



# A Caribbean Response to Child Sexual Abuse

The Honourable Mme Justice Maureen  
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Court of Justice

## **ISPCAN-International Society for the Prevention of Child Abuse and Neglect Caribbean Regional Conference**

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For over 40 years, **ISPCAN- International Society for the Prevention of Child Abuse and Neglect** has worked to reduce this preventable tragedy. Founded by Henry Kempe in 1977, ISPCAN is the only international non-profit organization that brings together the range of professionals that work toward the prevention and treatment of all forms of violence, abuse or neglect of children.

ISPCAN members with access to research, tools and best practice help thousands of children every year not only survive neglect and abuse but thrive.

## **Presentation**

**By**

**The Honourable Mme Justice Maureen Rajnauth-Lee, Judge of the Caribbean Court of Justice,**

**on the occasion of**

**ISPCAN Caribbean Regional Conference Master Class Session**

**2 December 2018**

This has been a fascinating morning and I am grateful to be here. I bring greetings to you from the Caribbean Court of Justice which sits in Port of Spain, Trinidad and Tobago, and from the President of the Court, the Honourable Mr Justice Adrian Saunders, a citizen of St. Vincent and the Grenadines. The Court is unique. It operates in two jurisdictions. In its appellate jurisdiction, the CCJ, as it is often referred to, is the final appellate court for Barbados, Belize, Dominica and Guyana. The Court also sits in an original jurisdiction as an international court with exclusive responsibility for interpreting the Revised Treaty of Chaguaramas, the Treaty which established the Caribbean Community. I wish to express special thanks to ISPCAN and the Organizers of this Conference for inviting me to participate in the Master Class Session. I will be sharing some snapshots or screenshots which will capture what is being done in the English-speaking Caribbean as justice systems respond to the challenging issue of Child Sexual Abuse.

### **INTRODUCTION TO THE JURIST PROJECT**

The Judicial Reform and Institutional Strengthening (JURIST) Project is a five-year regional Caribbean judicial reform initiative funded under an arrangement with the Government of Canada. The Project is being implemented on behalf of Global Affairs Canada and the Conference of Heads of Judiciary of CARICOM (the Conference) by the Caribbean Court of Justice (CCJ), which was appointed by the Conference as its Regional Executing Agency. The Project began its work in 2014.

The Project seeks to improve the administration of justice in the Caribbean region by strengthening the ability of courts to resolve cases efficiently and fairly. Special attention is being paid to improve the capacity and skills of judges, court administrators and court personnel to deliver services that address the different needs of their customers. A key objective of the Project is the reduction of delay in the court process. The Project supports local jurisdictions of the region toward the attainment of the Project's ultimate outcome, which is "a judicial system that is more responsive to the needs of women, men, youth, and the poor."

## **JURIST'S SEXUAL OFFENCES PROJECT**

An important component of the JURIST Project is the Sexual Offences Project. The Sexual Offences Project has as its objective improving the capacity of regional courts to deliver gender-responsive and customer-focused court services in such a way that complainants in sexual offence cases (including children) are not further traumatized when they enter the justice system. The two (2) key initiatives of the Sexual Offences Project are:

- (1) the development of Model Guidelines for treating with sexual offences cases within the court system; and
- (2) the establishment of a Sexual Offences Model Court to test the effectiveness of the Model Guidelines.

In order to monitor the implementation of the sexual offences initiative, in 2015, the Project established an Advisory Committee consisting of representatives from the CCJ and the judiciaries of Barbados, Jamaica and Trinidad and Tobago, representatives of UN Women, UNICEF, the CARICOM Secretariat and the University of the West Indies (Mona Campus, Jamaica). A baseline study commissioned through UN Women identified several major gaps and challenges in the justice chain for sexual offence cases. These gaps and challenges included:

- poor investigative and evidence gathering procedures by the police;
- inordinate delays in the courts. As I have said repeatedly to judicial officers in the Caribbean over the last year, *delay is the enemy of justice*. Just this week, the Judiciary of

Trinidad and Tobago launched its *Gender Equality Protocol for Judicial Officers*<sup>1</sup>. In the chapter which deals with Sexual Offences, the Protocol makes the point that “... *delay is particularly egregious in the prosecution of sexual offences*”.

- undervaluing of sexual offence cases in relation to the public interest so that limited resources are instead reserved for more “serious crimes” such as murder;
- lack of data collection to form the basis of monitoring and accountability of the courts’ performance and responsiveness in sexual offence cases;
- insufficient interconnectedness between the courts and the other key agencies required to facilitate proper investigation of sexual offences and to provide care for the victims throughout the process; and
- the victims’ refusal to pursue cases for fear of re-victimisation by the very process of seeking justice.

## **THE DEVELOPMENT OF MODEL GUIDELINES FOR SEXUAL OFFENCE CASES**

In response, and as mentioned earlier, the JURIST Project undertook the task of developing Model Guidelines for Sexual Offence Cases in the Caribbean Region as part of a comprehensive and multi-sectoral approach to improving the management of sexual offence cases and the treatment of witnesses and survivors of sexual offences. In 2016, the Project engaged Ms Diana Shaw, Attorney at Law, (and present here today) as Consultant to conduct various consultations and to develop the Model Guidelines. During the years 2016 and 2017, the Project hosted regional and national consultations throughout the English-speaking Caribbean with the following persons: survivors of sexual assaults – women, men, indigenous persons (in Belize and Guyana), persons who had experienced sexual assault and interacted with law enforcement and the courts as children; non-governmental agencies who represent survivors; judicial officers; defence counsel; prosecutors; police officers; medical practitioners; court administrators and court staff. These consultations provided a comprehensive assessment of how sexual offence cases were being adjudicated in the region, and critical gaps and challenges were documented. Priority subject areas for the Model Guidelines were also identified. After the first draft of the Model Guidelines was prepared, further consultations were held, and an editorial team was convened to finalize the Draft.

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<sup>1</sup> *Justice through a Gender Lens* (November 2018)

I am happy to say that the Final Model Guidelines are the result of the direct contribution of over 200 persons throughout the Caribbean region and over 15 months of intensive work. The Model Guidelines were launched at the Biennial Conference of the Caribbean Association of Judicial Officers (CAJO) held in Curacao in September 2017. Towards the end of 2017 and in early 2018, JURIST hosted regional and national launches together with sensitization workshops to familiarize judicial officers, lawyers, representatives of NGOs etc., across the Caribbean region, on the contents of the Guidelines.

### **Case Management, the Treatment of Vulnerable Witnesses and the Use of Special Measures**

The Model Guidelines have incorporated several best, good and promising practices. The Guidelines contain three (3) key components which are critical to the improvement of the justice system in the area of sexual offence cases:

- (1) Proactive case management by the courts;
- (2) The early identification of vulnerable witnesses; and
- (3) The use of special measures for vulnerable witnesses.

- **Proactive case management** by the courts has as its aim the eradication of delay and the reduction of trauma for complainants. The Model Guidelines recommend that early and comprehensive case management is a necessity for an efficient criminal court system. Several important matters must be dealt with by the judge in preparation for a trial so that efficient time-lines are established to avoid delay. In addition, where child complainants are involved, special consideration should be given by the court at an early stage to ensure their safety and protection as well as their support. The Guidelines also suggest that a holistic approach be adopted to ensure that other matters which concern children such as custody, care and control, and maintenance and support, are dealt with promptly if not by the same case management judge, then by the Family Court.
- **The early identification of vulnerable witnesses** is another important function of the case management judge. Vulnerable witnesses include children; the elderly; survivors of sexual assaults who have experienced trauma that has caused emotional and psychological

distress, such as will impair their ability to give evidence; indigenous persons, who have to come outside their communities to interact with police, court officials and other agencies.

- Where any of these vulnerabilities is identified, the case management conference is the place for the court to consider what **special measures** will be required to facilitate the complainant or witness giving evidence. Several English-speaking Caribbean countries have enacted legislation for the use of special measures. For example, in Antigua and Barbuda, there is comprehensive legislation<sup>2</sup> (including an amendment passed in 2016) which provides for the use of extensive special measures. These include screens and video links to facilitate a vulnerable witness giving evidence; removal of wigs and gowns when the vulnerable witness, such as a child, is giving evidence; video recording of evidence in chief, cross-examination and re-examination; the provision of aids to communication for a young or incapacitated witness. Also included is the giving of evidence through an interpreter or other person approved by the court; and the witness being assisted in the giving of evidence by a person approved by the court. In the case of aids to communication for a young child, such as drawings, pictures, and anatomically correct dolls, we have made the important point in our training sessions that where these aids are to be employed during the trial, they should have been first employed during the police forensic interview. In the Model Guidelines, special emphasis is placed on the important role played by support persons who will not only be present in the court room while the vulnerable witness is giving evidence, but who will continue to provide support to the complainant throughout the entire process.

Caribbean jurists continue to receive training on the challenge that vulnerable witnesses (including children) present in the criminal justice system; and how special measures can be used to assist vulnerable witnesses in the giving of their evidence. For example, in September 2018, the United Kingdom Foreign & Commonwealth Office hosted a Conference for Caribbean judges in Miami, Florida, on the theme of case management and vulnerable witnesses. Among the many presenters was Professor Penny Cooper, who devised and introduced the “England intermediary model”.

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<sup>2</sup> See the Evidence (Special Provisions) Act 2009 (No. 5 of 2009) and the Evidence (Special Provisions) (Amendment) Act 2016 (No. 9 of 2016).

Professor Cooper presented on the treatment of vulnerable witnesses and the use of special measures, and in particular, intermediaries, in sexual offence cases.

## **GUIDELINES FOR THE POLICE FORENSIC INTERVIEW IN SEXUAL ASSAULT CASES**

Included in the Model Guidelines are *Guidelines for the Police Forensic Interview in Sexual Assault Cases*. When we consulted with police officers, they suggested that the Model Guidelines should contain guidelines which would assist police officers to record the best possible account of what had taken place. One common complaint that we received throughout our consultations was that survivors of sexual assault, who were interviewed at police stations, felt that they were being *interrogated* and not interviewed. For many complainants, that was the beginning of painful experiences with the justice system. In the Guidelines for the Police Forensic Interview in Sexual Assault Cases, special emphasis was placed on interviewing children, persons with disabilities and indigenous persons.

Some jurisdictions in the Caribbean have specialist police units comprised of officers trained in the investigation of sexual offences and the interviewing of victims of sexual offences. For example, in Jamaica, the Centre for the Investigation of Sexual Offences and Child Abuse (CISOCA) is a branch of the Jamaica Constabulary Force. Established in 1989, the objectives of CISOCA are: to create an atmosphere which will encourage victims to report incidents of sexual offences and child abuse; to ensure efficient and effective investigation into allegations of abuse; to enhance the rehabilitation of victims through counselling and therapy and to conduct public education programmes on Sexual Offences and Child Abuse.

In addition, Child Protection Units operating within the Police Service have been established in some jurisdictions. For example, in Trinidad and Tobago, the Child Protection Unit (an investigative unit) was established in May 2015 and operates within the Police Service of Trinidad and Tobago with officers specially trained in the investigation of crimes against children. Officers of the Child Protection Unit were recently interviewed and shared the following statistics: for the period May 2015 to July 2016, there were 2595 reports made to the Child Protection Unit. The majority of those reports were of child sexual abuse.

Among the best practices for the interviewing of child witnesses that we witnessed first-hand was the work being done in Guyana by Blossom Inc. Blossom Inc. is a children's charity based in Guyana, registered in 2014 and founded with two main goals:

1. To support the child protection system in Guyana.
2. To support children and families affected by trauma.

The Blossom Inc.'s Managed Children Advocacy Centres (CAC) offer a child-focused setting designed to provide a safe, comfortable and neutral place where forensic interviews and other services can be appropriately provided for children and families.

Forensic interviews with child sexual abuse victims are coordinated to avoid duplicative interviewing and are recorded. The forensic interviews are conducted in a manner that is developmentally and culturally sensitive, unbiased, fact-finding and legally sound method of gathering information regarding allegations of sexual abuse. These interviews are done by National Child Advocacy Centre (NCAC), USA, trained Forensic Interviewers, and are observed by a Multi-Disciplinary Team comprising professionals from the Guyana Police Force, the Childcare and Protection Agency, Mental Health and Victim Advocate Services that provide guidance based on the information collected to determine if a case can be brought against the perpetrator.

## **THE SEXUAL OFFENCES MODEL COURT**

After the development and publication of the Model Guidelines, the Advisory Committee accepted the Consultant's recommendation that the Sexual Offences Model Court be located in Antigua and Barbuda. The Model Court will be launched in January 2019 and will be a set of specialised court procedures for the treatment of sexual offence cases. There is to be a dedicated courtroom and presiding Judge assigned to the hearing of sexual offences using these specialised procedures.

The following seven guiding principles will be the foundation for all sexual offence court proceedings and services provided by the court and other connected agencies:



- The rights of all complainants and defendants will be protected and their rights and dignity will be respected;
- All court services will be provided in a non-judgmental way that facilitates the empowerment of complainants;
- Specialized training is an essential part of ensuring that the best evidence is collected from complainants;
- Service delivery must not re-victimize the complainant or traumatize witnesses;
- Vulnerable complainants or witnesses will receive specialized support services;
- It will be recognized that due to the traumatic and disruptive nature of sexual assaults, support services will be needed for complainants and this will require multi-disciplinary collaboration with other agencies; and
- Confidentiality and privacy of complainants will be respected and protected.

**The special features of the Sexual Offences Model Court are:**

- Quicker resolution of cases through tighter pre-trial case management;
- Fast tracking process for sexual offence cases;
- Only judges, court administrators, police and prosecutors, with specialized training, will be assigned to sexual offence cases;
- The use of video conferencing technology, which will allow vulnerable complainants/witnesses to give evidence from a testimony room. This will ensure that vulnerable complainants, such as children, will no longer need to be in the physical presence of the defendant when testifying;
- A designated waiting room at the High Court for complainants/witnesses; and court orientation for complainants; and
- The High Court will partner with the Directorate of Gender Affairs and the Family and Social Services Division in Antigua and Barbuda to provide survivor support services to both adult and child complainants. This will allow complainants to make their reports, conduct their medical examinations, get counselling and be assigned survivor advocates. All these services will be available at the Support and Referral Centre, which is operated by Directorate of Gender Affairs.

The JURIST Project is currently working with the Eastern Caribbean Supreme Court and the Antigua and Barbuda Government to support the establishment of the Model Court in the Antigua and Barbuda High Court by:

- Developing case management processes to facilitate the expeditious handling of sexual offence cases as well as special protocols for the treatment of complainants and witnesses;
- Introducing technology into the Model Court and providing equipment and material to operationalize special measures for complainants and witnesses in sexual assault cases (to enable complainants to give evidence remotely);
- Developing a Monitoring and Evaluation framework to monitor and evaluate the Model Court's performance; and
- Training a cadre of professionals including judges, court personnel, police, lawyers, prosecutors and victim support personnel from the government and NGOs, to effectively manage sexual assault cases and provide care and support to complainants and witnesses.

JURIST's Sexual Offences Project has provided inspiration for judiciaries in the Caribbean. Both Jamaica and Trinidad and Tobago have announced that they are considering the establishment of specialized courts to deal with sexual offences. The Project also inspired the Judiciary of Guyana, the most southerly state of the Caribbean, to establish the first Sexual Offences Court in the English-speaking Caribbean.

## **THE SEXUAL OFFENCES COURT OF GUYANA**

In November 2017, the first Sexual Offences Court in the English-speaking Caribbean region, was established in the Supreme Court of Guyana. This Court is a project of the Judiciary of Guyana, the Government of Guyana, and UNICEF. A court room was converted into a purpose-built facility with screens and video conferencing facilities, which allow for vulnerable witnesses, including children, to give evidence from another location. Since the launch of this court, which we were fortunate to witness, it has been reported that more sexual assault survivors are finding the courage to seek justice within the criminal justice system. At the opening of the court in November 2017, the Honourable Chancellor of the Judiciary of Guyana, Justice Yonette

Cummings-Edwards, highlighted the needs of survivors and witnesses of sexual offence cases who require specialist treatment and support. She said with that in mind, the idea of establishing a specialist court was birthed. It was reported that fourteen matters had been completed within the first five months of the court's operation. Of those, seven dealt with sexual activity with a child or family member, and four with the rape of a child under the age of sixteen. All but one of the virtual complainants were female and aged between three and twenty-eight at the time of commission of the offence. Ten of the victims were ten years old or younger at the time of the commission of the offence. All of the complainants utilized the audio-visual link, except for two, and those two were adults. One of the complainants testified via Skype from Barbados. Twelve of the fourteen virtual complainants had their support persons present while they gave evidence. These were persons from Blossom Inc, the Child Care and Protection Agency or relatives. What a difference the Guyana Sexual Offences Court has made!

## **CHILD OFFENDERS**

- As I close, I do not believe that a presentation on the Caribbean's approach to Child Sexual Abuse will be complete without reference to the work being done in the Caribbean with respect to child sexual offenders. The Model Guidelines make reference to legislative reforms in the Caribbean which establish special mechanisms and create separate justice systems for child offenders. The general aims of these separate justice systems are to prevent re-offending and to provide opportunities for the rehabilitation of child offenders while ensuring that there is accountability for what has been done. The Children Court of Trinidad and Tobago is a prime example. Established in March of this year, the Juvenile Court Project<sup>3</sup> under which the Children Court has been established, seeks to strengthen the capacity of the Judiciary of Trinidad and Tobago to deal with criminal matters involving child offenders using a restorative and less retributive approach.
- In addition, recent legislation has been enacted in some Eastern Caribbean States with a similar objective<sup>4</sup>. Let me mention briefly the Child Justice legislation of Antigua and

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<sup>3</sup> The Family and Children Division Act No. 6 of 2016. The Children Court sits in Port of Spain and Fyzabad, Trinidad and in Tobago.

<sup>4</sup> Child Justice Act 2015 (Act No. 23 of 2015) of Antigua and Barbuda; Juvenile Justice Act 2012 (Act No. 24 of 2012) of Grenada; and Child Justice Act 2013 (Act No. 19 of 2013) of St Kitts and Nevis.

Barbuda, Grenada and St Kitts and Nevis which focuses on the use of diversion options for child offenders with the aim of restoring them to their family and community.

## **CONCLUSION**

This is an exciting time to be a Judge in the Caribbean. Much is happening that will improve the lives of those who come to us for justice, especially children. THANK YOU!