



“Beyond Bias: Access to Justice and Social Participation in the Caribbean”

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

Commission on the Status of Women 63 Side Event Focused on Social Protection and Access to Justice

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The Commission on the Status of Women (CSW), a functional commission of the **United Nations Economic and Social Council (ECOSOC)**, is a global policy-making body dedicated exclusively to promoting gender equality and the empowerment of women. The Commission was established by ECOSOC resolution 11 (II) of 21 June 1946 with a mandate to prepare recommendations on promoting women's rights in political, economic, civil, social and educational fields. The Commission is also responsible for monitoring, reviewing and appraising progress achieved and problems encountered in the implementation of the Beijing Declaration and Platform for Action of 1995 and of the outcomes of the twenty-third special session of the General Assembly of 2000, at all levels, and to support gender mainstreaming. The Commission also contributes to the follow-up to the 2030 Agenda for Sustainable Development so as to accelerate the realization of gender equality and the empowerment of women and girls.

Remarks

By

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

on the occasion of

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GREETINGS AND APPRECIATION

This has been a wonderful experience, and I am grateful to be here. I wish to express special thanks to the organisers of this event – the Government of Antigua and Barbuda, UN Women Multi-Country Office Caribbean, the CARICOM Secretariat and the Judicial Reform and Institutional Strengthening Project (JURIST) for their invitation to the Caribbean Association of Judicial Officers (CAJO), whom I am privileged to represent.

I bring greetings to you from the Caribbean Court of Justice (the CCJ), which sits in Port of Spain, Trinidad and Tobago, and from the President of the Court, the Honourable Mr Justice Adrian Saunders. The Court is unique. It is “two courts in one”. In its appellate jurisdiction, the CCJ, is the final appellate court of Barbados, Belize, Dominica and Guyana. The Court also sits in an original jurisdiction as an international court with compulsory and exclusive responsibility to interpret and apply the Revised Treaty of Chaguaramas, the Treaty which established the Caribbean Community. The CCJ, in its Mission Statement, has committed to providing accessible, fair and efficient justice for the people and states of the Caribbean Community. The CCJ was, therefore, a natural fit to execute the JURIST Project.

INTRODUCTION TO THE JURIST PROJECT

The 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 Judiciaries of CARICOM by the Caribbean Court of Justice, which was appointed by the Heads of Judiciaries as its Regional Executing Agency.

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 are not further traumatised 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 criminal justice 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 (chaired by me) 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:

UN Women-commissioned Baseline Study revealed:

- Poor investigations and evidence gathering by the police.
- Inordinate delays within the criminal justice system. We have observed over the past two years in working on this project that *delay is the enemy of justice*. In November 2018, the Judiciary of Trinidad and Tobago launched its *Gender Equality Protocol for Judicial Officers*¹. [I will speak more about the Protocol later] In the chapter that 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 vs “serious crimes” such as murder.
- Lack of data collection for proper monitoring of the courts’ performance.
- Insufficient interconnectedness between the courts and key agencies – “victims falling through the cracks.”
- Victims’ refusal to pursue cases for fear of re-victimisation within the justice system.

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. During 2016 and 2017, the project consulted with over 200 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 and as adults; non-governmental agencies who represent survivors; judicial officers, court administrators and court staff; defence counsel; prosecutors; police officers; and medical practitioners. 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. 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,

¹ *Justice through a Gender Lens* (November 2018)

JURIST hosted regional and national launches together with sensitisation workshops to familiarise judicial officers, lawyers, police officers, representatives of NGOs etc., across the Caribbean region, on the contents of the Guidelines.

Three Key Components of the Model Guidelines

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 to eradicate delay and reduce trauma;
- (2) The early identification of vulnerable witnesses; and
- (3) The use of special measures to ensure that the best evidence is given by 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 timelines are established to avoid delay. The case management judge is also responsible to ensure that adequate support and protection are provided for survivors of sexual offences.
- **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.
- **The use of special measures in ensuring that the best evidence is given by vulnerable witnesses.** 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 legislation² (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 from a distant courtroom or from outside of Antigua and Barbuda; removal of wigs and gowns when a 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 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.

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 within the justice system. In the Guidelines for the Police Forensic Interview in Sexual Assault Cases, special emphasis is placed on interviewing children, persons with disabilities and indigenous persons.

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

SURVIVOR'S RIGHTS CHARTER FOR SEXUAL ASSAULTS

Also included in the Model Guidelines is the Survivor's Rights Charter for the Survivors of Sexual Assaults, which sets out the basic rights and entitlements of a survivor of sexual assaults to adequate and appropriate services from all agencies responsible for addressing such crimes. These include the Police, Prosecutors, the Medical Sector, the Courts, Child Protection Agencies, Departments responsible for women/gender affairs and other referral agencies. These rights include:

- Respect
- Information about services and remedies
- Access to services
- Protection from contact with the defendant
- Information about court proceedings, bail proceedings and the outcome of the trial
- The importance of the Victim Impact Statement.

THE SEXUAL OFFENCES MODEL COURT

On the recommendation of the Consultant and with the approval of the Sexual Offences Advisory Committee, JURIST set about establishing the Sexual Offences Model Court. Some key features of the Model Court include:

- Ongoing Partnerships – JURIST working along with the Eastern Caribbean Supreme Court, the Government of Antigua and Barbuda, and UN Women.
- Located in the High Court in Antigua and Barbuda and was launched in January 2019.
- Comprises a set of specialised court procedures for the treatment of sexual offence cases.
- All sexual offences matters are to be fast-tracked. The Attorney General of Antigua and Barbuda has recommended an 18 months time limit from charge to the determination at trial.
- A dedicated courtroom and a presiding Judge are assigned to the hearing of sexual offence cases using these specialised procedures. Only trained judges and staff are to be assigned to the Model Court.

- The use of video conferencing technology allows vulnerable complainants and witnesses to give evidence from a testimony room.
- A designated waiting room at the High Court and court orientation for complainants and witnesses.
- The Provision of Survivor Support. Key collaboration between the High Court and the Directorate of Gender Affairs, and the Family and Social Services Division in Antigua and Barbuda for the provision of survivor support services to both adult and child complainants. This will allow complainants to make their reports, have their medical examinations conducted, get counselling and be assigned survivor advocates. All these services will be available at the Support and Referral Centre operated by the Directorate of Gender Affairs. In addition, the testimony room has been established in the Support and Referral Centre. This will ensure that vulnerable complainants will no longer need to be in the physical presence of the defendant when testifying.

In its first month of the operation of the Model Court, we have been told that it is working well, with the focus being maintained on the continuing care and support for complainants.

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 specialised courts to deal with sexual offences. The project also inspired the Judiciary of Guyana 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 courtroom (in the capital Georgetown) was converted into a purpose-built facility with screens and video conferencing facilities, which allow for vulnerable witnesses 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 specialised court was birthed. It has been reported that fourteen matters have been completed within the first five months of the court's operation. What a difference the Guyana Sexual Offences Court has made! And that is not the end for Guyana, as soon there is to be the launch of a Sexual Offences Court in Berbice.

GENDER EQUALITY PROTOCOLS FOR JUDICIAL OFFICERS

You will no doubt have observed the important role which the collaboration of key stakeholders has played in improving access to justice for survivors of gender-based violence. The launch of the Gender Equality Protocols for Judicial Officers in Belize and Trinidad and Tobago is another example of collaboration. Birthed at CAJO's Biennial Conference in Jamaica in 2015 and entitled "*JUSTICE THROUGH A GENDER LENS*", this project was accomplished through the partnership of the Judiciaries of Belize and Trinidad and Tobago, JURIST, UN Women and CAJO. In the case of Trinidad and Tobago, the Association of Women Judges in that jurisdiction also played a key role. The Gender Protocols seek to promote awareness of the ways in which gender intersects with other social statuses to affect the justice system and its users and to provide tools to help judicial officers achieve gender-sensitive adjudication.

CONCLUSION – CCJ AND IMPROVING ACCESS TO JUSTICE – ELECTRONIC FILING PLATFORM

As I close, I wish to emphasise the importance to the CCJ of looking for ways to improve access to justice and social participation throughout the Caribbean region. In this regard, the CCJ has invested time and resources in developing an electronic filing platform for our case processing. All our filing and service of case documents are now done electronically. This has considerably increased efficiencies and reduced costs to the litigants. It has also enhanced access to justice and given the court far greater flexibility in the preparation of hearings. In May of this year, for example, we accepted, at 5:30 PM on a Friday afternoon, an extremely urgent appeal for filing. The 500 plus pages comprising the appeal record were filed, served and the appeal heard and

determined by five judges within 48 hours.³ This would not have been possible without an efficient electronic filing system.

The Court has also taken other measures to improve transparency and keep our customers and stakeholders fully abreast with information about the court. These measures include the use of modern communication tools. The CCJ live streams all its hearings and makes the video permanently available on our website. The court has also been increasing its social media footprint and plans to utilise Twitter and Facebook more robustly in the future.

I have shared just a screenshot of all the exciting and meaningful work that is being done in the English-speaking Caribbean region to remove bias and improve access to justice for survivors of sexual assault.

THANK YOU – www.juristproject.org

³ See *Ventose v Chief Electoral Officer* [2018] CCJ 13 (AJ)