

# CHILD CUSTODY AND MAINTENANCE

- **In custody matters, Judicial Officers are advised to:**
  - o Be cognizant of the fact that section 4 of the Family Law Act gives both mother and father equal parental rights and responsibilities;
  - o Bear in mind that custody is decided on what is in the best interests of the child and the gender of the parent is not a relevant factor in determining which parent should have legal custody;
  - o Ensure that they do not use the sexual orientation of either parent as a basis for refusing custody (See IACtHR decision *Atala Riffo and Daughters v Chile*);
  - o Inform probation officers/social workers of the relevant factors to be used in their assessment of which parent should get custody.
  
- **In maintenance matters, Judicial Officers are advised to:**
  - o Assess the financial resources of the parents as well as the needs of the child;
  - o Instruct probation officers on the relevant factors in assessing financial capability and needs of the child;
  - o Consider whether an Order should be made for both parents to receive separate counselling post custody and maintenance application hearings;
  - o Request that probation officers/social workers (1) assist the parents in complying with the orders of the court and (2) make follow-up visits to ensure that the best interests of the children are being served.

