

GENERAL
LC/CAR/G.659
23 November 2001
ORIGINAL: ENGLISH

**AN EVALUATIVE STUDY OF THE IMPLEMENTATION OF
DOMESTIC VIOLENCE LEGISLATION:
ANTIGUA AND BARBUDA, ST KITTS/NEVIS, SAINT LUCIA AND
SAINT VINCENT AND THE GRENADINES**



**ECONOMIC COMMISSION FOR LATIN AMERICA AND THE CARIBBEAN
Subregional Headquarters for the Caribbean
CARIBBEAN DEVELOPMENT AND COOPERATION COMMITTEE**

Preface

A central role of the Economic Commission for Latin America and the Caribbean (ECLAC) Subregional Headquarters for the Caribbean is the provision of critical thinking and information to governments to assist in policy formulation and evaluation. In meeting that role, ECLAC emphasises the research endeavour and, more particularly, research which elicits new insights and throws up practical solutions and recommendations.

This study was undertaken as a component of technical assistance to the Family Law and Domestic Violence Legislative Reform Project piloted by the Eastern Caribbean Supreme Court. This project is a far-reaching initiative which aims at the reform of family and child law, so as to meet the obligations and normative standards set out in the Convention on the Elimination of all Forms of Discrimination against Women and the Convention on the Rights of the Child. ECLAC has welcomed the opportunity to work collaboratively on this project and acknowledges the support given to the research process by the project administrators and by the Eastern Caribbean Supreme Court.

Table of Contents

| | |
|---|-----|
| Executive Summary..... | vii |
| Introduction.. .. | 1 |
| International obligations..... | 2 |
| The legislative framework..... | 4 |
| Incidence of domestic violence | 5 |
| Child abuse... .. | 7 |
| State responses to domestic violence..... | 9 |
| Social services/shelters/homes | 9 |
| Children’s homes..... | 10 |
| The context of the domestic violence legislation..... | 11 |
| Use of the domestic violence acts | 15 |
| Profile of applicants and respondents..... | 16 |
| Eligible abused persons | 17 |
| Eligible applicants | 22 |
| Prohibited behaviour | 23 |
| Jurisdiction and venue | 27 |
| Family court..... | 27 |
| Court layout..... | 29 |
| Applications and hearings..... | 30 |
| The procedure | 31 |
| The role of attorneys..... | 32 |
| Service of applications/orders/designated process server..... | 35 |
| Access to courts | 37 |
| Proof or return of service: Applications and orders | 38 |
| Other procedural matters | 38 |

| | |
|---|----|
| Orders available under the Act..... | 40 |
| Protection orders | 40 |
| Occupation orders | 42 |
| Tenancy orders | 44 |
| Experience | 45 |
| Other orders | 47 |
| Ex parte, interim protection orders..... | 50 |
| Duration of ex parte order..... | 51 |
| Counselling... .. | 51 |
| Reporting and monitoring | 53 |
| Standard of proof..... | 54 |
| Notice of consequences of violations..... | 54 |
| Enforcement of orders | 55 |
| Arrest authority..... | 55 |
| Experience | 56 |
| Penalties for violation | 57 |
| Criminal jurisdiction..... | 58 |
| Social service provisions | 59 |
| Police duties.. .. | 59 |
| Data collection..... | 61 |
| Conclusion..... | 64 |
| Annex I..... | 69 |
| Annex II | 72 |
| Bibliography..... | 75 |
| Endnotes..... | 77 |

List of Tables

| | |
|---|----|
| Table 1: Prevalence of wife abuse in selected countries..... | 7 |
| Table 2: Child abuse cases reported to the citizen's welfare division - Antigua and Barbuda | 7 |
| Table 3: Child abuse cases reported to the citizen's welfare division - Saint Vincent and the Grenadines | 8 |
| Table 4: Child abuse cases reported to the citizen's welfare division - St Kitts/Nevis | 8 |
| Table 5: Child abuse by type of abuse - Grenada | 8 |
| Table 6: Child abuse by type of abuse - Dominica | 9 |
| Table 7: Applications made for Protection Orders | 15 |
| Table 8: Length of union of persons making application for protection orders - Antigua and Barbuda..... | 17 |
| Table 9: Type of abuses alleged in complaints of domestic violence - Antigua and Barbuda..... | 24 |
| Table 10: Outcome of applications for protection orders - Saint Vincent and the Grenadines..... | 46 |
| Table 11: Outcome of applications for protection orders – Saint Lucia | 46 |

List of Figures

Figure 1: Children 0-14 years by union status of heads of households
- Selected Caribbean Countries 21

Figure 2: Orders available under the Trinidad and Tobago
Domestic Violence Act 1999 49

Executive Summary

This paper is an evaluative study on the implementation of domestic violence legislation in Antigua and Barbuda, Saint Lucia, St. Kitts and Nevis and Saint Vincent and the Grenadines and forms one component of The Family Law and Domestic Legal and Judicial Reform Project piloted by the Eastern Caribbean Supreme Court (ECSC). This project has two major objectives. The first relates to the improvement in the efficiency and effectiveness of the judicial system in the countries which share the ECSC and the second is for the eradication of gender-based inequality in the content and administration of the law. The project focuses on family law, child law and domestic violence.

The methodology employed in the study was that of unstructured interviews with representatives of agencies which are central to the implementation of the Act, including magistrates, police officers, social workers, women's desks and non-governmental organizations. The interviews sought to elicit both factual information on the usage of the Act as well as opinions on the strengths and weaknesses of the legislative framework as well as the social service delivery supportive of the legislation.

The study highlights that the domestic violence legislation is an important component in State efforts to eliminate gender-based violence in the home. The new laws, which do not replace the criminal law, have given summary courts the jurisdiction to grant a range of injunctive-type relief. These powers include the jurisdiction to make interim and final protection orders, occupation orders and tenancy orders. The laws for the most part attempt to make clear that the protection of the applicant is the primary consideration for the court.

While the laws are widely accessed, the implementation of the legislation is affected by a number of substantive, administrative and cultural challenges. In relation to the content of the law, the study recommends that reform is needed in a number of areas including:

- Expansion of the category of protected persons to include, inter alia, persons in visiting or otherwise intimate relationships;
- Increase in powers to enable the court to resolve custody and maintenance disputes ancillary to the making of a protection or occupation order;
- Expansion of the range of persons with the authority to make applications for protection orders on behalf of children;
- Creation of a comprehensive definition of domestic violence to include, more clearly, threats of violence and to define emotional and psychological abuse;

- Consideration of the specification of time durations for occupation orders; and
- Consideration of a unified family court.

With regard to administrative matters, the study found a widespread legal underrepresentation of applicants and respondents in domestic violence matters. The study posits that this may well contribute to a certain denigration of such applications within the legal system and urges that bar associations be encouraged to develop and support continuing legal education programmes for attorneys.

The study also highlights the practice which has developed in Antigua and Barbuda for the inclusion of a detailed statement/affidavit in support of an application for a protection order. Such a procedure appears to have allowed for expeditious disposal of matters which come before the Antiguan magistrates' courts. The paper recommends generally the consideration of the use of affidavits, which would give the respondent full notice of the allegations as a method of not only shortening the length of trials but also reducing the adversarial nature of the proceedings.

The study found that the activism around domestic violence in the Caribbean over the last 10 years has resulted in some degree of sensitisation to the issue and to a greater commitment to meeting the needs of both applicants and respondents in domestic violence applications. Still, those interviewed as background to the study, articulated the need for ongoing training, particularly of court officials and police officers to increase understanding of the phenomenon of domestic violence. In relation to the police, it was thought that the development of response protocols would have the desirable result of standardising police action thereby limiting the discretion of police officers, which appears sometimes to be exercised in the direction not of law enforcement but of counselling.

In this regard, a recurring theme in the research is that the police plays a primary role in the implementation of the domestic violence laws as women attend the police stations often as first refuge seeking assistance, protection and counselling intervention. The study argues that the convergence, on one hand, of a cultural acceptance of domestic violence as something less than a crime with, on the other, a generalized anticipation of the absence of the will of the victim to prosecute leads police to act less as law enforcers than as social workers and counsellors. For the police, the expectation that they will act as social workers is a complicating one and can be at odds with the law enforcement role.

The study also shows the need for the strengthening of data collection and compilation capacity, this being pivotal to an ongoing evaluation not only of the law but also of the social support services provided.

In relation to child abuse, the study documents that general dismay exists over the present inability of the legal and social services systems to respond effectively to the incidence of child abuse because of inadequate surveillance systems, detection and investigatory procedures.

Finally, the study argues that the eradication of domestic violence can only be accomplished through the development of an integrated socio-legal response to domestic violence. Such an integrated response must ensure the equalization of power relations between women and men, the redefinition of masculinity away from control over women and the creation of economic, legal and social options for women which facilitate the escape from abusive situations and relationships.

AN EVALUATIVE STUDY OF THE IMPLEMENTATION OF DOMESTIC VIOLENCE LEGISLATION: ANTIGUA AND BARBUDA, ST KITTS/NEVIS, SAINT LUCIA AND SAINT VINCENT AND THE GRENADINES

Introduction

The Family Law and Domestic Legal and Judicial Reform Project piloted by the Eastern Caribbean Supreme Court (ECSC) has two major objectives. The first relates to improvement in the efficiency and effectiveness of the judicial system in the countries which share the ECSC and the second is aimed at the eradication of gender-based inequality both in the content of the law as well as in the unequal results of apparently non-discriminatory legal provisions. In this latter regard, the project focuses on family law, child law and domestic violence.

The primary goals of the project are to:

- (a) Identify areas for legal reform in laws related to the family and to children, (particularly children in difficult circumstances and juvenile offenders);
- (b) Develop model legislation in these areas for consideration by governments;
- (c) Analyze and make recommendations for the strengthening of legal and social services for persons making applications under the relevant domestic violence legislation; and
- (d) Develop a data collection system for reports of domestic violence.

This paper is an evaluative study of the implementation of domestic violence legislation in Antigua and Barbuda, Saint Lucia, St. Kitts and Nevis and Saint Vincent and the Grenadines¹ and forms one input towards the development of an integrated policy response to domestic violence. This study not only meets the need identified by the Eastern Caribbean Supreme Court but it is also informed by the mandate established at the Third Ministerial Meeting on Women for the ongoing review, monitoring and implementation of legislation to counteract and eradicate violence against women, convened by the Economic Commission for Latin America and the Caribbean/Caribbean Development and Cooperation Committee (ECLAC/CDCC) secretariat.

The methodology employed was that of unstructured interviews with representatives of agencies central to the implementation of the Act, including magistrates, police officers, social workers, women's desks and non-governmental organizations. Where possible, interviews were also conducted

with persons who had made applications under the legislation. The interviews sought to elicit both factual information on the usage of the Act and opinions on the strengths and weaknesses of the legislative framework as well as the social service delivery supportive of the legislation. Where available, the court records of applications made under the Domestic Violence Act were also examined.

In all countries, the research was considered a timely one, difficulties associated with the implementation of the legislation having been identified. In the case of St. Kitts and Nevis where the Act, though passed, has not been put into force, the research presented an opportunity to strengthen the legislation as well as social service delivery. Given the newness of the legislation, this exercise allowed most of the countries a first review of the implementation of the Act.

International obligations

In evaluating the existing legal framework, the project uses as a guide the obligations elaborated in the international human rights instruments of the Convention on the Elimination of all Forms of Discrimination against Women (the Women's Convention) and the Convention on the Rights of the Child (CRC). All independent member States of the Organisation of Eastern Caribbean States (OECS) have signed and ratified both the Women's Convention and CRC. As well, since 1995, all member States have signed and ratified the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para).²

While the Women's Convention does not address violence against women, it is now accepted that violence against women is both a manifestation and a product of systemic power asymmetries between women and men. In response to the calls for the development of standards of State responsibility to end all forms of violence against women, in 1989, the Committee on the Elimination of all forms of Discrimination against Women (CEDAW) adopted General Recommendation 12. This General Recommendation formed the basis for the elaboration of the Declaration on the Elimination of Violence against women.

Under the terms of the Declaration, violence against women in the domestic setting refers to:

“Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence, and violence related to exploitation.”

The Declaration calls upon States to exercise due diligence to prevent and punish acts of violence against women. Specifically, the State has the following obligations:

- (a) To ensure to women who are victims of violence access to the mechanisms of justice and to just and effective remedies;
- (b) To consider the possibility of developing national plans of action to promote the protection of women against any form of violence;
- (c) To develop preventive approaches and all those measures of a legal, political, administrative and cultural nature that promote the protection of women against any form of violence, and ensure that the re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions;
- (d) To ensure that women subjected to violence and, where appropriate, their children have specialized assistance, such as rehabilitation, assistance in child care and maintenance, treatment, counselling, and health and social services, facilities and programmes; and
- (e) To take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women.

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women defines violence in the domestic setting in the following way:

"Violence against women shall be understood to include physical, sexual and psychological violence that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse."

Among the State obligations adumbrated are the following:

- (a) To apply due diligence to prevent, investigate and impose penalties for violence against women;
- (b) To include in their domestic legislation penal, civil, administrative and any other type of provisions that may be needed to prevent, punish and eradicate violence against women and to adopt appropriate administrative measures, where necessary;

(c) To adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property;

(d) To establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures; and

(e) To provide appropriate specialized services for women who have been subjected to violence, through public and private sector agencies, including shelters, counselling services for all family members, where appropriate, and care and custody of the affected children.

The obligations contained in both instruments give a clear indication that the State obligations encompass legislative, administrative, social services and public education components. The emphasis on the development of a national plan denotes the understanding that domestic violence is a widespread and complex issue which can only be effectively addressed by the coordinated application of the resources of government and civil society.

The legislative framework

Prior to the passage of the domestic violence acts in the Caribbean,³ women who were victims of a physical act of violence or who faced a threat of such violence could file a criminal complaint thereby initiating or causing the initiation of criminal proceedings against their partners, whether married, common law or in a visiting relationship. A successful criminal prosecution would expose the perpetrator to the penalties of fine and/or imprisonment. The option of pursuing a criminal prosecution is still available to a battered woman.

Apart from criminal proceedings, the battered women could have sought injunctive and protective relief in the High Court and/or monetary compensation on the basis that the civil wrong of assault and battery had been committed. The major practical obstacle to access to this remedy was and continues to be the cost of legal services associated with a civil action.

Other than these tort-based injunctions, on the presentation of petitions for divorce, an abused woman is also entitled to seek a matrimonial injunction by way of a non-molestation or exclusion order. On the presentation of a petition, the Court can grant exclusion orders where the health and safety of the woman and/or children are in jeopardy.

In response to the shortcomings of the existing civil and criminal remedies, five member countries of the OECS⁴ have enacted legislation aimed at providing relief to victims of abuse perpetrated in the home by spouses. These countries are the British Virgin Islands, Antigua and Barbuda⁵, Saint

Lucia⁶, Saint Vincent and the Grenadines⁷ and St. Kitts and Nevis⁸. This legislation is modeled on the draft legislation provided by the Caribbean Community (CARICOM) secretariat as part of its legislative reform project. The approach to domestic violence evident in the legislation emphasizes the provision of the civil remedy of injunction relief or protection orders as opposed to an emphasis on punishment.

Incidence of domestic violence

Despite the policy and programmatic progress, the incidence of domestic violence shows little sign of abatement. The violence spreads across a continuum of spousal battery, sexual violence and child abuse. In all countries, concerted legislative efforts have been made to address spousal abuse and, while there remains scope for continued reform and response, the persons interviewed for this study were relatively satisfied with the efforts of their countries in this area. There was much greater dissatisfaction with the ineffectual mechanisms and responses to protect children from child abuse and, particularly, incest and to punish those who perpetrated abuse on children.

There are continuing difficulties in ascertaining the incidence of domestic violence in the Caribbean subregion due to a combination of factors: underreporting and data collection system inadequacies. This lack of consistent information about domestic violence affects the capacity of policy makers: (a) to obtain a profile of victims and perpetrators; (b) to understand the frequency and incidence of violence; (c) to identify the groups at risk; (d) to develop intervention programmes; and (e) to monitor the effectiveness of violence prevention and intervention activities. Higher quality and more timely incidence and prevalence estimates have the potential to be of use to policy makers, researchers, public health practitioners, victim advocates, service providers and media professionals.

However, obtaining accurate and reliable estimates of the number of women affected by violence is complicated by a number of factors, including the fact that there are no established and ongoing mechanisms for surveillance of violence against women. As a result policy makers are often forced to rely on multiple and inadequate data systems to obtain minimal incidence and prevalence information.

The reliance on multiple data systems is inadequate for the task of establishing incidence and prevalence estimates of domestic violence, because these data sources have been created and maintained for purposes other than monitoring the scope of the problem. Police collect information about violence against women for the purpose of bringing charges against the perpetrator(s) of the violence. They therefore record few details about the victim. In addition, police tend to record only those reports which lead to the initiation of the

formal criminal prosecution process, omitting from their records the numerous complaints made to them which are not converted into the laying of criminal complaints. For St. Kitts/Nevis, for example, it is estimated that less than 10 per cent of reports received are made the subject of criminal proceedings. However, a number of sample surveys conducted on domestic violence suggests that one in three adult women in relationships are the victims of domestic abuse.

Courts compile data to give an indication of the disposal of cases. Social services or welfare departments compile records on persons referred to them for social service intervention.

In addition, there are social barriers to obtaining accurate domestic violence surveillance data. These barriers include the guilt and shame that inhibit self-identification by victims and perpetrators, the lack of training and cultural acceptance of domestic violence all of which inhibit agency personnel from recording reports of domestic violence in official records, even when cases are identified. Furthermore, only a small fraction of all domestic violence victims ever seek help from the justice system.

There are no protocols in place to guide the data collection/compilation exercise of either the police or the courts. As a result it is next to impossible at the present time to get any accurate information on the number of reports made to the police of domestic violence cases. Where reports have ended in the laying of criminal charges, even these are difficult to identify as such cases merge with all other cases of assault and battery or other physical offences and these statistics are not disaggregated according to the relationship between abuser and victim.

With regard to the court process, a very rudimentary system of data compilation exists which does not allow for a ready analysis of the manner of disposal of cases that come before the court.

Table 1:
Prevalence of wife abuse in selected countries

| Country and Year | Sample Size | Sample Type | Findings | Comments |
|--------------------------------|-------------------------------------|--|-------------------------------|--|
| Antigua and Barbuda (1993) | 97 women; 20-45 yrs | Random subset of national probability sample | 30% battered as adults | 50% of women and men report that their mothers were beaten |
| British Virgin Islands (1997)* | 330 women 15-44 yrs. | Random sample | 28.5% reported physical abuse | |
| Barbados (1993) | 264 women, 243 men; 20-45 yrs | Island wide National Probability sample | 30% battered as adults | 50% of women and men report that their mothers were beaten |

Source: Lori L. Heise with Jacqueline Pitanguy and Adrienne Germain, *Violence Against Women: The Hidden Health Burden*, World Bank Discussion Papers #255, Washington DC, 1994, pp.6-8.

* Source: Nesha Haniff: *A Study on Domestic Violence in the British Virgin Islands*. January, 1998

Child abuse

Like domestic violence perpetrated against women, child abuse is notoriously underreported. Police recorded reports of incest are negligible even though it is widely perceived that incest is a major problem in the countries under study. Increasingly however, and with the advocacy around child rights and domestic violence, social welfare departments are witnessing a surge of reports of child abuse.

Widespread dismay exists over the present inability of the legal and social services systems to respond effectively to the incidence of child abuse. In relation to sexual assaults, inadequate surveillance systems, detection and investigatory procedures severely limits the likelihood of successful prosecution of offenders. Children under the influence of adults either do not or are not allowed to give evidence in many cases. Teachers and the health professionals do not necessarily report all cases of child abuse to the police and, where they do, social services are inadequate to the task of removing children out of danger and placing them in institutions which provide quality care. In one of the countries under study, it was reported that children can spend long periods in a police station while applications for Fit Person or temporary guardianship orders are processed.

The legal system's response to child abuse is beyond the mandate of this paper, but the research process did elicit that there is an untold story of the horror of child abuse. This is an area which requires greater sociological and legislative attention and the institution of a system of child advocates.

Table 2:
Child Abuse Cases reported to the Citizen's Welfare Division, Antigua and Barbuda: 2000

| Categories | Number of Cases | Male | Female | Age Range |
|---------------------|-----------------|-----------|-----------|-----------------|
| Physical | 37 | 20 | 17 | 2 – 6 yrs |
| Neglect/Abandonment | 73 | 40 | 33 | 5 mths – 17 yrs |
| Sexual | 15 | 2 | 13 | 4 – 15 yrs |
| Unspecified | 8 | 1 | 7 | 8 – 15 yrs |
| Total | 133 | 63 | 70 | |

Source: Citizen's Welfare Division, Antigua and Barbuda

Table 3:
Child Abuse cases reported to the Social Welfare Department, Saint Vincent and the Grenadines

| | 1990 | 1992 | 1994 | 1996 | 1998 | 2000 |
|-------------|------|------|------|------|------|------|
| Sex | 21 | 29 | 41 | 55 | 23 | 20 |
| Physical | 33 | 63 | 77 | 65 | 51 | 36 |
| Neglect | 31 | 51 | 73 | 51 | 121 | 78 |
| Abandonment | 27 | 40 | 28 | 56 | 38 | 30 |
| Maintenance | 409 | 573 | 690 | 529 | 414 | 337 |
| Other | 6 | 23 | 36 | 4 | 11 | 10 |

Source: Social Welfare Department, Saint Vincent and the Grenadines

Table 4:
Child Abuse in St. Kitts/Nevis

| Year | Total |
|-------|------------|
| | No. |
| 1990 | 34 |
| 1991 | 37 |
| 1992 | 37 |
| 1993 | 33 |
| 1994 | 32 |
| 1995 | 25 |
| Total | 198 |

Source: UNICEF, The State of Eastern Caribbean Children 1998

Table 5:
Child Abuse by type of abuse - Grenada

| Year | Sexual | Physical | Abandoned | Neglect | Total |
|-------|------------|------------|------------|------------|------------|
| | No. | No. | No. | No. | No. |
| 86-87 | 4 | 14 | 2 | 6 | 26 |
| 87-88 | 12 | 19 | 3 | 8 | 42 |
| 88-89 | 9 | 16 | 1 | 4 | 30 |
| 89-90 | 14 | 28 | 2 | 9 | 53 |
| 90-91 | 22 | 52 | 5 | 11 | 90 |
| 91-92 | 7 | 16 | 5 | 7 | 35 |
| 92-93 | 25 | 26 | 9 | 13 | 73 |
| 94 | 24 | 23 | 7 | 6 | 60 |
| Total | 93 | 171 | 27 | 58 | 409 |

Source: Source: UNICEF, The State of Eastern Caribbean Children 1998

Table 6:
Child Abuse by type of abuse - Dominica

| Year | Sexual | Physical | other | Neglect | Total |
|-------------|---------------|-----------------|--------------|----------------|--------------|
| | No. | No. | No. | No. | No. |
| 1989 | 15 | 17 | 32 | 7 | 71 |
| 1990 | 11 | 23 | 73 | 20 | 127 |
| 1991 | 35 | 25 | 41 | 66 | 167 |
| 1992 | 70 | 42 | 39 | 55 | 206 |
| 1993 | 123 | 31 | 59 | 42 | 255 |
| 1994 | 135 | 34 | 188 | 58 | 415 |
| 1995 | 82 | 38 | 74 | 66 | 260 |
| 1996 | 95 | 21 | 69 | 54 | 239 |
| Total | 566 | 231 | 575 | 368 | 1740 |

Source: UNICEF, The State of Eastern Caribbean Children 1998

State responses to domestic violence

The national machineries for women have been instrumental in putting the issue of domestic violence on the legislative agenda. The centrality of these units to the effort to eradicate gender-based violence can also be discerned by the fact that it is these departments which typically provide the support services to victims of domestic violence, be they counselling, court advocacy or the arrangement of emergency accommodation. The Women's Desk in Antigua and Barbuda, for example, has instituted a Domestic Violence project that provides victim support and advocacy through the legal process. The departments are all involved in the training for police officers.

Social services/shelters/homes

Historically, social services directed at this problem have been the initiative of non-governmental women's organizations. One of the pioneering organizations in this regard is the St. Lucia Crisis Centre established in 1988. The Crisis Centre has been at the forefront of advocacy around the issue of domestic violence and was a key lobbyist in the passage of the Domestic Violence Act. Currently, the Crisis Centre offers a counselling service, a hotline and public education programmes.

In none of the countries was there an emergency shelter for battered spouses and their families, a fact which makes the legislation empowering the courts to order the removal of the abuser from the home of central importance. In 2001, the Ministry of Health and Women's Affairs procured a building in Saint Lucia for the purpose of setting up a shelter for battered spouses and this facility has been offered to the Crisis Centre to manage.

In Antigua and Barbuda, the Directorate of Gender Affairs operates a hotline for domestic violence. The hotline is serviced by a group of trained volunteers under the supervision of the Directorate. While there is no shelter dedicated to victims of domestic violence, a non-governmental organization “Hour Glass Foundation” operates Hero House and arranges emergency housing for three to five days for victims of domestic violence. This programme utilizes the homes of volunteers for the placement of persons in need of emergency accommodation. The Directorate has recently collaborated with Hero House enabling the extension of services to skills training and the provision of a building which can be used by a small number of battered women in need of emergency shelter.

The Marion House in Saint Vincent and the Grenadines is a non-governmental institution which offers counselling for victims and perpetrators of domestic violence. The institution also addresses the issue through community education programmes.

Like, the Directorate of Gender Affairs in Antigua and Barbuda, the Ministry of Social Development in St. Kitts and Nevis has instituted a counselling service directed at family well-being and, not unexpectedly, a significant number of clients seen are victims of domestic abuse.

Children’s homes

Dedicated facilities for children in need of protection are either absent or very limited in all four countries. The children’s homes are generally run by non-governmental organizations with subventions from the State.

Antigua and Barbuda: The Salvation Army operates the Sunshine Home, an institution for girls in difficult circumstances as well as girls in conflict with the law. It is reported that the main causes of institutionalization are parental abuse, incest and delinquencies (running away from home).⁹ As is the case with other children’s homes in the Caribbean, there is no physical separation made between abused and delinquent girls. The girls are generally admitted to the Home pursuant to a Fit Person’s Order granted by the Magistrate Court in response to an application made by the Citizen’s Welfare Department.

The Good Shepherd Home for Girls is operated by the St. Vincent De Paul Society and caters for young girls who have been abused or otherwise require care. There is no institution for the protection of boys and those who are abused might be sent to the Boys Training School which is an institution for juvenile offenders.

St. Kitts and Nevis: Children in need of protection and care because of neglect, abandonment, abuse or homelessness are placed in the St. Christopher’s Children Home. This institution is funded largely by government

which not only provides annual grants but also health services, utilities and maintenance services. Children are placed at the home as a result of referrals from the Welfare Department, police or the hospital.

Saint Lucia: There is no institution in which abused children may be placed. The Upton Garden Girls Centre is a facility for juvenile offenders. The Sisserou Home is an orphanage for children under 12.

Saint Vincent and the Grenadines: The Liberty Lodge Boys Training Centre caters for juvenile offenders and boys in need of care and protection. There is one State-run children's home.

The context of the Domestic Violence Legislation

“He pushed me on the bed and ripped my shirt and bra and later cut them off me with a scissors. He then pulled the chain from my neck. We struggled for a while and then he started to choke me whilst he was sitting on me. He eventually got off me and sat on the bed watching me as he pulled my chain to small bits. He told me “You are a dead woman and I have dug your grave for you and you don’t even know it yet”. Shortly after he said, “I am going to get a pick axe and a shovel and let you dig your own grave and I’ll bury you.” I asked him to leave me alone and he went across to the light switch and started switching it on and off and remarked that “ I love you and love is not like a switch”. I then went to bed and lay down and he came and took away all the bed clothing and said that I should stay cold. He left the room and returned with a knife. He started tracing my body with the knife. I was extremely scared. He then gave me the knife and told me to stab him. I was so scared that my hand was shaking and the knife dropped to the ground”. Applicant.

The quotation conveys rather vividly that despite the neat categorization of types of domestic abuse into physical, psychological, verbal and sexual, many abused women experience what amounts to torture and often for protracted periods of their lives. Like the abuser in the above quotation, those who work on this issue report that perpetrators typically evince or allow themselves no real understanding of their actions, preferring to justify criminal conduct by blaming the victim or by references to emotional attachment.

The eradication of domestic violence can only be accomplished through the development of an integrated socio-legal and psychological response to domestic violence. Such an integrated response must ensure the equalization of power relations between women and men, the redefinition of masculinity away from control over women and the creation of economic, legal and social options for women which facilitate the escape from abusive situations and relationships.

Domestic violence is not a problem, it's a crime

The primary policy response in the four countries under review has been in the area of the justice system. Within that system, police officers act as the gatekeepers, making decisions about arrest and prosecution and by making or failing to make referrals to legal and social services. Small wonder that all the studies conducted on domestic violence in the Caribbean subregion speak to the concern for greater police understanding of their role in preventing domestic violence and in the protection of abused family members.

For Saint Lucia, two years after the Domestic Violence Act came into force, a review was done by Victoria Charles on "The Legal System's Response to Domestic Violence".¹⁰ That study examined the components of the justice system with a view to ascertaining whether they were adequate to deal with the problem of domestic violence. The study concluded that the operation of the Act and the ability of abused women to receive effective assistance was likely to be hindered by the persons who implemented it (magistrates, police officers) because of the lingering beliefs and ideologies which treated domestic abuse not as a crime requiring a court response but as a problem for social service intervention. In that study, the author, herself a former magistrate, found signs of an unofficial policy and "archaic view of non-intervention" on the part of police.

A 1998 study conducted in the British Virgin Islands on domestic violence echoed the Saint Lucia study. The British Virgin Islands study found that less than half of the women who reported experiencing domestic violence, reported this to the police. For such women, police reports seemed futile because of their expectation that the reports would not be treated seriously.

"He broke down the door and came after me with a stick. I ran to the police, they laughed and told me that my husband loves me"
28 year old married female

In the case of Antigua and Barbuda, the following complaint is instructive on the web of police attitudes that prevent effective response:

"I have reported him (partner) to the police three times. The first time the police said that I should go back to the home. The second time they locked him up for one day and then released him. The police never charged him. The last time he wet my bed with water and kicked down the front door. My son went to the police station and one police officer told him, "It is husband and wife business. Tell your mother to go to a lawyer." The police have also told me that I was being ungrateful because my husband was supporting

me. "You come from so far and you want the man to leave his house".¹¹

In all the countries, police arrests and prosecutions for domestic violence are insignificant even while it is widely acknowledged that the incidence of this type of crime is higher than any other. This disjuncture between the prevalence of this crime and the limited police and prosecutorial response however is the norm globally.

"One of the most difficult parts of policing is dealing with domestic cases and you can find yourself saying "go to all you lawyer".
Police officer.

In all four countries, both police officers and persons who work on this issue expressed continuing concerns for the absence of due diligence on the part of police to intervene in cases of domestic violence. This widespread inaction was attributed to the holding of cultural values that were permissive of assaults on women in the private sphere, to patriarchal notions about family privacy and male prerogatives.

In response to the need to change these values to make them more responsive to the protection of women's rights to bodily security, police training is ongoing and in all countries there is recognition that the police attitudes have shifted. In the current research, a general consensus emerged that with the passage of the Domestic Violence Act, police officers have become more committed to intervening in domestic violence matters. The growing political will in this regard can be seen in the involvement of the Association of Commissioners of Police in the Caribbean Association for Feminist Research and Action (CAFRA) initiated police training on domestic violence.

Of greater complication is the report of police that they respond to the directives of battered women who, by and large, are not interested in proceeding with criminal sanctions against their spouses, even in the worst cases of abuse. Indeed the British Virgin Islands study also found that those women who reported violence to the police did so, not to invoke a criminal justice response, but because they felt that the mere reporting would be a deterrent. In such cases, the abused women saw the police in the way of a moral authority.¹²

Victim recantation or reluctance to initiate criminal proceedings is reported by police to account for high levels of police frustration and over time the maintenance of a culture of police inaction. Police complain that dealing with domestic violence complaints takes up too much of their time, time wasted when it does not result in a successful prosecution because of the absence of victim cooperation.

The legal and social dimensions of domestic violence and its difference from other types of crime no doubt present a significant challenge to the use of the legal system as an effective social control mechanism. While advocates on behalf of victims have maintained that domestic violence is a crime like any other, in fact it differs in ways that profoundly complicate the normal administration of legal control mechanisms such as arrest and prosecution and punishment. In most cases there are emotional ties which exist between the victim and the abuser which weaken victim resolve to enter into adversarial proceedings carrying the threat of incarceration. The victim is often financially dependent on the abuser, not only for her maintenance but, more importantly, for the care and maintenance of children of the union. And it is these factors which women take into account when deciding whether or not to invoke the legal process. Studies from other countries show that women are less concerned with punishment and deterrence than they are with using the legal institutions, including police reporting mechanisms, to guarantee their own safety or to get counselling intervention for their abusers.

The convergence, on one hand, of cultural acceptance of domestic violence as something less than a crime with, on the other, a generalized anticipation of the absence of the will of the victim to prosecute leads police to act less as law enforcers than as social workers and counsellors.

Accepting that there are significant challenges in the use of the criminal process however should not be tantamount to its disuse. Criminal sanctions can bring an end to individual violence and act as an ongoing deterrent. Equally important, it is symbolic of societal rejection of abuse and communicates important cultural messages rejecting norms that support spousal abuse. In this context, police seek answers on how to improve their intervention in a way that takes account of the wishes of the victims on one hand, and, on the other, the need for enforcing the law in an unequivocal and consistent manner.

Given the intractability of domestic violence and enduring attitudes that diminish the significance of domestic violence as a crime, a consensus is emerging that mandatory arrest and prosecutions may be necessary. Through such policies, a presumption of arrest and prosecution will arise in every case where domestic violence has been committed and reported. Police discretion will be reduced and unless there are good, clear reasons to the contrary, police will be obligated to make an arrest, charge the abuser and ensure the prosecution of such charges.

The advocates of this approach emphasize the deterrent effect and argue that increases in the certainty and severity of criminal legal sanctions reduce domestic violence. The assumption here is that the consistent arrest of a batterer will strengthen the coercive power of the criminal justice system to ensure victim safety and manage the behavior of abusive offenders. The

supporters of pro-arrest and prosecution policies point to research which reveals that arrest, with its associated shaming and intimidatory procedures, reduces the risk of recidivism and has a positive effect in the management of abuse.

However, in a review of mandatory prosecutions and arrest, it has been suggested that a confluence of social structural factors and individual factors contribute to violence generally and may also undermine the deterrent effects of legal sanctions.¹³ Formal sanctions are effective among those with a “stake in conformity” and when accompanied or reinforced by informal social controls. The deterrent effect of arrest is greater where the batterer perceives high social costs. These costs include loss of job, loss of relationship with children and social status in the community.

In the current research, those who opposed mandatory arrest and prosecution referred to the absence of therapeutic programmes and support services for both batterer and abused person. One police officer also considered that having regard to the motivation of many women who visited the police station, mandatory arrest and prosecution policies might not act as a deterrent to abuse, but as a deterrent to reporting.

Irrespective of the institution of mandatory arrest and prosecution policies, police protocols should be developed which address appropriate investigation and detection procedures and standards. The procedures developed must take account and anticipate victim reluctance to participate in a criminal prosecution.

Use of the Domestic Violence Acts

The records for Saint Lucia show a steady increase in the use of the Act and on average in the year 2000 there were 39 applications made per month as opposed to 29 in 1998. For Saint Vincent and the Grenadines, there was a significant jump in 1999 but the number of applications declined considerably in the year 2000.

Table 7:
Applications made for Protection Orders

| YEAR | No. of Applications made for Protection Orders | | |
|-------------|--|--------------------------------|-----------|
| | Antigua and Barbuda | St. Vincent and the Grenadines | St. Lucia |
| 1996 | - | 134 | |
| 1997 | - | 204 | 106 |
| 1998 | - | 182 | 310 |
| 1999 | - | 225 | 447 |
| 2000 | 67* | 152 | 472 |
| 2001(March) | 11 | 42 | |

* This figure is for 1999-2000

Source: Court records

The number of applications made does not reflect the number of incidents of domestic abuse. The Directorate of Gender Affairs in Antigua and Barbuda estimates that only 40 per cent of the persons who seek their services make applications to the court. Many victims attend to the department to talk, to be counselled or to discuss the possibility of intervention with her spouse. Similarly, officials of the Saint Lucian Family Court report that the court process is used only as the last resort and usually after long periods of previous abuse.¹⁴

The limited use of the legislation in comparison with the incidence of domestic violence was explained partly by reference to the prevailing “culture of discouragement” on the part of family and community who remind a potential applicant that “it’s the child father”.

“I was not ready to call the police to arrest him. I was afraid and did not know how he would retaliate. The children weren’t prepared for their father to be locked up. To hear police arrest their father and it’s their mother doing that, I wasn’t prepared. I only wanted to protect my children”. Vincentian applicant

The stigma attached to taking one’s spouse to court acts as a deterrent to many women as does the existence of emotional and financial ties/dependencies on the batterer. Fear of batterer anger and retaliation (physical, financial or emotional) impede the use of the court process as a mechanism for bringing an end to domestic abuse. It was also thought that there is insufficient awareness of the legislation, an opinion supported by the periodic increases in applications around times of women’s rights advocacy, e.g. International Women’s Day.

Profile of applicants and respondents

In-depth data on applicants and respondents is not collected since the only personal information required under the Acts is the nature of the relationship between the parties. As a result, it is impossible to render a profile of the parties who appear before the court other than that which is anecdotal.

The applicants are typically women with only very few men making applications for protection orders. In all countries, it is reported that regardless of union status, generally applicants are unemployed women and of working class origin, with persons of middle socio-economic status preferring to seek their remedies in the High Court with the assistance of an attorney. In the words of the magistrate attached to the Family Court in Saint Lucia, “the persons who usually come to the Family Court are among the poorest, with limited education”.

For Antigua and Barbuda where the most detailed information was available on applicants through the files of the Directorate of Women's Affairs, no standard profile of applicants can be presented. All of those assisted by the Directorate were female with the exception of one male. Of the 40 cases documented from that data source, 65 per cent were in marital unions; 30 per cent in common law or former common law unions and a residual 5 per cent were in non-residential unions. There is no pattern to be discerned in relation to length of union either, as persons with unions as short as nine months and as long as 22 years have applied for protection orders. The average length of union for applicants was 11 years.

Table 8:
Length of union of persons making application for protection orders
- Antigua & Barbuda

| Period of Union | No. | % |
|-------------------------|------------|----------|
| Less than 5 years | 6 | 15 |
| 5 to less than 10 years | 9 | 23 |
| 10 years and over | 18 | 45 |
| Unknown | 7 | 17 |
| TOTAL | 40 | 100 |

Source: Directorate of Gender Affairs

Although all of the Acts make provision for applications on behalf of children, such applications are rare, with guardians or social workers preferring to make applications for Fit Persons Orders (temporary custody orders with protection orders attached in the appropriate case) under the relevant juvenile/child protection legislation.

While there is also little or no information available on the men who appear as respondents before the court, the perception is that a number are alcohol or drug abusers. This was rejected by the magistrates in Antigua and Barbuda who saw no such pattern in that jurisdiction.

Eligible abused persons

The classes of persons eligible to be protected are spouses, parents, children and dependants. Spouse is defined to mean persons in legal unions or formerly so, as well as persons in residential unions (common-law spouses) as well as former common-law spouses. Notably, "common-law spouse" is defined in Antigua and Barbuda as meaning a single person who is living together with another single person of the opposite sex in the same household as husband and wife without being legally married to each other. This is to be contrasted with the Vincentian and Kittian interpretation of common-law spouse as someone of the opposite sex, living with another as husband or wife although not legally married. While these sections make clear that persons in same sex unions cannot have recourse to the protection of the legislation, the Antiguan legislation goes one step further by denying protection to persons who may be married but living in a union with someone other than their legal spouse.

Parents included are parents of a child of the household, a parent or grandparent of the spouse or parent or grandparent of a respondent either by consanguinity or affinity.

Reflecting the realities of Caribbean family structure, the definition of child encompasses children of a common law or married union either by birth or adoption¹⁵; a child of one of the parties to the union; a child who resides on a regular basis in the household whether or not born to the man and woman who share a household; and a child of whom either the man or woman is a guardian.

A dependant within a household is also someone eligible for protection under the Act. Curiously however, the Acts define a dependant as someone over 18 “who normally resides or resides on a regular basis with another person and that other person is responsible for the maintenance of the first mentioned person”. Dependency is not tied only to physical or mental incapacity but rather it would seem to be tied to financial dependency, as well. This is to be contrasted with the Domestic Violence Act 1999 of Trinidad and Tobago which defines a dependant as “a person over the age of 18 who by reason of physical or mental disability, age or infirmity is reliant on either the applicant or respondent for his welfare”.

The legislation of Antigua and Barbuda, Saint Lucia and Saint Vincent and the Grenadines all suggest that any member of a household may make an application for a protection order on her own behalf or on behalf of another member of the household.¹⁶ Inconsistently, however, the acts make clear that the orders granted are for the protection of a spouse of the respondent, a parent, a child or a dependant of the spouse. In effect then, although the Acts appear to contemplate applications by other members of the household on their own behalf, the court does not have the power to grant protection orders for the benefit of all such members.

Notably absent in all the legislation is any reference to persons in an intimate relationship who do not or have never resided together or shared a household, namely persons in a visiting relationship. The legislation leaves such persons without a domestic violence remedy at the magistrates court level.

Recommendations

A significant proportion of the adult female population in the countries under review do not enter residential unions, despite maintaining long-term relationships with their partners. An indication of such visiting unions can be derived from the statistics on the distribution of children by union status. In the case of Dominica, 33 per cent of such children live with their single

mothers; for Antigua and Barbuda this figure is 41 per cent and 48 per cent in St. Kitts and Nevis.¹⁷ Confining eligibility for protection orders to residential unions omits a large class of persons from protection.

The list of persons eligible to make an application for a protection order should be extended to persons in visiting relationships and to persons who have a child in common even though the parties have not cohabited. The question of the nature and duration of a visiting relationship was raised throughout the research. In responding to the possible inclusion of persons in an “intimate relationship”, the interviews in the present research felt that there would be a need for legislative guidance. The Trinidad and Tobago Act extends protection to persons in a visiting relationship, this is defined as “a non-cohabitational relationship which is otherwise similar to the relationship between husband and wife”. The Trinidad and Tobago Act further provides that the visiting relationship should have subsisted for a period exceeding 12 months. The question of the need for a time limitation is worth considering and it is notable that in other jurisdictions the mere fact of an “intimate relationship” is sufficient to allow for an application for a protection order.

In this regard, Tracey Robinson¹⁸ canvasses the Bermudan model which allows persons in “close personal relationships” to apply for a protection order irrespective of residential status or the existence of a sexual relationship. Under the Bermudan legislation¹⁹ in determining what constitutes a close personal relationship, the Court must take into consideration. The nature and intensity of the relationship and, in particular:

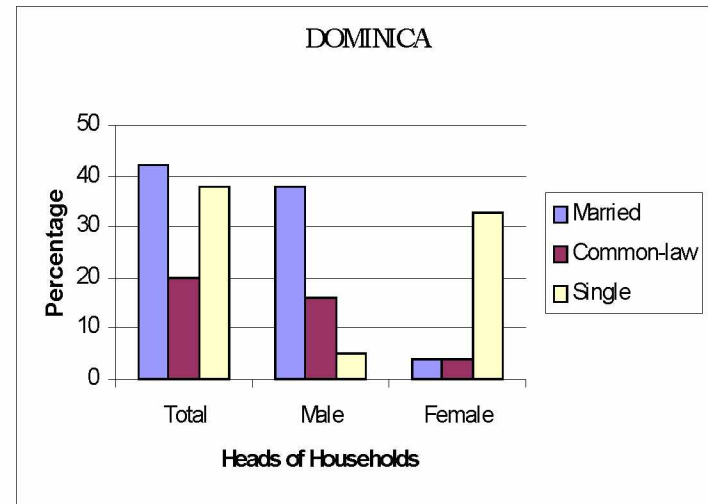
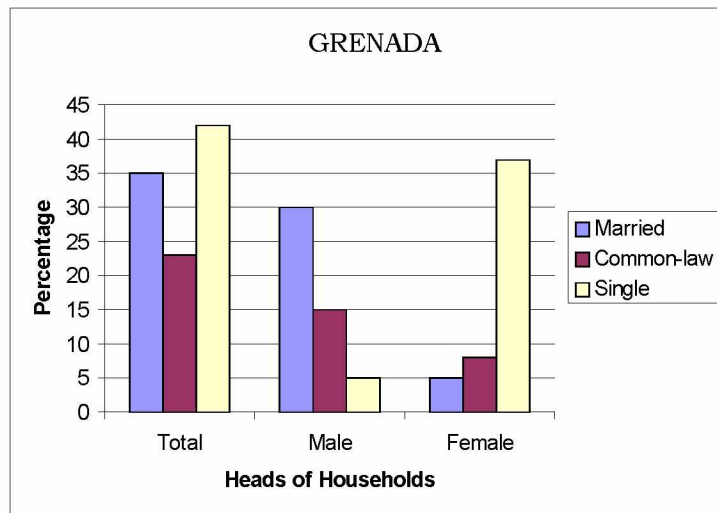
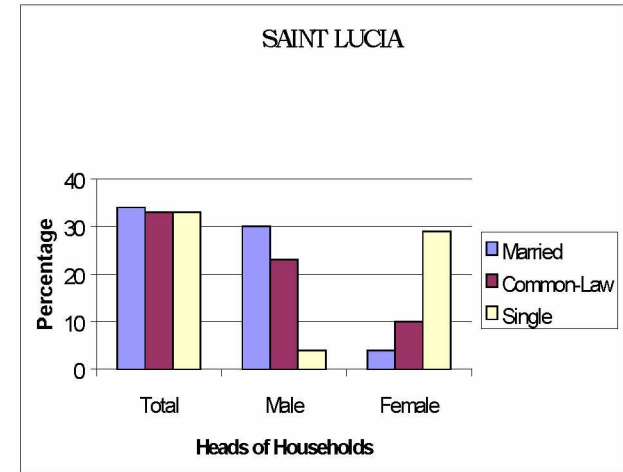
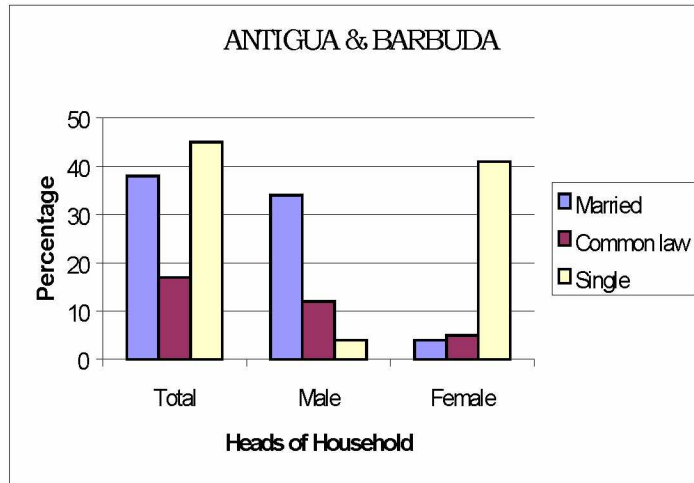
- (a) The amount of time the persons spend together;
- (b) The place or places where that time is ordinarily spent;
- (c) The manner in which that time is ordinarily spent; and
- (d) The duration of the relationship.

Notwithstanding references to household members in the definition of domestic violence, members of the household not being spouses, parents, children or dependants of households may not apply for a protection order. Jurisdictions may wish to take a more holistic approach to domestic violence by extending the act to:

- (a) Members of the household of spouse or respondent, whether on their own behalf or on behalf of another member of the household; and
- (b) A sibling by consanguinity or affinity of either spouse or respondent not being a member of the household.

Persons eligible to make applications on their own behalf should include all persons in unions whether or not married. Having regard to the paramount objectives of the legislation, being the elimination of violence in the home, policy makers may want to take a more inclusive approach which does not discriminate on the basis of marital status or sexual orientation.

Figure 1: Children 0-14 years by Union Status of Heads of Households - Selected Caribbean Countries



Eligible applicants

The Acts list the categories of persons who are eligible to make an application either on their own behalf or on behalf of a battered spouse, child or dependant. Applications may be made by a spouse, a parent of a spouse or by any member of a household on his own behalf or on behalf of any member of that household.

On behalf of child or a dependant, the Saint Lucia and Antigua and Barbuda Acts specify that applications for protection orders may be made by a person or any other member of the household with whom the child or dependant normally resides or resides on a regular basis or a parent or guardian. Social welfare officers, police officers or anyone performing the duties of probation officer or medical social worker may make applications on behalf of mentally ill dependants.

Saint Vincent and the Grenadines and St. Kitts and Nevis allow for applications to be made on behalf of children by:

- (a) A person experienced or qualified in social welfare and approved by the Minister;
- (b) A police officer; and
- (c) A person holding the office or performing the duties of a probation officer or medical social worker.

The Solicitor General is also given the power to initiate proceedings in Saint Vincent and the Grenadines.

The Vincentian approach seems preferable and more conducive to child protection. Throughout the research, interviewees commented on the absence of child protection in situations where the mother was financially or emotionally dependent on the abusive male in the home. In such situations mothers may be reluctant or intimidated against acting in the best interests of their children. Granting powers to a wider range of social work actors to initiate proceedings to protect children meets the imperative of child protection.

Recommendations

It is recommended that the legislation for Antigua and Barbuda and Saint Lucia be amended to give a wider range of persons the authority to intervene on behalf of children under the Domestic Violence legislation.

Additionally, police officers should be empowered to make applications on behalf of battered spouses. This provision exists in the legislation for Trinidad and Tobago and Barbados²⁰.

Prohibited behaviour

Domestic violence experienced by women in the Caribbean runs the gamut from assault and battery to extraordinary sadism amounting to torture. In jurisdictions like Antigua and Barbuda where the Directorate of Gender Affairs receives many applications, the attached statements of the applicants reveal an astounding range of abuse:

- (a) Physical abuse
 - (i) “He beat me and tied a rope around my neck”
 - (ii) “I was locked in the house”
 - (iii) “Tore off my blouse in public”
 - (iv) “He has the habit of hitting me on my knees”
 - (v) “He pushed me out of a moving car and my skull was fractured as a result.”
- (b) Threats of physical abuse
 - (i) “He threatened to kill me with a plank of wood”
 - (ii) “He cut the brakes on my car”
- (c) Coercion and control
 - (i) I was not allowed to make financial decisions
- (d) Harassment
 - (i) He removed the plugs from all my electrical equipment
 - (ii) He littered condoms all over my store floor

- (e) Sexual assault
- (i) “He tore off my clothes and forcibly inspected me to see if I had sex with another man”
 - (ii) “I was raped so many times. I have had every disease you can think about”.

The files of the Directorate of Gender Affairs in Antigua and Barbuda indicate that in 78 per cent of the cases taken to court by that department, physical abuse is the basis for the application. Forty per cent complain of harassment. In 15 per cent of the cases the applicant alleged threats to kill children and other family members. Damage to property was cited in 10 per cent of the cases.

Table 9:
Type of abuses alleged in complaints of domestic violence –
Antigua & Barbuda

| Types of Abuse | No. | % |
|---------------------------------|------------|----------|
| Verbal abuse | 15 | 37 |
| Physical abuse | 31 | 78 |
| Threats to kill children/family | 4 | 10 |
| Damage to property | 4 | 10 |
| Personal harassment | 16 | 40 |

Source: Directorate of Gender Affairs

Domestic violence is defined with greater or lesser particularity depending on the jurisdiction. However, the definitions are all consistent in the fact that they list behaviours which constitute domestic violence without attributing any meaning to the actions. This is to be contrasted with definitions which link the act of violence with gender-based motivation of assertion of power and control.²¹

In all countries, it is clear that both words and deeds can amount to domestic violence. It is that which causes physical, emotional or psychological injury or harm. For Antigua and Barbuda and Saint Lucia domestic violence is defined to mean:

“Any act of violence whether physical or verbal abuse perpetrated by a member of a household upon a member of a household which causes or is likely to cause physical, mental or emotional injury or harm to the abused party or other members of the household.”

For the purposes of making an application for a protection order, the St. Kitts and Nevis legislation itemizes conduct that constitutes domestic violence as:

- (a) Violence that results in or is likely to result in:
 - (i) physical harm;
 - (ii) sexual suffering, or
 - (iii) psychological suffering;
- (b) Threats of violence;
- (c) Coercion;
- (d) Arbitrary deprivation of liberty;
- (e) Molestation;
- (f) Conduct of an offensive or harassing nature; and
- (g) Conduct which amounts to psychological abuse, intimidation or persecution.

The Vincentian legislation, following the CARICOM model does not include a definition of domestic violence in the interpretation section, but a definition can be elicited from the provision which specifies that the court may not make an order unless it is satisfied that the respondent:

“has used or threatened to use, violence against or caused physical or mental injury to a prescribed person and is likely to do so again; or has committed or attempted to commit any sexual offence listed in Part VIII of the Criminal Code or has conducted himself in a manner which is sexually offensive”.

The definitions supplied by the legislation, with the exception of St. Kitts and Nevis, do not explicitly include threats to cause personal injury nor causing or threatening to cause damage to property.

It can be argued that there is a gap between the definition of domestic violence and the nature of the orders which can be granted by the court. To this extent the definition is somewhat superfluous to the exercise of the Court discretion. While domestic violence is defined in the interpretation section of the Acts, section 4 speaks to the kinds of protection orders which may be

made. Most glaring is the omission of a protection order which restrains in the clearest of terms acts or threats of physical violence.

Recommendations

It is recommended that a comprehensive definition of domestic violence be drafted which takes into account all forms of violence and threats of violence. One example of this approach is that of the recent Trinidad and Tobago legislation which describes in great particularity what constitutes domestic violence. This approach is less a legal advantage and more a method of assisting possible applicants in deciding whether their own experiences amount to domestic violence. In that sense a more expansive definition has an educative and re-socializing function.

Under the 1999 Domestic Violence Act (Trinidad and Tobago), domestic violence includes “physical, sexual, emotional or psychological or financial abuse”. The inclusion of financial abuse is based on the understanding that many batterers use the withholding of money or the taking away of money as a method of control over the victim.

While examples of physical abuse and threats of physical abuse can be obvious, other forms of violence are less so and a listing may be preferable. In the case of emotional or psychological abuse, this is defined in Trinidad and Tobago as follows²²:

A pattern of behaviour of any kind, the purpose of which is to undermine the emotional and mental well being of a person including:

- (a) Persistent intimidation by the use of abusive or threatening language;
- (b) Persistent following of the person from place to place;
- (c) Depriving that person of use of property;
- (d) Watching and besetting of the place where the person resides, works, carries on business or happens to be;
- (e) Interfering with or damaging the property of the person;
- (f) Forced confinement;
- (g) Persistent telephoning; and
- (h) Making unwelcome and repeated or intimidatory contact with a child or elderly relative of the person.

Financial abuse under the Trinidad legislation is a pattern of behaviour of a kind, the purpose of which is to exercise coercive control over, or exploit or limit a person's access to financial resources so as to ensure financial dependence.²³

Jurisdiction and venue

In order to ensure the widest possible access to the court in cases of domestic violence, the CARICOM model legislation suggested that the jurisdiction to hear matters under the Act should be at the magisterial level. This recommendation has been followed in all the legislation. Applications under the Acts are made to the Magistrate Court in Antigua and Barbuda and to the Family Court in Saint Lucia and Saint Vincent and the Grenadines.²⁴

Anticipating the establishment of a family court in St. Kitts and Nevis, it is provided that the jurisdiction to hear domestic violence applications will be confined to a family court once such is established. There, in what may be an error of omission, the drafters defined "court" to mean "a court of competent jurisdiction" without specifying the Magistrate Court. Having regard to the fact that the jurisdiction of the magistrate court can only be derived by legislation, it is not clear whether when implemented, magistrate courts will be able to hear applications for protection orders. Certainly the High Court will be able to hear applications made under the Act. This is not consistent with the other legislation and will need to be clarified.

Family Court

The family courts of Saint Vincent and the Grenadines and Saint Lucia were set up under the Family Court Act, 1992 and the Family Court Act No. 4 of 1994, respectively. The Family Court is a court of summary jurisdiction and the judicial officer appointed to adjudicate matters before the Court is a magistrate, though referred to as the President in Saint Vincent and the Grenadines. In both countries the court is housed separately from other magistrate courts and has its own staff. The courts have jurisdiction over the whole of the two countries and sit in districts other than Kingstown and Castries at certain fixed days in every month. Generally, the process, procedure and practice are the same as that used in the magistrate court.

One key distinguishing feature of the family courts is the presence of social services to assist applicants and respondents appearing before the court. Apart from the President, the Vincentian Family Court is staffed by a Registrar (also an attorney), an Executive Officer, a Senior Clerk, four clerk/typists; two bailiffs and one full-time social worker. Persons wishing to make applications under the Domestic Violence Act and who are unrepresented by a lawyer will be referred to the Registrar who ensures eligibility to make the application.

Assistance is given by the Registrar or Senior Clerk in the completion of the application form. It would appear also that it is at this stage, that a determination will be made by the registrar as to whether an application for an ex parte order is to be made.

The social workers attached to the court have responsibility for the completion of social inquiry reports pursuant to requests for such by the President. The social workers are also expected to conduct counselling of persons referred to them as a result of domestic violence applications. They report that they have received no specific training in domestic violence counseling/psychology.

In Saint Lucia a magistrate presides as chairperson of the Court. The Court does not have a Registrar but is staffed by a Director responsible for administrative matters as well as the social support services. The court has one intake counsellor who interviews every applicant. This intake counsellor, if the applicant is unrepresented, assesses the risk and makes a preliminary judgement on how expeditiously the matter is to be heard. The court is also staffed by two social workers who carry out social investigations and prepare reports upon court request on matters such as maintenance and custody. The Director, along with the social workers, also conducts counselling pursuant to court orders to that effect.

The strength of the Family Courts is in the presence of social work services and counselling. At the Family Court in Saint Lucia, an applicant can get advice and referrals to other social services prior to the hearing of an application. The Courts have available to them a pool of persons upon whom they can draw for social investigations and reports guiding the exercise of judicial discretion.

However there are also limitations which flow from the exclusive jurisdiction given to the Family Court to hear applications for protection orders. The Family Court is situated in Kingstown and in Castries with limited mobility. The advantage of the magistrate court structure is the fact of its presence in rural areas.

The Vincentian legislation attempts to balance the need for specialized court services, on one hand, with ensuring the widest possible access to protection orders, on the other, by providing for the transfer from the Family Court to the Magistrate Court or vice versa in appropriate circumstances with the consent or on the application of the parties if the court thinks fit.²⁵

Notwithstanding provisions for district courts in Antigua and Barbuda, building limitations have forced all three magistrates to hear cases only in St. John's. The Court is currently short staffed with two magisterial vacancies. This fact along with the extensive responsibilities for petty civil matters,

criminal proceedings and family-related cases (affiliation and maintenance) results in some delay in the final determination of domestic violence cases. However from the point of view of the applicant, the otherwise deleterious effect of delay is minimized by the practice of hearing most applications ex parte as a matter of priority and in the granting of interim protection/exclusion/occupation orders.

In the case of Saint Lucia and Saint Vincent and the Grenadines, delays are caused less by over-crowded court lists than by delay in service of applications on the respondent.

Recommendations

Many interviewees recommended the establishment of a family court with a consolidated magisterial and high court jurisdiction. Such a court should be staffed by a judge and not by a magistrate. The Family Court would hear all matters related to the family and children including matrimonial matters and would have extensive and specially trained social service support. Interviewees felt that such a court would command greater respect not only from litigants but also from police officers who had a specific role in enforcing court orders. This recommendation should be considered in light of its repercussions on geographic and financial accessibility. Would the Court be centralized? Would litigants require counsel to appear before the court?

Otherwise, at the present time, there is no good reason why the jurisdiction to hear matters under the Domestic Violence Act should not be extended to the high court concurrently with the magistrate courts. As it stands, married persons are already entitled to apply for injunctions pursuant to matrimonial proceedings.

Court layout

Court layout and atmosphere differs from country to country and even within countries. Still, in all countries, domestic violence matters are heard in closed court where a certain level of informality marks the court ambiance. Some magistrates prefer to hear applications in the confines of their chambers while others hold the hearings in the courtroom. Even in cases where matters are heard in the courtroom, the procedure employed de-emphasizes the formality normally associated with court process. Magistrates sit at the same level as litigants and the room is cleared of all persons except those directly involved in the matters.

The question of court formality recurred throughout the research process. On the one hand, those who favoured the relaxed atmosphere spoke of the need to reduce the trauma of the court proceedings on the applicant who typically is reluctant and intimidated in bringing the proceedings. On the other

hand, there were those who considered that a greater degree of formality was required to ensure that the respondents received the message that domestic violence was unacceptable and that the court process demanded strict adherence. Greater support was expressed for informality in court procedure.

In all countries, with the exception of Saint Lucia, it was felt that the court layout reduced confidentiality and privacy and both inhibited and intimidated potential applicants. In both Saint Vincent and the Grenadines and Antigua and Barbuda, applicants enter into an open administrative area where they are required to divulge the nature of their matter in the presence and/or hearing of court staff and other visitors to the Court. They are then referred to the appropriate court officer for assistance in the completion of the application form. In small societies, applicants and respondents report being decidedly uncomfortable in this setting anticipating as they do, (whether justifiably or otherwise) that the administrative staff will know them or the respondent. This fear for loss of privacy is also echoed in the concern which applicants (in their view) had in Saint Vincent and the Grenadines when their matters were called for hearing by the police officers in unnecessarily loud tones.

Recommendations

The reception area for those making applications for protection orders or awaiting a hearing should be sited in areas away from the general administrative offices. Further, administrative staff should be specifically trained to ensure an understanding of the dictates of confidentiality and the ethics of the service provider in this area.

Applications and hearings

In all jurisdictions, the Acts have provided for easy access to the courts by applicants who are not required to be represented by attorneys at law. With the exception of St. Kitts and Nevis, special simplified forms that can be completed by the applicant, accompany the Acts. To facilitate ease of use, an explanatory memorandum is annexed to the Act in Antigua and Barbuda.

In the case of a protection order, the form requires that the following information be given:

- (a) Name and address of applicant and respondent;
- (b) Relationship between the parties rendering the applicant eligible for relief;
- (c) Nature of the complaint; and

(d) Type of order sought/desired relief.

For Saint Lucia, applicants are first seen by an intake social worker who will take the details of the complaint and advise on the completion of the form (in cases other than those initiated by attorneys). Similarly, the Registrar of the Family Court in Saint Vincent and the Grenadines will advise on the completion of the application form.

The Directorate of Women's Affairs in Antigua and Barbuda assists many women who make applications for protection orders in completing the application forms and in drafting a statement which is annexed to the application. There, the practice is to go beyond the mere recitation of the most recent abuse which preceded the application. In that country the practice has developed for the preparation either of an unsworn applicant statement or an affidavit which is annexed to the application form. These statements not only set out the essential data on the parties but also particularize the relationship history, duration of union and previous experience of violence and abuse. Whether or not this is consistent with general magisterial practice, it is permitted by the Antiguan court which "may receive such evidence as it thinks fit whether it is otherwise admissible in a court of law or not."²⁶ The Kittitian legislation has a similar provision.

Apart from allowing the court to receive affidavit evidence, this provision gives the court greater flexibility in receiving evidence than that allowed under the normal rules of evidence and, in particular, the rules against hearsay. This flexibility responds to the corroboration challenges posed by the fact that domestic violence most often occurs in very private settings.

The procedure

The procedure employed by the magistrate court has general application to matters heard under the Domestic Violence Act particularly since rules of court, though anticipated by the legislation, have not been made. In Saint Lucia and Saint Vincent and the Grenadines, the completed application form having been served on the respondent, an inter partes hearing takes place within a two week period, unless an application for an ex parte interim order has been made.

In Antigua and Barbuda, it would appear that there is a presumption of urgency in all applications made which would explain the preponderance of ex parte hearings. This presumption is supported by reference affidavits or unsworn statements of the applicants annexed to the application form. The applicant will be required to verify under oath that the contents of the statement/affidavit are true and correct. An interim order having been granted, a date for a hearing between both parties is given within two to three weeks.

The hearing with both parties is like any other contested civil proceeding. The applicant presents her evidence, the respondent presents his evidence, and the court decides if the applicant has proven the case on a balance of probabilities or by a preponderance of the credible evidence. Evidence is given orally. Where there is no lawyer, in Saint Vincent and the Grenadines, the Senior Clerk assists in eliciting the oral evidence of the parties. In Antigua and Barbuda, the applicants are allowed to amplify the statements, if necessary, and the statements form the basis for cross-examination. Inconsistently, respondents do not file affidavits/statements in response, but give their evidence orally.

As stated above, the courts in Antigua and Barbuda and St. Kitts and Nevis may receive evidence which may be otherwise inadmissible in a court of law.²⁷

The role of attorneys

The applicants, in all three countries, are largely unrepresented by attorneys at law. The same does not hold true for as many male respondents who are represented by attorneys in a greater number of cases. For Antigua and Barbuda, it is estimated that 50-60 per cent of respondents who appear before the court are represented. In that context, when the respondents appear in court for the first time, it is usually after they have been served with an interim order made against them.

Through the court advocacy programme run by the Directorate, many applicants in Antigua and Barbuda are accompanied by an “advocate”. This person provides a sympathetic support and is able to assist the applicant in the conduct of the case. For Saint Lucia, there is an expectation on the part of applicants that the Director and her staff would provide assistance to in the course of proceedings. This expectation provides a dilemma for the court staff whose mandate is primarily to assist the court once an order has been made. The appearance therefore of court staff intervening in hearings by assisting applicants constitutes bias and poses a threat to the integrity of the Family Court.

“Magistrates have a dual role as arbiters of fact as well as looking after the protection of women’s legal rights if they are unrepresented”: Magistrate

Even though the Acts were drafted with the explicit purpose of allowing easy access to the courts, the absence of attorneys from this arena is detrimental in a number of expected and unexpected ways. While the adjudication of cases by a neutral court is a fundamental element of due process, magistrates are confronted continuously with the need to assist applicants and respondents in presenting their evidence or in challenging the

evidence of the other side. Because respondents tend more often to be represented by counsel, court assistance to applicants may feed a perception that the courts are applicant- or female- biased. Similarly, the absence of a lawyer can impede court findings as the court cannot be expected to play the role of cross-examiner challenging evidence of either party.

By and large, applicants are unrepresented by counsel primarily for economic reasons. As one Antiguan lawyer reported, “If they have no money, I send them over to the Directorate of Women’s Affairs”. Additionally there is a perception that domestic violence applications are not “real legal issues” sufficiently serious to justify attorney intervention. A number of attorneys reported that they advised persons to make the applications on their own and that this advice was given in the context of an appreciation of limited funds as well as the ease of the court process.

“Lawyers have not had much training in domestic violence or other family matters and their threshold for burn out is very low”.
Antiguan attorney.

“The Family Court is not going to be a place for lawyers. It is a question of cost”: Vincentian lawyer

Yet again, the absence of lawyers in many domestic violence cases has also been attributed to the fact that domestic violence cases are time consuming because of the emotionally turbulent condition of the battered woman. Such clients often require counselling and the careful extraction of the relationship history prior to advice being rendered and action taken. Lawyers consider that such matters are not financially profitable.

Domestic violence matters, like other family matters are associated in the public consciousness by a perception of “bacchanal and commess”. Further, these areas are seen as soft law, requiring a social work intervention, albeit facilitated by an initial court process. To some extent it can be argued that this reflects and contributes to a more generalized cultural devaluing of domestic violence as a serious criminal violation.

It may also be that the dominant notion of lawyering which rewards competitiveness and which defines success as victory is at odds with the dominant value of the legal system in the hearing of domestic violence cases, that is, problem solving.

The absence of lawyers in domestic violence proceedings can have a number of adverse implications. Apart from the fact that magistrates are forced into a role of advisor to unrepresented litigants, the quality of judicial decisions can only be improved by vigorous advocacy and guidance which lawyers bring

to the judicial process, whether in adversarial settings or in more conciliatory modes.

While it is true that lawyers' work and roles increasingly intersect with other problem-solvers, most notably social workers and police officers, there remains a pivotal role for lawyers. The lawyer as problem-solver explores the relationship between existing or proposed practice/behaviour and legal norms. The law, as has been pointed out, functions as both an aspiration and a constraint and lawyers help translate legal rules into language and practices that are meaningful to those who must comply with and enforce those rules.²⁸

Recommendations

The use of affidavit evidence is also to be recommended in the appropriate case. Affidavit evidence can clearly set out the applicant's case, giving the respondent full notice of the allegations which he must meet. It has been found in Antigua and Barbuda that this device has shortened the length of hearings and has reduced the adversarial nature of the proceedings in most cases.

The majority of litigants do not choose to go unrepresented but are forced to do so because of resource limitations. All persons who appear before the court should have an option of obtaining legal advice and assistance. The establishment of a legal aid and advisory service should be addressed in all countries. This legal aid could be operated by the bar associations in collaboration with government. Alternatively, a lawyer could be assigned to the Magistrate Court to act on behalf of applicants.

In Antigua and Barbuda, it was suggested that an attorney attached to the Office of the Attorney General be assigned to assist the court advocacy programme of the Directorate of Women's affairs.

The bar associations should be encouraged to develop and support continuing legal education programmes in domestic violence for attorneys. These courses should be prepared and presented in consultation with persons who have expertise and experience in providing legal assistance to victims and perpetrators of domestic or family violence, advocates for victims. The courses could include the following topics:

- (a) The nature, extent and causes of domestic and family violence;
- (b) Resources available for victims and perpetrators of domestic or family violence;
- (c) Sensitivity to gender bias and sexual issues; and

- (d) The role of the lawyer.

Service of applications/orders/designated process server

The Acts for Saint Vincent and the Grenadines and Saint Lucia and Antigua and Barbuda are all silent on the question of service of applications. Generally however the practice is for the mode of service to be personal and executed by an official attached to the court. In the case of St. Kitts and Nevis, in situations where it is not “reasonably practicable” to serve a copy of an application for a protection order or the order itself, the court may order that service be effected by any such means as the court thinks just or make an order for substituted service. This provision allows much greater flexibility in effecting service either where the respondent is evading service or where, for any number of reasons, the police is unable to effect service.

Court orderlies serve applications for protection orders as well as interim or ex parte orders in Antigua and Barbuda. They are police officers attached to the court for the purpose of ensuring magistrate safety, process serving, subpoena service and bench warrants as well as maintaining court order. Similarly, applications and orders are served by police officers attached to the Writs Department in Saint Lucia. For Saint Vincent and the Grenadines, the bailiff attached to the Family Court, of whom there are two, effects service. These bailiffs are charged with the service of all applications made to the court.

In no jurisdiction are the persons who have responsibility for service specifically trained to respond to issues which arise out of the service of the applications or protection orders. It is to be noted that unlike the Antiguan court orderlies, the Vincentian bailiffs are not police officers. The significance of this is that they therefore have no powers to arrest or intervene in situations in which the respondent becomes violent upon receipt of the application for the protection order or the order itself.

It is well recognized that persons who initiate court process for protection orders are at the most risk of violence after the batterer has received notice of the application. Respondents interpret such applications as a betrayal of the relationship (in the words of one respondent in Antigua and Barbuda “They should have called me in first to talk to me”) or as an assertion of power by the applicant. Where respondents become angry and the victim is in the vicinity, she is exposed to the possibility of violent reprisal. In one case reported from Saint Vincent and the Grenadines, upon receiving the application and in the presence of the bailiff, the respondent physically assaulted the applicant, choking and beating her. The assault was only stopped when a neighbour intervened.

Episodes such as this highlight the need for guidelines or protocols for all stages of the legal process. In the case of service, it is preferable that service

be executed by police officers who have powers of warrantless arrest. Such service should not be effected in the presence of the applicant.

The importance of training police officers charged with service responsibilities cannot be understated. Arguably, the attitude of such officers set the tone for the respondent's response to the proceedings to follow.

"Police can and should be sympathetic to a man who has nowhere else to go. If we know the person very well and know for a fact that they have no where else to go, it will cause some problems". Police Officer

Where police officers appear sympathetic to an abusive man who has been excluded from his home pending the hearing and determination of an application, he/she may unwittingly be sending a message to the respondent that the court process constitutes an abuse of which he can be justifiably angry and resentful. Such a response not only exposes the applicant to greater harm but also brings the legal process into disrepute.

In small societies, familiarity with the respondent can also undermine the legal process, as in when the police do not take due diligence in ensuring timely service. In all four countries, the particular problem of effecting service on abusive police officers was highlighted.

In the jurisdictions where police officers serve the application, it is reported that the power of arrest is used only as a last resort. What constitutes "last resort" is highly discretionary, varying considerably depending on the police attitudes towards domestic violence. Therefore guidelines will also have to specify with clarity the appropriate responses to the range of behaviour confronted by officers in the process of service as well as a delineation of what would constitute arrestable behaviour in such a context.

That there is much hostility displayed upon receipt of the application has also been underscored by police in Saint Lucia who are charged with service. The recommendation has been made that police officers should either be trained in counselling or be accompanied by a social worker who would be able to counsel and advise.

Police act not only as law enforcers but also as mediators, legal advisers and counsellors. In all the countries, police officers reported that they are forced to do social work, a role for which they are inadequately equipped. In serving court documents, police often see the need to placate and calm the respondent as well as to explain the application. A protocol which guides officers in meeting these roles as well as containing information on referral services is needed.

Recommendations

To meet the problems posed by inefficient process serving, it is recommended that a wider range of service methods be considered. While it is preferable that applications be served by police officers, the Acts should make provision for service by persons other than bailiffs or police officers. Forms of substituted service which can be considered include service by registered mail to last known address and the leaving of the document at the last known address. In the 1999 legislation from Trinidad and Tobago, provision is also made for service by publication. Arguably, service by publication would undermine the confidentiality and privacy of proceedings that the Act in its other provisions is meant to preserve.

In relation to the service of orders made by the court, it has been recommended that a social worker accompany the police officer who can counsel the respondent in anger management and make appropriate referrals.

Access to courts

The Acts do not provide a mandatory time-frame within which applications must be heard. In the case of inter partes applications, the practice has developed for the listing of the matters for hearing within one to two weeks of the date of the application. For Saint Vincent and the Grenadines it is reported that applications which suggest real urgency are heard within one week. Otherwise, applications are heard within two weeks.

In all jurisdictions an abused person can obtain an ex parte order of protection, often on the same day as the filing of the application form. However in determining whether an ex parte order will be granted the court must be satisfied that delay as a result of proceeding on notice would entail risk to the safety of the applicant/abused person or result in serious injury or undue hardship.

In Antigua and Barbuda, as stated above, most applications are heard ex parte on the same day that the application is made and otherwise no more than two days later. Thereafter, the matters are listed for full hearing within two to three weeks after the making of the order.

It is unclear whether an abused person can access the court after court hours and on weekends.

Recommendations

Rules of procedure should be developed which mandate an inter partes hearing within seven days of the date of the application. Such a provision should not affect or limit the court's power to hear urgent cases in the shortest possible time-frame.

Similarly statutory guidelines should be given of the return date for inter partes hearings for continuation of interim orders.

Proof or return of service: Applications and orders

Except in the case of an ex parte application, due process requires that a protection order may not be issued against a person without prior notice and the opportunity to be heard. If the respondent fails to appear, the court must have some basis on which to conclude that the respondent has received notice, but, by ignoring the proceedings, waived the right to be heard.

Service of application or ex parte orders having been effected, police officers or bailiffs are required to complete a return of service affidavit attesting to the date and time of service on the respondent. This is the best evidence that the respondent received notice of the application for a protection order.

Only in St. Kitts and Nevis is there provision made for the service of a copy of a court order to law enforcement officials. In that case service is mandated on a police officer not below the rank of sergeant in the district where the order was made as well as on a police officer in charge of the closest police station to the protected person.

Recommendations

One recurring complaint on the part of applicants and those who gave them assistance, was the absence of information to the applicant on whether service had been effected. Similarly, it would appear that there are cases where the applicants are not given copies of the application forms. It is therefore recommended that a copy of application as well as the affidavit of service be provided to applicant.

Other procedural matters

With the exception of Saint Vincent and the Grenadines, the Acts all anticipate the making of Rules of Court to regulate the practice and procedure of the Court for giving full effect to the Act. In the case of Saint Vincent and the Grenadines, by virtue of the Family Court Act, the rules of the magistrate court apply to the hearing of domestic violence cases.²⁹ All the Domestic Violence Acts provide only skeletally or not at all on matters, such as date of hearing of the application, notice of proceedings and service, service of orders, service other than personal service or duration of orders and form of evidence. Still, in no country has the power to make rules been exercised and, generally, the rules relevant to the magisterial jurisdiction are applied.

The procedural provisions contained in the Acts relate to the need to ensure confidentiality in the conduct of proceedings. All four Acts provide that hearings of proceedings under the Act, other than criminal proceedings shall be attended only by officers of the Court, parties to the proceedings and their counsel, witnesses and any other person permitted by the magistrate to be present.

To protect privacy, publication of proceedings, except with leave of the court, is prohibited and a breach of this provision amounts to a criminal offence punishable upon summary conviction to a fine not exceeding EC\$5,000 in all countries except Antigua and Barbuda where the fine is EC\$10,000.

This requirement for leave does not apply to publication of reports in publications that are professional or technical in nature or those intended for circulation among members of the legal or medical professions, officers of the public service, psychologists, marriage counsellors or social welfare officers³⁰ and police officers.³¹

Notably, the Vincentian legislation allows the presence of “any bona fide journalist”³² during the hearing of domestic violence applications, though the court still retains the power to proceed in camera or to exclude any person from the Court. In keeping with the allowance of journalists, in Saint Vincent and the Grenadines notwithstanding the general prohibition on publication except by leave of the court certain particulars of cases may be published, including, a statement of the charge, submissions on a point of law and the decision of the court. ³³

The maintenance of the confidentiality of court proceedings is essential to the efficacy of the legislation. In small societies even minor breaches of confidentiality can have an inhibiting influence of applicants. In both Antigua and Barbuda and Saint Vincent and the Grenadines complaints were made of breaches of confidentiality stemming from indiscretion of court staff.

Applications are heard either in camera in the courtroom or in the chambers of the presiding magistrate. In both circumstances and as a result of the cleared court, applicants reported experiencing much less anxiety than normally associated with court participation. In Antigua and Barbuda, where the Directorate assists a significant number of applicants, a victim's advocate/supporter accompanies the applicant to court. This person does not address the court neither does he or she intervene in any way once the matter is before the court.

While there seems to be a perception that victim's advocates or support persons are only allowed into the courtroom through the exercise of judicial discretion, it was recommended in the course of the research that such

assistance should be a right to the applicant or respondent. This view is consistent with a 1991 English Court of Appeal upholding the case of *McKenzie v McKenzie*³⁴ and the notion (if not the terminology) of the “McKenzie friend”. In *R v Leicester City Justices, ex parte Barrow and Another* the Court of Appeal held that litigants appearing in person in civil proceedings were entitled to have all reasonable facilities for exercising their right to be heard including quiet unobtrusive advice from another member of the public accompanying them as an assistant or adviser. Permission from the court was not required unless there were clear grounds in the proper administration of justice for denying assistance.³⁵

Orders available under the Act

Three types of orders are provided for: protection orders; occupation orders and tenancy orders.

Protection orders

The Acts do not directly specify the types of orders which the Courts are empowered to make. Rather, the types of orders are indicated through the section which specifies the applications which can be made and the relief to be sought. Under section 4(1) or in the case of St. Kitts and Nevis section 7(2), applications can be made for the following protection orders:

- (a) From entering or remaining in the household residence of the specified person;
- (b) From entering or remaining in the specified areas where the household residence is located;
- (c) From entering the place of work or education;
- (d) From entering or remaining in any place where a specified person happens to be;
- (e) From molesting by:
 - (i) Watching or besetting a specified persons household residence, place of work or education;
 - (ii) Following or waylaying the specified person in any way;
 - (iii) Making persistent telephone calls; and
 - (iv) Using abusive language or behaving towards a specified person in any other manner which is of such nature and

degree as to cause annoyance to, or result in ill treatment of the specified person.³⁶

In effect, a protection order has two dimensions – exclusion and non-molestation.

There are no explicit provisions made for orders which restrain actual or threatened physical violence nor harassing behaviour. Arguably, however, the prohibition against behaving in any other manner which is of such nature and degree as to cause annoyance or results in ill treatment can accomplish these ends even though in a less than forceful and direct manner.

The terms of section 4 came under consideration in a 2001 constitutional challenge in the Saint Lucian case of Francois v The Attorney General. An ex parte interim protection order had been made against Mr. Francois prohibiting him from harassing or assaulting his wife and from interfering with her in any way likely to cause her annoyance or offence. Mr. Francois complained that the interim ex parte order was unconstitutional and that his right to a fair hearing and freedom of speech and expression were violated by the order of the magistrate.

Apart from other attacks on the legislation, it was alleged that the section 4(1)(e)(iv) was too vague, "harassing" and "annoying" being undefined. Although the court thought that those terms may well be impugned for vagueness, it declined to pronounce on this, holding instead that the magistrate had power to grant protection orders only in the form prescribed by the statute: "An order, therefore must be purely a creature of statute". The Court ruled that the magistrate's order was ultra vires the Act since the Act did not empower the court to prohibit either harassing or assaulting in those terms.

This interpretation on the form of protection orders which the court has power to grant will have extensive implications for the other countries which share the same provision. Of equal concern, having regard to the very strict reading of the legislation apparent in the Francois case, is that the Acts do not speak to prohibiting acts done not only by respondents but also by their servants and/or agents.

The court also has jurisdiction to make consent orders under all the legislation and this power is not confined to the protection orders specified, as the court may make “any order with the consent of the parties to the proceedings”.³⁷ Strict adherence to the form of specified protection orders required by the Francois ruling would not apply to a consent order.

Occupation orders

Apart from protection orders, the court may also make occupation and tenancy orders pursuant to specific applications for such relief. An occupation order grants to the applicant/spouse the entitlement personally to occupy the household residence to which the order relates (that is or was last habitually used by both spouses or either of them as the family residence) to the exclusion of the respondent.³⁸ There are therefore two interlocking components of an occupation order: the applicant's right to occupy and the exclusion of the respondent.

The court has the power to grant to an applicant the right to occupy the household residence for such periods or on such terms and conditions as the court thinks fit. However, this order can only be made if the court is satisfied that such an order is necessary for the protection of a spouse, child, dependant or parent of either party to the application or if it is in the best interest of a child, presumably a child resident in the household.

The order once made may be varied or discharged by the court if it thinks fit on the application of either party. The power to vary includes the power to extend or reduce the duration of the occupation order.

Ancillary to occupation orders (and tenancy orders) the court has the power to grant the applicant use of furniture, household appliances and household effects in the household residence or other premises to which the occupation order relates.

Like the case with protection orders, the Court may make occupation orders ex parte if it is satisfied that:

(a) The respondent has used or threatened to use, violence against or caused physical, mental, emotional injury to a specified person and is likely to do so again; or

(b) That it feels that the order is necessary for the protection of a specified person.³⁹

Unlike the legislation in other Caribbean jurisdictions, the Acts do not provide time limits for the duration of final orders and therefore presumably a final occupation order can be made with indefinite effect subject always to an application for variation or discharge. It is this absence of limitation which raises concerns of respondents and their attorneys that occupation orders have the de facto effect of varying property rights to the household residence and may in fact constitute a violation of the right to property. This concern persists despite the statutory assurance that the Acts shall not be construed as altering the right of a spouse to ownership of property.⁴⁰ The constitutionality of the provision which gives magistrates the power to grant occupation order without stipulation of time limitation has been questioned. In addition, an order for occupation with indefinite effect, particularly in the absence of any legal or equitable entitlement, would arguably amount to an unreasonable exercise of jurisdiction and could therefore be the subject of judicial review proceedings.

The possibility that the Act would be used as a sword by unscrupulous applicants to acquire de facto property rights (exclusive possession) has been canvassed by a number of attorneys, magistrates and police officers. Still, in Antigua and Barbuda where a significant percentage of applications for occupation orders have been granted, no case could be cited as an example of such cynical use of the legislation.

The power to grant occupation order upon such conditions as considered necessary also contains the power to direct arrangements for the financial support for “the member of the household” in Antigua and Barbuda and Saint Lucia.⁴¹ The drafting of the acts makes it unclear which member of the household is being referred to, though presumably this characterization will encompass the applicant/spouse or a child of the household or dependant. For Saint Vincent and the Grenadines, the language allows for a more expansive jurisdiction to grant appropriate financial relief as the court is allowed to include arrangements for “the financial support of the members of the household”. The comparable provision in St. Kitts and Nevis is much more restricted as the court has the power only to order the respondent to continue paying the rent for the duration of the occupation order.

It would appear that if an occupation order (as opposed to a protection order) is not sought or granted, the court cannot make an ancillary order for financial relief. In such circumstances, a separate application must be made for the maintenance of children. The absence of authority to make custody and access orders as well as orders in relation to financial maintenance of spouses and/or children where an occupation order has not been sought or granted has been identified as a significant deficiency in the legislation.

It should be noted that in the absence of a specific application for a protection order, the court may grant an exclusion order under section 4(1) (or section 7(2) in St. Kitts and Nevis) which has the same effect as an occupation

order. Under section 4 and its equivalent in St. Kitts and Nevis, the court may prohibit the respondent:

- (a) From entering or remaining in the household residence of the abused person;
- (b) From entering or remaining in a specific area where the household residence of an abused person is located; and
- (c) From entering or remaining in any place where an abused person happens to be.

The advantage of pursuing this order as opposed to an occupation order is that a power of arrest may be attached to the former. A protection order which excludes a respondent and to which a power of arrest is attached can therefore be more easily enforced by the police.

Tenancy orders

Where the relationship is being brought to an end by the violence of a legal tenant that violence is likely to decide the future occupation of the family home, leaving the most vulnerable party least protected. Under the common law married persons or cohabitants whose home is rented have no means of resolving transfer of tenancy disputes when their relationship ends. A joint tenancy cannot be transferred to one party, and any tenancy in the name of one cotenant only cannot be transferred to the other except by consent of the other party and the landlord.

The Domestic Violence Acts provide that where a relationship is disrupted by violence, the courts are able to provide a remedy to the parties in dispute concerning their tenancy rights. The courts in all four jurisdictions have a discretionary remedy to transfer tenancies between spouses, be they married or common law, whose family home comprised rented accommodation. Further to an application for a tenancy order, the courts are empowered to exercise discretion to reallocate tenancies, either of which the respondent is the sole tenant or a tenant holding jointly with the applicant and which constitutes the household residence of the applicant or respondent.⁴² Unlike occupation orders, the tenancy order is clearly intended to bring about a clean break between the parties.

The reallocation of a tenancy can be made on such terms and conditions that the Court considers necessary in Saint Vincent and the Grenadines and Saint Lucia. Importantly, the court may order that the respondent continues to pay the whole or part of the rent having had regard to the financial means and obligations of both of the parties.⁴³ This power is to be exercised only in exceptional circumstances in Saint Vincent and the Grenadines. In the case of

Antigua and Barbuda, Saint Vincent and the Grenadines and Saint Lucia the court may also make orders granting to the applicant the use of furniture, household appliances and household effects for such period and on such terms as the court finds advisable in all the circumstances.

Like the other types of orders which can be made under the legislation, the court must be satisfied that a tenancy order is either clearly necessary for the protection of the applicant or is in the best interest of a child or dependant.

The tenancy order has the effect of transferring the tenancy to the applicant subject to the terms and conditions of the tenancy in force. The order also has the same effect as an order for possession which means that the respondent must relinquish possession/occupation of the residence if so transferred to the applicant. A final tenancy order can also be varied, or re-vested on the application of the applicant or respondent if the court considers this appropriate.

All acts require the court to give notice to any person who has an interest in the property prior to the granting of an occupation order. Such person is then entitled to appear and be heard as a party to the application.⁴⁴

Experience

Protection orders along with either exclusion or occupation orders are granted as a matter of course in Antigua and Barbuda upon an ex parte application being made. Of the 40 cases examined from the Directorate's files protection order were granted in 36 cases. Of these cases, exclusion orders were granted in two thirds of the cases. Powers of arrest were attached to 27.5 per cent of the orders. Discussions with the three magistrates in Antigua and Barbuda confirm that very few applications are dismissed and that interim orders are normally granted upon an ex parte being made. An examination of the Directorate files also suggest that while there is a fall off, in a significant number of cases final orders are granted. A small number (five) of the parties reconciled and the orders were vacated upon request of the applicants.

In relation to occupation orders, the Antiguan court has taken, in the appropriate case, a flexible approach mindful of accommodation needs of both parties. In certain cases the court has granted "a partial order" that is, exclusive use of part of the house to the applicant and another defined part to the respondent.

In contrast, occupation orders are reported to be made only sparingly or rarely in Saint Lucia and Saint Vincent and the Grenadines. For Saint Lucia, 55 per cent of all applications made under the Act for the period 1997-2000, resulted in the granting of a protection order; 5 per cent occupation orders and 0.2 per cent in tenancy orders. In 40 per cent of the applications made, no

order was granted. Court officials report that a large proportion of such applications are dismissed or struck out because of the non-appearance of the applicants.

Table 10:
Outcome of applications for protection orders – Saint Vincent and the Grenadines

| <u>Outcome of applications</u> | 1995 | | 1996 | | 1997 | | 1998 | | 1999 | | 2000 | | 2001 | |
|--|------|-----|------|-----|------|-----|------|-----|------|-----|------|-----|------|-----|
| | No | % | No. | % | No. | % | No. | % | No. | % | No. | % | No | % |
| Withdrawn/Dismissed /Struck off for non-appearance | 1 | 8 | 35 | 26 | 111 | 54 | 92 | 51 | 124 | 55 | 99 | 65 | 27 | 64 |
| Order | 1 | 8 | 22 | 16 | 60 | 29 | 79 | 43 | 104 | 46 | 48 | 32 | 14 | 33 |
| Unknown | 10 | 84 | 77 | 57 | 33 | 16 | 11 | 6 | 1 | 4 | 5 | 3 | 1 | 3 |
| TOTAL | 12 | 100 | 134 | 100 | 204 | 100 | 182 | 100 | 225 | 100 | 152 | 100 | 42 | 100 |

Source: Court records

Table 11:
Outcome of Applications for Protection Orders – Saint Lucia

| Year | Cases Lodged | | Interim & Permanent Orders Granted | | | | | |
|-------|--------------|--|------------------------------------|-----|------------|----|---------|-----|
| | No. | | Occupation | | Protection | | Tenancy | |
| | | | No. | % | No. | % | No. | % |
| 1997 | 106 | | 9 | 8 | 66 | 62 | 2 | 2 |
| 1998 | 310 | | 10 | 3 | 150 | 48 | 0 | 0 |
| 1999 | 447 | | 16 | 3.5 | 225 | 50 | 0 | 0 |
| 2000 | 472 | | 31 | 7 | 293 | 62 | 1 | 0.2 |
| TOTAL | 1335 | | 66 | 5 | 734 | 55 | 3 | 0.2 |

Source: Court records

Between 1996 and April 2001 940 applications were made for protection orders in Saint Vincent and the Grenadines. Of this number, 39 per cent resulted in the granting of an order. The records do not readily indicate the type of order made, but court officials report that only few occupation or exclusion orders are granted. The court may be more inclined to make such an order if the house belongs to the applicant, the thinking being that married persons should file matrimonial proceedings that lead to a clean break between the parties.

On average, over half of all applications are either dismissed because of non-appearance of the applicants or withdrawn by the applicants because of a change of heart. In such cases, there is no follow up by the social work department and the court has no way of ascertaining the reasons for such a large incidence of aborted applications. However it can be posited that there are a number of reasons, including reconciliation of the parties and withdrawal because of fear and intimidation of the abuser or the court process.

There is judicial resistance discernible in the granting of exclusion or occupation orders. It may be that the extensive documentary evidence that supports an application has informed the approach in Antigua and Barbuda. This document sets out in great detail the history of abuse, perhaps leaving the

court with no other recourse than to remove from the home or restrain the abuser. The magistrates, however, are very aware of the absence of statutory guidelines on the duration of orders and are loath to make orders that in essence amount to a variation of property rights in the household residence, particularly where no equitable rights have accrued.

Other orders

The range of financial orders available under the legislation is very limited. Apart from the ancillary financial provision orders that can be made along with occupation orders, the legislation does not give the court the jurisdiction to make maintenance for the benefit of the applicant or children of the family. Similarly no provision is made for custody and access orders. These omissions have ramifications for the abused woman who has primary responsibility for childcare.

Studies have shown that the risk of domestic violence directed both towards the child and the battered parent is frequently greater after separation than during cohabitation and that this elevated risk often continues after legal interventions. This is therefore an important factor to be taken into consideration in delineating custody and access to children.

Recommendations

In light of the judgement in the Francois case, the court should be given greater latitude in the terms of the orders it may grant. The orders should be capable of extension to the agents of the respondent. The subject matter of the orders should also be reviewed and extended to include a range of financial orders including maintenance; compensation for loss of earnings, medical and dental expenses, accommodation expenses and legal costs, including those associated with applications under the Domestic Violence Act.

The legislation should set out the matters to be considered by the court in determining whether to grant a protection/occupation order. The factors provided by the Trinidad and Tobago legislation is instructive:

- (a) The nature, history or pattern of the violence that has occurred and whether a previous order had been issued;
- (b) The need to protect the applicant and any other person for whose benefit the order has been granted;
- (c) The welfare of any child;
- (d) The hardship that may be caused as a result of making the order;

(e) The income, assets and financial obligations of the parties; and

(f) The need to preserve and protect the institution of marriage and other relationships while affording protection and assistance to the family.

In relation to occupation orders, the maximum duration of the order should be specified (three years in the case of Trinidad and Tobago). Additional criteria may be required including considerations of residence, length of union, legal/equitable ownership of property and the best interests of children.

The legislation should give the court the power to make custody and access orders. In making these orders the court should consider:

(a) The safety and well-being of the child and of the parent who is the victim of domestic or family violence; and

(b) The perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person.

In the case of an order of access by a parent who committed domestic violence, the court should ensure that adequate provision for the safety of the child and the parent who is a victim of domestic or family violence could be made. Access orders may:

(a) Order an exchange of a child to occur in a protected setting;

(b) Order visitation supervised by another person or agency;

(c) Order the perpetrator of domestic or family violence to attend and complete, to the satisfaction of the court, a programme of intervention for perpetrators or other designated counselling as a condition of the visitation; or

(d) Prohibit overnight visitation.

Having regard to the numbers of applications that are not proceeded with, it may be useful to institute social investigation into such cases to ascertain reasons for withdrawal of applications. Depending on the reason, referrals may be made to social work departments. Should the applicants not have resources to afford an attorney, referrals to the Bar Association may be made.

**Figure 2: Orders available under the Trinidad and Tobago
Domestic Violence Act 1999**

- (1) A Protection Order may—
- (a) prohibit the respondent from—
- (i) engaging or threatening to engage in conduct which would constitute domestic violence towards the applicant;
 - (ii) being on premises specified in the Order, that are premises frequented by the applicant including any residence, property, business, school or place of employment;
 - (iii) being in a locality specified in the Order;
 - (iv) engaging in direct or indirect communication with the applicant;
 - (v) taking possession of, damaging, converting or otherwise dealing with property that the applicant may have an interest in, or is reasonably used by the applicant, as the case may be;
 - (vi) approaching the applicant within a specified distance;
 - (vii) causing or encouraging another person to engage in conduct referred to in paragraphs (i) to (iv).
- (b) direct that the Order be applied for the benefit of a child or dependant of the applicant or respondent; and
- (c) direct that the respondent—
- (i) return to the applicant specified property that is in his possession or under his control;
 - (ii) pay compensation for monetary loss incurred by an applicant as a direct result of conduct that amounted to domestic violence;
 - (iii) pay interim monetary relief to the applicant for the benefit of the applicant and any child, where there is no existing order relating to maintenance until such time as an obligation for support is determined, pursuant to any other written law;
 - (iv) immediately vacate any place or residence for a specified period, whether or not the residence is jointly owned or leased by the respondent and the applicant, or solely owned or leased by the respondent or the applicant;
 - (v) relinquish to the police any firearm license, firearm or other weapon which he may have in his possession or control and which may or may not have been used;
 - (vi) make or continue to make payments in respect of rent or mortgage payments for premises occupied by the applicant;
 - (vii) ensure that reasonable care is provided in respect of a child or dependant person;
 - (viii) or applicant or both, receive professional counselling or therapy from any person or agency or from a programme approved by the Minister in writing.
- (2) A Protection Order may contain such other prohibitions and directions as consented to by the applicant or respondent or both.

Ex parte, interim protection orders

The Acts authorize the courts to award the applicant the full range of relief on an interim basis in hearings without notice to the respondent. The Court will grant an ex parte order if the applicant satisfies the test that delay will cause serious injury or undue hardship or a risk to personal safety of the applicant or person on whose behalf application is made.⁴⁵ In the case of Saint Vincent and the Grenadines, it is stated that an ex parte order can only be made in exceptional circumstances.

In the Francois case from Saint Lucia, in which the constitutionality of ex parte orders under the Domestic Violence Act was challenged, Justice Barrow accepted that “definitionally, an ex parte order is an anomaly in our system of justice which generally demands service or notice of the proposed proceedings on the other party”.⁴⁶ In declining to find that the ex parte procedure represented a violation of the right to a fair hearing, the court referred to the important safeguards which were either expressly or implicitly contained in the legislation including: a) the high standard of proof set for the court as to the necessity for proceeding without hearing the respondent; b) the nature and degree of risk to applicant suggesting the requirement of a genuine and serious emergency; c) provision for procuring an immediate discharge; and d) the exercise of a discretion to be exercised judicially.

The judge concluded on that point that the Act did not deny the applicant the right to fair hearing. The power conferred was one which allowed the court to decide “whether as a matter of fairness to both the applicant for a protection order and a respondent, in light of the circumstances which exist, it is necessary as a matter of emergency to make an interim order without first having heard the applicant.”

In Antigua and Barbuda the practice has evolved where most applications result in the granting of an ex parte order. The court grants this order based on the application along with the attached statement or affidavit setting out not only the most recent allegation but also the history of abuse between the parties. The ex parte order, along with the application and the statement/affidavit are all served on the respondent and a short return date is given.

The ex parte order precisely because of the severe nature of the orders is seen as being advantageous to an expeditious and fair resolution of applications. It puts the respondent on notice of the allegations which he must be prepared to meet and it provides a cooling off period allowing for reflection on the seriousness with which domestic violence is viewed by the court.

Still, it has been reported that respondents see the ex parte orders as being somewhat unfair and feel aggrieved at being thrown out of their home. In

the state of anger and defiance, there is little reflection that the order is as a consequence of their behaviour. This underscores the need for legal assistance and a social work intervention immediately after an order has been made and served on a respondent.

Recognizing the threat to which an applicant may be exposed by the angry response of a defiant or aggrieved respondent, the Acts make it mandatory for an ex parte occupation order to be accompanied by an interim protection order.

Duration of ex parte order

Either party to an application which results in an ex parte order, can apply to have the order discharged immediately. However, the application will only proceed when notice has been given to the other side.

The most frequent concern voiced in relation to interim occupation orders was the denial of occupation rights in the absence of a full hearing. The Acts provide that the respondent may make an immediate application for discharge of occupation orders. Otherwise, the interim occupation orders made while parties are living together expire on the discharge of the occupation order by the court; the discharge of an interim protection order made in support of a occupation order⁴⁷ or in any other case, at the expiration of a period of seven days after the date on which the occupation order was made.⁴⁸

This section clearly contemplates that orders as severe as an ex parte occupation order demands a speedy inter partes or evidentiary hearing.

Counselling

The Vincentian legislation gives the judicial officer the discretion to compel participation in counselling by either or both parties as an element of protection relief. Once an order for counselling has been made, failure to attend in the absence of "reasonable excuse" amounts to a breach punishable by a fine not exceeding EC\$500.⁴⁹ In contrast, for Saint Lucia, Antigua and Barbuda and St. Kitts and Nevis, the court may only recommend counseling and therefore there are no sanctions consequential to non-compliance. The exception to this is in Saint Lucia which does prescribe a sanction in the absence of a reasonable explanation for non-attendance upon counselling even though the court has no power to order but merely to recommend. This would appear to be a drafting error.

The circumstances are not outlined under which counselling would be an appropriate order. Therefore throughout the three countries where the legislation Act is in force, counselling recommendations/orders are not made in

any systematic fashion. Counselling may be ordered where the court discerns a certain level of receptivity on the part of the respondent. In Saint Vincent and the Grenadines, it is reported that the Court will generally only order counselling when it considers that the union between the parties has not broken down irretrievably. In such cases, both parties, and not just the abuser, are sent to counselling. Further, the purpose of the counselling is not an unalloyed thrust to end violent behaviour and there is a strong emphasis on marriage or union preservation.

The Acts do not direct that the counselling must be offered by a specialized batterers programme and the counselling may be directed or motivated by a perception of alcohol or drug abuse or general mental health treatment. Indeed in none of the countries is there a specific batterer intervention/counselling service and social workers who may be assigned to this task are not typically specifically trained in this area.

It is well accepted in countries where the studies have been undertaken that perpetrator programmes based on therapy models (e.g. anger control, conflict management and communication training) may be counter-productive if they provide the abuser with the opportunity to search for the cause of his violence without taking full responsibility for it. Such counselling/therapy models are thought likely to distract the abuser from being held accountable for his violence and implicitly reinforces the violent behaviour by implicating the victim.⁵⁰

Recommendations

The court order for counselling, perhaps more than any other order given by the court reflects the court's attitude towards domestic violence. In recommending marriage counselling or mediation, the message, however unintended, is that violence is an unfortunate incidence of marital breakdown which involves two parties. The abused person may well conclude that her behaviour has provoked or contributed towards violence.

The fundamental purpose of the Acts is to adjudicate the need for protection from abuse and, if that need is found to exist, to provide protective court orders. Given this protective purpose, it is inappropriate for the court to attempt to reconcile the parties or to mediate disputes.

The treatment should focus primarily on ending the violence, holding the perpetrator accountable for the violence and changing behaviour. The treatment must be based on non-victim blaming strategies and philosophies and should include education about the individual, family and cultural dynamics of domestic violence.⁵¹

In this regard, standards developed in other jurisdictions for batterer intervention programmes should be examined. Such standards invite a process, which prioritizes victim safety and batterer accountability. A review of standards for batterer intervention programmes suggest certain key elements:⁵²

- (a) Stated philosophy of the intervention:
 - (i) domestic abuse is conceptualized as part of “pattern of coercive control”;
 - (ii) abuse is solely the responsibility of the perpetrator and victims should never be blamed for men's abuse; and
 - (iii) counselling is not guaranteed to end the violence and that such intervention is not intended to salvage relationships;
- (b) Victim safety is the primary concern for batterers' programmes, and holding the batterer accountable for abusive behavior is a priority;
- (c) That there is a duty to warn the victim of threats of violence against her made during counselling;
- (d) Ethical requirements of counsellors to be violence-free in their personal lives; they must not abuse alcohol or drugs, and must seek to rid themselves of sexist attitudes;
- (e) Intake procedures: Batterers should complete a written contract before beginning the counselling. This contract includes elements such as: commitment to attend for the length of the programme; to be non-violent; sign a waiver of limited confidentiality to help ensure his partner's safety; and to not abuse alcohol or other drugs.
- (f) Couples' counselling are seen as an inappropriate initial intervention. Batterers must have completed a batterer intervention programme and be violence-free for a certain period before couples' counselling is seen as acceptable.

Reporting and monitoring

The present legislation makes no provision for reporting back to the court on the progress of counselling. It is recommended that the order for counselling should be accompanied by a directive on the submission of a report to the Court in respect of the counselling or therapy, such report to include a prognosis for rehabilitation. The Court should also receive written notification from the counselor or therapist of sessions missed without reasonable excuse.⁵³

Standard of proof

The standard of proof required for questions of fact in the issuance of final or ex parte relief under the Act other than for criminal proceedings is on a balance of probabilities.⁵⁴ The Courts must not only find the facts to be likely than not to have occurred but they must also be satisfied that the order is necessary for the protection of the applicant or in the best interest of a child. In relation to ex parte orders, whether protection, occupation or tenancy, the court must be satisfied on a balance of probabilities that the respondent has used violence or caused physical or mental harm or that delay caused by the giving of notice was likely to expose the applicant/prescribed person to further physical or mental injury.

In relation to criminal matters, such as breach of an order, the criminal standard of proof will obtain.

Notice of consequences of violations

There is no statutory requirement of a notice of the consequences of violations of either an ex parte order or final order and neither does the legislation in the four jurisdictions include a standard form of order which contains an explanatory note to the respondent. However, the Kittitian legislation provides that the relevant minister may make regulations which, inter alia, prescribe the form of the injunction and any order required to be made under the Act.⁵⁵ Presumably, the power to make Rules of Court provided for in Saint Lucia⁵⁶ and Antigua and Barbuda⁵⁷ would also include the power to prescribe forms of orders as well.

Recommendations

Bearing in mind that most applicants and a significant number of respondents appear before the court unrepresented and that ex parte orders are served on respondents who would not have had the opportunity of seeking legal representation, a notice which explains the effect of the order should be considered. In relation to ex parte orders, the notice should:

- (a) Notify the respondent that if he or she does not appear at the court hearing specified on the order, the court may grant the requested relief as a final order without further notice; and
- (b) Advise that the respondent may seek advice of counsel.

The order should also contain a penal clause, that is, a clause that specifies the consequences of a failure to comply with the order, including not only the breach of order consequences but also that a willful violation

constitutes a crime and can result in immediate arrest and further punishment.

Enforcement of orders

Arrest authority

The Court may attach a power of arrest to a protection order.⁵⁸ In the event that a power of arrest is not attached to an order, the Acts also mandate police officers to effect a warrantless arrest when a police officer has reasonable cause to suspect that a person has committed a breach of a protection order.⁵⁹ Apart from reasonable cause, a warrantless arrest is only to be undertaken where the police officer believes that this is reasonably necessary for the protection of the applicant. The Acts have provided guidelines to the exercise of this discretion on the part of a police officer. They are:

- (a) The seriousness of the act which constituted the breach;
- (b) The restraining effect of other persons or circumstances on the respondent;
- (c) The time that has elapsed since the alleged breach was committed; and
- (d) The need for a cooling off period⁶⁰.

In the case of Antigua and Barbuda and Saint Lucia, it is stipulated that an arrest for the purposes of “cooling off” may not last longer than 24 hours and two days, respectively.

Importantly, the police are given power take steps as may be necessary and appropriate, including to effect a warrantless arrest even in the absence of a protection order where she/he knows or has good cause to believe that a person is the object of domestic violence and is likely to be further abused.⁶¹ It would appear that necessary and appropriate steps would include warrantless entry into the home to protect an abused person or to effect an arrest of a perpetrator.

It is to be noted that warrantless arrest is a pre-existing common law police power exercisable when a serious offence (felony or arrestable offence) has been committed in the presence of police officers. This section extends police powers to encompass intervention in all matters of breach of protection order and not only upon the occurrence of conduct which in and of itself (and regardless of the existence of a protection order) amounts to a criminal offence.

Where a warrantless arrest or an arrest pursuant to a power of arrest attached to a protection order has been effected, the legislation in St. Kitts and Nevis obligates the arresting officer to, as soon as practicable, inform the arrested person of his entitlement to make telephone call to one person of choice, other than the applicant.⁶²

The power to arrest without warrant crystallizes only in the case of a breach of a protection order. Therefore, where a respondent fails to comply with an occupation order, there appears to be no recourse provided. This is a significant deficiency in the legislation and perhaps explains the oft-repeated complaint of police ineffectiveness in cases of breach of occupation orders.

Tenancy orders may be enforced as if they were an order for possession of land.⁶³ Orders for possession of land are generally enforceable by ejectment proceedings in the magistrate court or by way of writs for possession before the High Court. Once an order is made, the Marshal of the court ensures the physical removal of someone in breach.

Experience

It is not possible to state to what extent court orders are breached since many do not report breaches of orders. However, a significant number of applicants report continuous harassment during the course of the proceedings as well as upon completion of the case. Very few breaches of protection orders are prosecuted and to a large measure this is a result of police inaction.

“After the order was made, he threatened to cut my throat and break my neck if I went back into the apartment. One day I looked out and saw him driving the car into the apartment. I ran to get the police who came. They did not lock him up. They took him back to his apartment even though he was in breach. They claimed that they never had the Protection Order even though I had given it to them myself.” Applicant.

Reports such as the one above underscore the need for continuous monitoring of police response to incidents of domestic violence. Magistrates as well as applicants and service providers in the three countries where the Act is in effect expressed dissatisfaction with the level of diligence in policing the enforcement of orders. From the point of view of one service provider, the protection order gives a false sense of security because the back-up protection does not exist either because the police resources are over-stretched or as a result of police attitudes.

Penalties for violation

Provided that a protection order, either interim or final, (as opposed to an occupation order) is served personally on the respondent, a breach of the order is an offence and punishable upon summary conviction by a fine not exceeding EC\$5,000 in the case of St. Kitts and Nevis, Saint Vincent and the Grenadines and Saint Lucia or in Antigua and Barbuda EC\$10,000 or imprisonment for a term not exceeding six months.⁶⁴

Very few prosecutions proceed for breach of a protection order. However, it is reported for Saint Vincent and the Grenadines that the average fine is in the vicinity of \$100-250. Very rarely is imprisonment the penalty for a breach of a court order.

In what surely is an error of omission, no consequence attaches to the breach of an occupation order as there is no penalty prescribed for breach of an occupation order in any of the four countries. This along with the absence of the power of arrest in relation to breaches of occupation orders perhaps explains police inaction when respondents refuse to vacate the household residence in breach of an order:

“In relation to occupation orders, sometimes months would pass and the fellow still in the house. Police do not want to make the application for a breach of order. They very rarely do so.”
Magistrate

Recommendations

The lack of enforcement of court orders has a grave and detrimental impact on the authority of the court and can result in a trivialization of its jurisdiction. A power of arrest should attach to all orders made by the court under which a police officer may detain and arrest someone who on reasonable grounds she/he believes to have committed or is committing a breach of an order. Similarly, the legislation should provide a penalty for the breach of all orders, including occupation orders.

To facilitate police prosecutions of breaches of protection orders, the Trinidad and Tobago 1999 legislation makes admissible complainant statements given to the police in situations where the complainant refuses to be sworn as a witness or where the complainant gives inconsistent or contradictory evidence to the statement forming part of the police record. Such provision is a response to the widespread experience of absence of victim cooperation in the prosecution of domestic violence. A similar provision should be considered.

Criminal jurisdiction

In both St. Kitts and Nevis and Saint Lucia the perpetration of domestic violence as defined by the legislation amounts to a criminal offence punishable in the case of Saint Lucia by a fine not exceeding \$5,000 and/or to imprisonment not exceeding six months.

The definition of domestic violence sufficient to ground a criminal complaint in St. Kitts and Nevis is more restrictive than that provided in relation to protection orders. A domestic violence offence is an offence committed against a spouse, child or dependant or a parent and encompasses any of the following acts:

- (a) Use of violence or threatening to use violence;
- (b) Causing physical or mental injury;
- (c) Coercion;
- (d) Molestation;
- (e) Arbitrary deprivation of liberty; and
- (f) An offence under Section 5 of the Juvenile Act

The Kittitian legislation therefore criminalises certain actions such as the arbitrary deprivation of property; molestation and coercion. Similarly, the Saint Lucian legislation criminalises violence, whether physical or verbal, which causes or is likely to cause physical, mental or emotional injury or harm. It is questionable whether these Acts sufficiently set out what constitutes the elements of these offences.

Perhaps as a result of a drafting error, although a domestic violence offence is created in St. Kitts and Nevis legislation, no punishment is prescribed. Without amendment, it is unlikely that anyone could be penalized pursuant to a successful prosecution.

Apart from the imposition of a sentence (albeit not prescribed), the Kittitian legislation creates the possibility of ordering a first time offender to undergo probation in a re-education or rehabilitation programme. The exploration of alternatives to custody merits further examination. It has been pointed out that where jails are overcrowded and violent, incarceration of a domestic violence offender will not allow for the rehabilitation of the offender. On the other hand, there are certain offenders who must be in a controlled environment for the protection of the victim. The Kittitian legislation makes it

clear that recidivist offenders are not to be the recipients of rehabilitation orders.

Social service provisions

In keeping with more recent legislation which spells out the minimum obligations of critical actors in domestic violence intervention responses, the Kittitian legislation calls upon the ministry responsible for women/gender affairs to act as an advocate, monitor and initiator of programmes designed to eradicate domestic violence. Apart from promoting public education programmes, the ministry has an investigative role and is called upon to give specific support to victims and perpetrators of domestic violence. The provision is important as it represents public policy and can be used to monitor State action in the campaign to eradicate domestic violence. However, the language employed is neither mandatory nor stringent and the section is more by way of guidelines for action.

Police duties

The police have specific duties under the act as law enforcers. As stated above, police are empowered to make applications for protection orders on behalf of a child or dependant. They also have statutory powers of warrantless arrest in cases where a protection order of the court has been breached.

As a method of improving police response to domestic violence cases and by way of increasing police accountability, the Kittitian legislation mandates that police must take all reasonable measures to prevent victims of violence from being subject to further abuse. These actions include:

- (a) Assistance to the victim in obtaining medical treatment;
- (b) Accompanying the victim for the purpose of the removal of her personal belongings from a place where the abuser resides; and
- (c) Informing the victim of her rights and of services available and of the importance of preserving evidence.

Police officers also have the obligation to prepare a written report of all domestic violence matters in which she/he has intervened. The legislation also specifies that the report should contain the allegations of the persons involved, the witnesses, and the type of investigation conducted and how the incident was resolved.

Unlike the 1999 Trinidad and Tobago Act, the legislation does not contain a standard form which must be used by police officers. Under the Trinidad and Tobago Act, the police are mandated to complete a report that

also contains information relating to the history of domestic violence between the parties, the type of abuse and the weapon used. Whether children were present during the attack and whether previous complaints had been made. (A copy of the form used in Trinidad and Tobago is annexed).

Recommendations

Police response can be made more effective by the establishment of clear guidelines for conduct. Examples of policy that would strengthen police response include the following:

- (a) Non-arrest duties for purposes of providing victim assistance, such as informing of rights, transporting to medical facility or shelter, or help with removing personal property;
- (b) Training on issues relating to domestic violence; and
- (c) Mandatory police reporting and compilation of domestic violence incidents for the purpose of evaluation of police efforts.

In every country, calls were made for training, both of recruits and continuing education for police officers. The course of instruction should include:

- (a) The investigation and management of cases involving domestic violence and the writing of reports in such cases;
- (b) The nature, extent and causes of domestic violence;
- (c) Cultural dynamics and potential barriers to assistance/intervention;
- (d) Domestic violence response protocol⁶⁵;
- (e) Reporting procedures;
- (f) Criminal and civil liability;
- (g) Legal issues: powers of arrest and entry, weapons removal and seizure; and
- (h) Working with advocates, collaboration and assistance

Data collection

The Declaration on the Elimination of Violence against Women calls on states to:

“Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public”.

The lack of consistent information about the number of women affected by violence limits the ability to respond to the problem in several ways:

- (a) Limits the ability to gauge the magnitude of violence against women;
- (b) Limits ability to identify those groups at highest risk who might benefit from focused intervention or increased services; and
- (c) Limits the ability to monitor changes in the incidence and prevalence of violence against women over time.

This, in turn, limits the ability to monitor the effectiveness of violence prevention and intervention activities. Higher quality and more timely incidence and prevalence estimates have the potential to be of use to a wide audience, including policy makers, researchers, public health practitioners, victims advocates, service providers and media professionals.

In none of the courts are there personnel who are specifically assigned and trained to collect and compile data on applications made and the nature of the determination of these cases. As a result, only very basic information is generally available. Similarly, police databases on domestic violence reports are still practically non-existent and there is no quick and ready way to separate such complaints from the general category of assault and battery.

The Kittitian legislation, when brought into force, should substantially improve the quantity and quality of data on domestic violence reports made to the police. In that country a central registry on child abuse cases is also being developed. This registry which is to be maintained by the Probation and Child Welfare Board, shall be a compilation of all allegations of child abuse as well as a record of the final disposition of the report.

Recommendations

It is recommended that a data collection system which compiles non-duplicative statistics from police, court and social services be developed. The main objectives of this system would be:

- (a) To gauge the magnitude of the problem of domestic violence;
- (b) To identify those groups at highest risk which might benefit from focused intervention or increased services;
- (c) To track and assess changes in the incidence of domestic violence;
and
- (d) To formulate, monitor and improve intervention strategies and services.

A standardised form/questionnaire would have to be developed which would elicit the following information⁶⁶:

- (a) Relationship between victim and perpetrator;
- (b) Nature of violence alleged;
- (c) Case ID (unique identifier);
- (d) Data source:
 - (i) Police
 - (ii) Courts
 - (iii) Hospital/health centres
 - (iv) Rape crisis centres
 - (v) Telephone hotlines
 - (vi) Other victim services
 - (vii) Other social services

- (e) Victim demographics:
 - (i) Birth date
 - (ii) Sex
 - (iii) Place of residence
 - (iv) Marital status of victim
- (f) Victim's prior experience of domestic abuse;
- (g) Details of most recent episode:
 - (i) Types of violence
 - (ii) Date of most recent episode
 - (iii) Place of occurrence
 - (iv) Victim's pregnancy status
 - (v) Number of perpetrators
 - (vi) Relationship of victim and perpetrator
 - (vii) Cohabitation of victim and perpetrator
 - (viii) Length of intimate relationship
 - (ix) Length of time relationship has been violent
 - (x) Pattern of violence in past 12 months
 - (xi) Number of children in victim's home
- (h) Consequences to victim following most recent episode:
 - (i) Physical consequences
 - (ii) Medical care received by victim

- (i) Perpetrator of most recent violent episode
 - (i) Birth date
 - (ii) Sex of perpetrator
 - (iii) Place of residence
 - (iv) Alcohol use of perpetrator
 - (v) Drug use of perpetrator
 - (vi) Weapons used by perpetrator

Conclusion

Through the review of the legislation, a number of shortcomings and omissions have been identified both by the users and implementers of the legislation. Chiefly, the legislation needs to be more comprehensive in a number of areas including: a) definition of domestic violence; b) eligible abused persons; c) nature of the orders granted; and d) enforcement mechanisms.

The Acts do not fully capture the reality of Caribbean family forms failing as they do to take account particularly of that large grouping of women and men whose primary relationships are of a visiting nature. These unions are a significant percentage of all unions in the subregion. Protection coverage should be extended to persons in visiting unions whether or not there are children of that union. Further, and in keeping with the fact of extended families sharing one residence, any member of a household should be able to make an application for protection in the event of violence on their own behalf.

The definitions of domestic violence given should ensure in a clear manner the inclusion of sexual violence, threats of violence, threats to damage property and the damaging of property. Many people still associate domestic violence only with physical assault and, therefore, it would be both explanatory and educative to list examples of what constitutes “behaving in a manner of such a degree and nature as to cause annoyance”.

At present the list of protection orders which can be granted by the court does not include a direct order restraining the respondent from engaging or threatening to engage in conduct which constitutes domestic violence. According to the ruling in the Francois case, such an order may not be granted as this form of order is not contained in the statutory listing. In that regard the court should be able to make any order which is appropriate to the allegation

of domestic violence before it without having to follow a prescribed and rigid wording.

In addition, there is some overlap observable in the orders which may be granted. A protection order can exclude a respondent from the household residence or even limit his access to certain parts thereof. Similarly, an occupation order gives the applicant the right to occupy the family residence to the exclusion of the respondent. However, a protection/exclusion order is more easily enforced because of the power of arrest which is attached or crystallizes upon a breach of the order. It is not obvious to what extent the occupation order represents an advance on the exclusion order and the two should be harmonized into one type of order to avoid inconsistent application between courts and, therefore, uneven results.

To ensure respect for the rule of law and for the administration of justice, all court orders should be enforceable and all breaches attended by what would amount to criminal contempt proceedings. Court orders are made in a cultural context which, though changing, continues to trivialize or ignore acts of violence perpetrated against women by their partners. Ironically, though the violence takes place in the home, in small societies, that fact is usually a 'secret', well known to the community and to police officers. The system of protection offered by the civil justice system is severely compromised when court orders or injunctions against violence can be ignored with impunity or, at least, with little fear of serious consequence.

The police must take action in all cases of breach which come to their attention and the extent and/or limits of police powers in this regard need to be made clear. A wide range of sentencing options should be available to magistrates when dealing with breaches of protection orders. Alternatives to incarceration should be considered in appropriate cases and the court should be given powers to make "rehabilitation orders" and community service orders. The philosophy of rehabilitation orders, like counselling orders, should be based on the abuser taking responsibility for his actions and the need to ensure victim safety.

In creating remedies for domestic violence, the drafters had to balance competing rights. Nowhere is this more contested than in the assessment of competing claims between the applicant's right to bodily security as opposed to respondent's right to the enjoyment of property. Although the legislation states clearly that occupation orders do not affect property rights, in reality where they are granted in the absence of a duration limitation, such orders do have an effect of varying property rights, exclusive occupation being a major incident of such.

Magistrates, police and attorneys all spoke of the potential of abuse of this provision although no one was able to point to a case which bore out this

concern. In order to avoid the legislation being put into disrepute, greater clarity should be achieved on the maximum duration of such orders. It does not seem appropriate for rights and entitlements to property to be essentially varied through the indirect method of an occupation order. Property rights between partners (married or common law) should be created or varied in a direct manner and only after consideration of legal and equitable entitlements.

Apart from legislative reform, the research highlighted the need for continued training for police, judicial officers and lawyers on the nature, extent and causes of domestic violence; sensitivity to gender bias and sexual issues; and the role of the actors within the justice system.

“The Domestic Violence Act is being used by police as their escape route from prosecution”: Magistrate

Police officers need to understand that protection orders are not and were never intended to be a substitute for enforcement of the criminal law. Domestic violence is a crime and police have a responsibility not only to the individual complainant but to the community to ensure the prevention of future violence. Leaving the decision of prosecution to the victim does not acknowledge or recognise the powerlessness and fear victims commonly experience living in a situation in which they are abused and gives both victims and perpetrators an ambiguous message that domestic violence is not quite a crime.

In this regard, greater community consideration needs to be given to the issue of mandatory arrest and prosecution for violent offenders. In any event, police officers require further training in investigation and effective responses to domestic violence. In some countries in the subregion, a domestic violence unit within the police force has been recommended⁶⁷. Such a unit would provide a coordinated police response and consistent approach to domestic violence cases, including the provision of training to other police officers, monitoring and evaluating the effectiveness of the police response and data collection.

The policy goals of the legal institutions which deal with domestic violence are, at one and the same time, the punishment of offenders and the protection of victims. These are policy goals which are meant to coexist, to be reciprocal and mutually reinforcing. However, the dominant philosophy behind the domestic violence legislation can be discerned most readily from the actions of those who are charged with administering and implementing its provisions. The continued lack of criminal prosecutions of domestic violence on the part of the police is indicative of attitudes which see violence not as a crime but as a social problem requiring social service intervention. Similarly, the exercise of magisterial discretion to send both parties to counselling also suggests a

conception of intra-violence as indicative of family dysfunction as opposed to a manifestation of coercion by men against their partners.

Indeed the obstinate use of the masculine gender in reference to the applicant itself obscures the central meaning of violence in the family, that is, that it is largely perpetrated by men against women and that it is gender based.

At the heart of the legal response to domestic violence are the actions expected of police officers, as enforcers of the law, as peace officers and as protectors of victims. Police are generally not equipped and should not be expected to act as social workers though there must exist a baseline understanding of the sociology/psychology of domestic violence. The social work role now increasingly expected of police reproduces to some extent the notion that domestic violence while a wrong, is not quite a crime. The primary role of police officers as law enforcers has to be reinforced even while back up support is given to police departments who must work closely with social services as well as the courts. The establishment of a Domestic Violence Interagency Group comprised of the organizations with an interest in the issue of domestic violence is therefore recommended.

For all their shortcomings however, there can be no denying that the Acts have given an avenue of effective justice for many women. Even where the Acts have not caused the complete cessation of violence for the women who have made applications, this, in and of itself, has been significantly empowering.

"In the middle of the court process, he assaulted me, attempted to tear clothes off I went to the police and made a report. They asked me if he had raped me. I said no. I had signs of bruising. They told me that they couldn't do anything because he did not rape me. But they could visit him. I don't know if they did. I never heard from the police. After the court granted the protection order, since then he has not harassed me." Applicant in Saint Vincent and the Grenadines.

That the law alone will not bring an end to domestic violence is a truism. The law however makes an important normative statement defining as it does what is criminal and deviant behaviour. For much of history, violence perpetrated in the home was not only usual, but also accepted. As late as the 1980s, popular culture in the Caribbean made fun of women who were abused in the home and recommended it to men who needed to be in control in the domestic setting.⁶⁸

The legislative framework, whatever its limitations, represents a tremendous advance in giving women the right and the legitimate expectation to protection by the criminal justice system. The sheer numbers of women who

have made applications to the courts in the four countries under review suggest compellingly that women consider the protection order a shield. In the words of one Vincentian applicant, “the Act has made a big difference because people now have an avenue to resort to and they are fairly confident of receiving justice.”

Annex I

STANDARD PROTECTION ORDER OR INTERIM ORDER (Taken from Trinidad and Tobago: Domestic Violence Act, 1999)

In the County of.....

The Court having heard an application made byin
(Name of Applicant)

respect of the conduct or threatened conduct of.....
(Name of Respondent)

towards
(Name of person to be protected)

NOW THIS COURT ORDERS, that for the period from the
.....
day of, to the.....day of,

YOU
(Name of Respondent)

THE WITHIN NAMED RESPONDENT SHALL NOT ENGAGE IN THE FOLLOWING CONDUCT, AND YOU THE WITHIN NAMED RESPONDENT SHALL COMPLY WITH THE FOLLOWING PROHIBITIONS AND CONDITIONS:

SPECIFY PROHIBITIONS AND CONDITIONS IMPOSED AND ANY PERIOD OR PERIODS FOR WHICH THEY MAY BE IMPOSED (IF DIFFERENT FROM THE PERIOD OF THE PROTECTION/INTERIM PROTECTION ORDER).

AND THIS COURT FURTHER ORDERS that youshall not
(Name of Respondent)
engage in any conduct that constitutes an offence under this Act.

If you the said fail to comply with any of the terms of this Order you shall be liable to imprisonment and/or a fine

.....
*Justice or Clerk of the Peace of the
Magistrate's Court for the District*

Dated this day of,

STANDARD DOMESTIC VIOLENCE POLICE REPORT (adapted from the Trinidad and Tobago Domestic Violence Act, 1999)

STATION DIVISIONReference No.
Complaint made by
Surname First name

Address.....
Relationship to Victim/OffenderTelephone No.
Mode of Report
Telephone Personal Referred (by whom) Etc.

DateTimeDiary Reference.....
Recorded by: *(Number/Rank/ Name)*
Name of Victim
Surname First Name

Religion.....
Address.....
Telephone No.Marital StatusRelationship to Offender
SexAgeOccupation
Address of Employment
Name of Offender
Surname First Name

Religion
Address.....
Sex Age Marital StatusTelephone No.
Occupation Address of Employment
Name of Witness Name of Witness
Address.....
Relationship to Victim/Offender.....Relationship to
Victim/Offender.....

BRIEF FACTS AS REPORTED

.....
.....
.....
.....
.....
.....
.....

Extent of Inquiry
Medical Report Form Attached *(tick)* Yes p No p
Instrument used to inflict Injury.....
Whereabouts of Children at time of incident.....
.....
State whether previous complaints were made *(tick)* Yes No

DateTimeDiary Reference
Investigator: (Number/Rank/Name)
Action taken

Other previous complaints made
DateTimeDiary Reference
Investigator: (Number/Rank/Name)
Action taken

Is Protected Order (P.O.) in existence? (tick) Yes p No p
Date of Issue
Comments

Duration (P.O.)Court of Issue

| Date/Time | Action taken, by whom |
|-----------|-----------------------|
| | |
| | |
| | |
| | |

ARREST MADE:
Date of ArrestMode of Arrest
Present status of report

- CHARGES PREFERRED:
- (1)
 - (2)
 - (3)
 - (4)

STATE REASON(S) IF NO CHARGES PREFERRED:
.....
.....
.....
.....

AGENCY TO WHICH REPORT REFERRED/FOLLOW UP ACTION:
.....
.....
.....

Investigator
.....
Date

Supervising Officer
(Inspector and above)
.....
Date

Annex II**List of persons interviewed****ANTIGUA AND BARBUDA**

Mr. Errol Cort, Attorney-General

Court Officials:

Ms. Clare Henry-Watson, Magistrate

Mr. Riviere, Magistrate

Ms. Nicholls, Clerk of the Magistrate Court

Ms. Pat Hyman, Magistrate

Police

Assistant Superintendent Delano Christopher

Court Orderlies:

WPC Christopher

PC O'Garro

PC Bramble

Corporal Bartley

PC Wayne

Attorneys at law

Ms. Ann Henry

Ms. Monique Francis Gordon

Ms. Stacey Richards

Septimus Rhudd

Social Services

Ms. Faustina Jarvis, Chief Welfare Officer

Ms. Morvel Francis, Social Worker

Ms. Rose Inyang, Former Project Officer, Court Advocacy Project

Ms. Sheila Roseau, Director, Directorate of Gender Affairs

Ms. Gwendolyn Tonge, Adviser, Directorate of Gender Affairs

Ms. Patricia Bird Commissioner for Social Improvement

Ms. Roma Creque, Director, CCOPE

Ms. Maxam, Director, Sunshine Home for Girls

Three applicants

One respondent

ST. KITTS AND NEVIS

The Honourable Mr. Sam Condor, Minister

Court Officials:

Ms. Josephine Mallalieu, Magistrate

Police

Mr. Fahie, Commissioner of Police

Inspector Mireless Dolphin, Police Prosecutor

Attorneys at law

Mr. Dennis Merchant, Director of Public Prosecutions

Ms. Pauline Hendrickson, Crown Counsel

Ms. Richardson, Office of the Attorney General

Mr. Tapley Seaton, President, Bar Association

Social Services

Ms. Roslyn Hazelle, Permanent Secretary

Mr. Newton, Permanent Secretary, Ministry of health

Mr. Osmond Petty, Permanent Secretary, Ministry of Education,
Labour and Social Security

Mr. Penchion, Director of Culture, Youth and Sports

Mr. Maurice Richards, Probation and Child Protection Officer

Ms. Eartha Williams, Probation and Childcare officer (Former
police officer)

SAINT LUCIA

Family Court Officials:

Mr. Mickel Magloire, Magistrate, Family Court

Ms. Rumelia Dalphinis-King, Director, Family Court

Attorneys at Law

Mr. Norton Jack, Director of Public Prosecution

Ms. Victoria Charles, Crown Prosecutor

Ms. Lorraine Williams

Ms. Kimberley Roheman, (Former Magistrate of the Family Court)

Police

Sargeant Giselle Simon. Community Relations Branch

Corporal Bernard Labadie, Writs Department

Social services

Ms. Iona Erlinger-Forde, St. Lucia Crisis Centre
Ms. Ruffina Paul, St. Lucia crisis Centre
Ms. Bernadette Springer, Division of Gender Affairs

SAINT VINCENT AND THE GRENADINES

The Honourable Judith Jones-Morgan, Attorney General
The Honourable Girlyn Miguel, Minister of Social Development

Court Officials

Ms. Bridgette Nurse, President, Family Court
Ms. Colleen MacDonald, Registrar
Mr. Parris, family Counsellor
Ms. Ross, Clerk of the Court
Mr. Lennox Haynes, Bailiff

Police

Mr. David Charles, Deputy Commissioner of Police
ASP Davis, Assistant Superintendent of Police
Mr. Jonathan Nicholls, Police Public Relations and Complaints
Department
Sargeant Delpeche, Police Prosecutor

Attorneys at Law

Ms. Agnes Cato
Mr. Victor Cuffy
Ms. Paula David (Former magistrate)
Ms. Nicole Sylvester

Social services

Ms. Jeannie Ollivere, Director, Department of Women's Affairs
Ms. Yvonne Raymond, Director, Family Services Division
Ms. Debbie Dalrymple, Marion House
Ms. Barbara Matthews, Marion House

Applicants (3)

Bibliography

Austin, J and Juergen Dankwort: A Review of Standards for Batterer Intervention Programs. 1997.

Website: <http://www.vaw.umn.edu/Vawnet/standard.htm>

Benjamin, Ernest; Bird, Edris. 1991-1996 Situation Analysis of Children and their families: consolidating social achievements and meeting the challenges of the 21st century child survival, development and protection in Antigua and Barbuda. Bridgetown: UNICEF. Caribbean Area Office, 1998.

Charles, Victoria: The Legal System's response to Domestic Violence: Can Laws Alone Solve the Problem? 1996 Unpublished

Fagan, J: The Criminalisation of Domestic Violence: Promises and Limits. NIJ Research Report. 1996. Website: www.ncjrs.org/tfiles/crimdom.txt

Francis, Tarlie; McQueen, Maxima. 1991-1996 situation analysis of children and their families: consolidating social achievements and meeting the challenges of the 21st century child survival, development and protection in Grenada. Bridgetown : UNICEF. Caribbean Area Office. 1998

Halliday, Joseph; Harris, Vernon. 1991-1996 situation analysis of children and their families: consolidating social achievements and meeting the challenges of the 21st century child survival, development and protection in St. Kitts and Nevis. Bridgetown: UNICEF. Caribbean Area Office, 1998

Haniff, N: A Study of Domestic Violence in the British Virgin Islands. January, 26, 1998 (Unpublished).

Hart, B. State Codes on Domestic Violence: Analysis, Commentary and Recommendations. Juvenile and Family Court, Jamaica Vol. 43 No.4, University of Nevada 1992

Kuriansky, J. (Ed): Assessing Justice System Response to Violence Against Women: A Tool for Law Enforcement, Prosecution and the Courts to Use in Developing Effective Responses. A product of the *Promising Practices Initiative* of the STOP Violence Against Women Grants Technical Assistance Project. February, 1998

McGuire, Linda: Criminal Prosecution of Domestic Violence. Minnesota Center Against Violence & Abuse. Minnesota. 1998

Mondesire, Alicia; Dublin, Josephine. 1991-1996 Situation Analysis of Children and their Families: Consolidating Social Achievements and Meeting the

Challenges of the 21st century Child Survival, Development and Protection in Dominica. Bridgetown : UNICEF. Caribbean Area Office, 1998.

National Committee on Violence Against Women: National Strategy on Violence Against Women. Australian Government Publishing Services, July 1993

Orchowsky, S. and Johnson, C.: Domestic Violence and Sexual Assault Data Collection Systems in the States Justice Research and Statistics Association. October 1999

Reid, O: Domestic Violence: The Need for a Change in Police Response. Unpublished

Robinson, Tracey: Changing Conceptions of Violence: The Impact of Domestic Violence Legislation in the Caribbean. In Caribbean Law Review. University of the West Indies, Cave Hill Campus, Barbados 2000

Schechter, S. and Edleson, J.: Effective Intervention in Domestic Violence and Child Mal-Treatment: Guidelines for Policy and Practice. Recommendations from the National Council for Juvenile and Family Court Judges. Family Violence Department. National Council for Juvenile and Family Court Judges Nevada. 1999

Sturm, S.: From Gladiators to Problem-solvers: Connecting Conversations about Women, The Academy and the Legal Profession in 4 Duke J. Gender Law & Policy 119.

The St. Lucia Crisis Centre the family- Restoration and Peace 1988-1998. St. Lucia 1999

Thompson-Ahye, H.: Juvenile Justice in the Caribbean. A Rights Approach to Children and the Juvenile Justice System. Commissioned by UNICEF Caribbean Area Office. 2000

UNICEF. Caribbean Area Office. Child Survival, Development and Protection in the Eastern Caribbean: Consolidating the Achievements and Meeting the Challenges of the 21st century. Draft subregional summary of the 1996 analyses of children and their families. [Bridgetown]: UNICEF. Caribbean Area Office, 1996.

UNICEF: Consolidating Social Achievements and Meeting the Challenges of the 21st Century. Child Survival Development and Protection in Antigua and Barbuda. 1991-1996 Situation Analysis of Children and their Families. UNICEF, Barbados. 1998

Endnotes

- ¹ The Act in St. Kitts and Nevis is not yet in force and therefore the evaluation of the use of the legislation does not incorporate St. Kitts and Nevis though the content of the legislation is examined.
- ² Ratified/Acceded by Antigua and Barbuda, 19 November 1998; Dominica, 6 June 1995; Grenada, 15 February 2001; Saint Lucia, 4 April 1995; Saint Vincent and the Grenadines, 31 May 1996; St. Kitts and Nevis, 12 June 1995.
- ³ Among CARICOM countries, Trinidad and Tobago was the first to enact domestic violence legislation in 1991. It was followed by Barbados, Belize, Guyana, Jamaica and the countries under the present review.
- ⁴ Dominica and Grenada have prepared Bills which are under consideration. The Grenada Domestic Violence Bill 2000 presently under consideration is a hybrid of the CARICOM draft legislation and the Trinidad and Tobago 1999 Act.
- ⁵ Domestic Violence (Summary Proceedings) Act 1999.
- ⁶ Domestic Violence (Summary Proceedings) Act, 1995.
- ⁷ Domestic Violence (Summary Proceedings) Act, 1995.
- ⁸ The Domestic Violence Act 2000
- ⁹ UNICEF: Consolidating Social Achievements and Meeting the Challenges of the 21st Century. Child survival Development and protection in Antigua and Barbuda. 1991-1996 Situation Analysis of Children and their Families. UNICEF, Barbados.
- ¹⁰ Charles, Victoria: The Legal System's response to Domestic Violence: Can Laws Alone Solve the Problem? 1996 (Unpublished)
- ¹¹ Interview with applicant in Antigua and Barbuda
- ¹² Haniff, N: A Study of Domestic Violence in the British Virgin Islands. January, 26, 1998 (Unpublished).
- ¹³ Fagan, J: The Criminalisation of Domestic Violence: Promises and Limits. NIJ Research Report. 1996. on website: www.ncjrs.org/txfiles/crimdom.txt

¹⁴ The Director of the Family Court in Saint Lucia observed that many of the women who seek assistance from the Family Court, come in with scars from lacerations which have healed.

¹⁵ Only in the Antiguan legislation are birth and adoption spelt out. In the others, the phrase used is “a child of both parties to the marriage”.

¹⁶ Antigua and Barbuda s. 3(1)(b), Saint Lucia s.3(1)(b), Saint Vincent and the Grenadines s.3(1)(b)

¹⁷ 1991 Census

¹⁸ Robinson, Tracey: Changing Conceptions of Violence: The Impact of Domestic Violence Legislation in the Caribbean. In *Caribbean Law Review*. University of the West Indies, Cave Hill Campus, Barbados. 2000

¹⁹ Domestic Violence (Protection Orders) Act 1997

²⁰ The Grenada Bill allows social welfare officers, persons qualified or experienced in social work and police officers to make applications not only on behalf of children and dependents but also on behalf of battered spouses.

²¹ "Domestic violence is a pattern of coercive behavior which can include physical, sexual, economic, emotional and/or psychological abuse exerted by an intimate partner over another with the goal of establishing and maintaining power and control." The New York State (NYS) Office for the Prevention of Domestic Violence (OPDV) found on website <http://www.health.state.ny.us/nysdoh/rfa/hiv/guide.htm>

²² The Domestic Violence Act, 1999 s.3

²³ op cit;

²⁴ Apart from the Domestic Violence Act which gives the Family Court in Saint Vincent and the Grenadines the power to hear applications under that Act, the High Court also has jurisdiction to hear applications for injunctions in cases of domestic violence in marital unions. The Domestic Violence (Summary Proceedings) Act does not derogate from the operation of the Domestic Violence Matrimonial Proceedings Act.

²⁵ Saint Vincent and the Grenadines s.27

²⁶ Antigua and Barbuda: s.19; St. Kitts and Nevis: s.22

²⁷ Antigua and Barbuda: s. 19; St. Kitts and Nevis: s. 22 (1)

²⁸ Susan P. Sturm: From Gladiators to Problem-solvers: Connecting Conversations about Women, The Academy and the Legal Profession in 4 Duke J. Gender Law & Policy 119

²⁹ The Family Court Act No. 53 of 1992

³⁰ Antigua and Barbuda s.21(4), St. Kitts and Nevis s.21(4), Saint Lucia s. 20(4), Saint Vincent and the Grenadines s.20(4)

³¹ Antigua and Barbuda.

³² S.18(1)(d)

³³ S.20(5)

³⁴ [1970] 3 WLR 472.

³⁵ R v Leicester City Justices, ex parte Barrow and Another (1991) 3 All ER 935

³⁶ Antigua and Barbuda s. 4(1), Saint Lucia s. 4(1), Saint Vincent and the Grenadines s. 4(1).

³⁷ Antigua and Barbuda, s.22; St. Kitts and Nevis s.31, Saint Lucia s.21; Saint Vincent and the Grenadines s.21

³⁸ Antigua and Barbuda s.9 (1); St. Kitts and Nevis s.11(1); Saint Lucia s.8(1); Saint Vincent and the Grenadines s. 8(1)

³⁹ Saint Lucia s.4 (2)

⁴⁰ Antigua and Barbuda s.28, St. Kitts and Nevis s.40, Saint Lucia s.28, Saint Vincent and The Grenadines s.28

⁴¹ Antigua and Barbuda s.9(2), Saint Lucia s.8(2), Saint Vincent and the Grenadines s.8(2). In the case of Saint Vincent and the Grenadines, the legislation refers to “members”

⁴² Antigua and Barbuda s.11(1), St. Kitts and Nevis s.14(1), Saint Lucia s.11(2), Saint Vincent and the Grenadines s.11(2)

⁴³ Saint Vincent and the Grenadines s.11(2)

⁴⁴ Antigua and Barbuda s.15(2)

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- 45 Antigua and Barbuda s.4 (3) St. Kitts and Nevis s.8(1), Saint Lucia s.4(3), Saint Vincent and the Grenadines s. 4(3)
- 46 Martinus Francois The Attorney General of Saint Lucia Suit No. 69 of 2001 (unreported)
- 47 Not applicable to St. Kitts and Nevis
- 48 See to Austin, J and Juergen Dankwort: A Review of Standards for Batterer Intervention Programs. 1997. Antigua and Barbuda s.8(4), St. Kitts and Nevis s.12 (3), Saint Lucia s.9(4), Saint Vincent and the Grenadines s.9(4)
- 49 Saint Vincent and the Grenadines s.22(2)
- 50 National Committee on Violence Against Women: National Strategy on Violence Against Women. July 1993
- 51 Taken from the Washington Domestic Violence Code in State Codes on Domestic Violence: Analysis, Commentary and Recommendations. Barbara Hart. National Council of Juvenile and Family Court Judges 1992
- 52 Juliet Austin and Juergen Dankwort: A Review of Standards for Batterer Intervention Programs. 1997.
Website: <http://www.vaw.umn.edu/Vawnet/standard.htm>
- 53 This section appears in the Trinidad and Tobago legislation.
- 54 Saint Vincent and the Grenadines s.19, Antigua and Barbuda s.20, Saint Lucia s.19
- 55 St. Kitts and Nevis s.41(c)
- 56 Saint Lucia s.26
- 57 s.26
- 58 Antigua and Barbuda s.4 (2); St. Kitts and Nevis s. 7(3), Saint Lucia and Saint Vincent and the Grenadines
- 59 Antigua And Barbuda s.5(2), Saint Lucia s.5(2), St. Kitts and Nevis s.27(1), Saint Vincent and the Grenadines s.5(2)
- 60 For Saint Lucia: only considerations (a) and (b) apply

⁶¹ Antigua and Barbuda s.5(6), Saint Lucia s.5(5) Saint Vincent and the Grenadines s.5(5)

⁶² Section 27(4). This provision is also to be found in the Grenada Bill: clause 5(4)

⁶³ Antigua and Barbuda s.13(2), St. Kitts and Nevis s.15(2), Saint Lucia s.13(2), Saint Vincent and the Grenadines s. 13(2).

⁶⁴ Antigua and Barbuda s.5(1); St. Kitts and Nevis s.26; Saint Lucia s. 5(1); Saint Vincent and the Grenadines s. 5(1).

⁶⁵ An example is to be found in Domestic Violence Protocol for Law Enforcement 2001: Police Chief's Association of Saint Clara County.

⁶⁶ These suggestions draw on the work of Orchowsky and Johnson: Domestic Violence and Sexual assault Data Collection Systems in the States. Justice Research and Statistics Association. October 1999

⁶⁷ Such a Unit is established in Antigua and Barbuda, but at the moment is staffed by only one police officer.

⁶⁸ Lord Nelson's calypso "We like it" is a good example of this: "A little rough, a little cuff up, a little lick up the bam bam. We like it. Is West Indian culture".