and Tobago’s laws do not provide for the offense of “<i>parental kidnapping</i>”; however it is to be noted that there are already multiple remedies available in law to treat with instances such as these.</p> <p>This matter is being reviewed.</p>
2.	Legislation which allows, as part of joint custodial arrangements, a minimum allotment of ten days per parent (instead of the current 4 days allotted) in keeping with an agreed shared parenting plan between both parents.	<p>The Ministry of the Attorney General and Legal Affairs is of the view that the Court should be allowed the freedom and the discretion to make such Orders, as the Court thinks fit, having regard to the welfare of the minor on a case by case basis. It is therefore unnecessary to adopt this suggestion since current laws can suffice.</p>
3.	Legislation which addresses the existing precedent that unmarried persons and those who have never been in a common law relationship, do not have access to joint custody arrangements.	<p>The Ministry of the Attorney General and Legal Affairs is of the view that the current laws give the Courts the power to make such Orders which are in the best interest and welfare of the child. There is therefore no need to alter the current position.</p>
4.	Legislation which decriminalizes nonpayment of maintenance and makes it non punishable by imprisonment. Other punitive measures which are more cost effective to the state and more meaningful and effective in addressing the relevant issues should be implemented.	<p>The Ministry of the Attorney General and Legal Affairs is of the view that the current range of measures available to the Court, to secure the maintenance payments due for a child, which culminates in imprisonment, provides sufficient mechanisms to ensure that the welfare of the child is preserved. This suggestion is therefore respectfully declined.</p>
5.	Legislation which will affix a penalty to Breach of Court Order related to custodial arrangements.	<p>It would be inaccurate to state that there currently exists no penalty for the breach of a Court Order with respect to custodial arrangements. At the High Court level the breach of an Order of the Court exposes the person in breach to proceedings for Contempt of Court. Proceedings for Contempt of Court can result, ultimately, in a person being</p>

		imprisoned. Additionally, at the Magistrates' Court level a party aggrieved by the breach of the Order of the Court can bring the fact of the breach before a Magistrate. A Magistrate can then vary the original order in a manner which can be punitive in effect to the party who is in breach.
6.	Legislation which will allow for the revision of the criteria to access legal representation via the existing Legal Aid and Advisory Authority.	The Attorney General and Minister of Legal Affairs remains committed to ensuring that the laws of the Republic of Trinidad and Tobago are operating effectively and in the best interests of the people of the Republic of Trinidad and Tobago. In this regard, the Ministry of the Attorney General and Legal Affairs remains open to receiving suggestions as to which aspects of the criteria to access legal representation should be changed and what it is suggested the criteria should be changed to.
7.	Legislation which would establish in Trinidad and Tobago the required number of Family Courts which would eventually have all custodial and related matters addressed within the Family court system.	The Ministry of the Attorney General and Legal Affairs notes that the proclamation of the <i>Family and Children Division Act</i> , Act No. 6 of 2016, would address the concerns raised by the SFATT.
8.	Legislation which would facilitate the electronic payment of Child Maintenance.	This has already been accomplished with the passage of the <i>Electronic Payments into and out of Court Act, 2018</i> , which is currently awaiting proclamation.
9.	Legislation which allows maintenance payments to be made at a location that is convenient to both parents and not necessarily at the Court, where the judgment was made.	This has already been accomplished with the passage of the <i>Electronic Payments into and out of Court Act, 2018</i> , which is currently awaiting proclamation.
10.	Legislation which allows transparency and access by all relevant parties to all psychological evaluations, assessments and reports.	Currently the Court has the requisite authority to make Orders in relation to these matters as it sees fit, on a case by case basis.
11.	Legislation which ensures accountability by the custodial parent as regards funds received and spent which were provided by the non-custodial parent (in the majority of the cases the non-custodial parent are men).	It should be noted that section 30 of the <i>Family Law (Guardianship of Minors, Domicile and Maintenance) Act</i> , Chap. 46:08, already makes provisions for this by creating an offense for the misappropriation of funds received and spent by the custodial parent.

12.	Legislation which ensures accountability by the custodial parent for his/her monthly contribution to the child's maintenance (in the majority of the cases the non-custodial parent are men).	It should be noted that section 30 of the <i>Family Law (Guardianship of Minors, Domicile and Maintenance) Act</i> , Chap. 46:08, in addition to the above, also makes it an offense for the custodial parent to ill-treat the minor child. This provision would help to ensure that the custodial parent maintains the child adequately.
13.	Legislation which ensures mandatory Paternity Testing before a maintenance application and or order is made and or given; and	See the response to this suggestion which is given in the pre-fixed Ministerial Response of the Attorney General and Minister of Legal Affairs.
14.	Legislation which ensures that the conditions/circumstances which allow access to public assistance for children are equitable for fathers and mothers.	Government, through the requisite Ministries and agencies, remains committed to ensuring that all those who require public assistance for children will be assessed equitably on a case by case basis. It is not felt that this is an area which requires legislative intervention at this time.