



Remarks at the Virtual Launch of the Revised Model Guidelines for Sexual Offence Cases in the Caribbean Region

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

Launch of the Revised Model Guidelines for Sexual Offence Cases in the Caribbean Region

Virtual
21 October 2022

The Judicial Reform and Institutional Strengthening (JURIST) Project is a multi-year (2014-2023) 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 (GAC) 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 JURIST Project commenced activities on April 1, 2014 after the signing of a Contribution Arrangement between the CCJ and GAC. An important component of the JURIST Project is the Sexual Offences Project. Under this component, Model Guidelines for Sexual Offence Cases in the Caribbean Region were developed, published and launched in September 2017, after meaningful and extensive consultations with various stakeholders. Consequent upon recommendations coming out of a Knowledge Exchange programme hosted by the JURIST Project in March 2022, and again after meaningful consultations, the Model Guidelines for Sexual Offence Cases in the Caribbean were revised and launched in October 2022.

Remarks

By

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

on the occasion of the

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Introduction

I wish to express sincere appreciation to the JURIST Project Team, and in particular, to Mrs Gloria Richards-Johnson, Executive Director, and to Ms Salima Bacchus-Hinds, Regional Project Coordinator and Gender Specialist, for this invitation to make some brief remarks at the Launch of the Revised Model Guidelines for Sexual Offence Cases in the Caribbean Region. I thank them publicly for the key roles they have played in bringing this important initiative to fruition.

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 interact with 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 in the Caribbean; and
- (2) The establishment of a Sexual Offences Model Court in a Caribbean jurisdiction 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. I was privileged to chair that Committee. The Committee comprised representatives from the Caribbean Court of Justice (CCJ), 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).

Baseline Study

As the Advisory Committee began its work, a baseline study was commissioned through UN Women in 2015. The study identified several major gaps and challenges in the justice chain for sexual offence cases. These gaps and challenges included:

- Poor investigations and evidence gathering by the police
- Inordinate delays within the criminal justice system We have observed over the 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. 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 by the justice system.

The Development of Model Guidelines for Sexual Offence Cases

In response, 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.

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

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 into 2018, JURIST hosted several regional and national launches, together with sensitisation workshops to familiarise judicial officers, lawyers, police officers, prosecutors, advocacy groups and the like, across the Caribbean region, on the contents of the Guidelines.

Three Key Components of the Model Guidelines

The Model Guidelines have incorporated several internationally accepted best practices. They offer a rights-based approach to the conduct of sexual assault cases. The Guidelines contained three (3) key components which were critical to the improvement of the justice system in the area of sexual offences:

- (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.

I am pleased that the Revised Guidelines have not only built on these three critical components, but have also expanded on several other important areas of adjudication, such as judge-alone trials and sentencing. I am sure that we will hear more about these from Ms Diana Shaw, Attorney at Law and Gender-Based Violence Consultant, who must be commended for her professionalism and the excellent work done to produce these Revised Guidelines.

The Launch of Sexual Offences Courts in the Caribbean

By the end of 2017, pleasant winds of change were blowing across the Caribbean. Inspired by the JURIST Project, the Judiciary of Guyana, in November 2017, established its first Sexual Offences Court at the High Court in Georgetown. I am proud to say that this was the first sexual offences court established in the Caribbean. In January 2019, the Sexual Offences Model Court was launched in St. John's, Antigua. Two more sexual offences courts have been established in Guyana. It is our hope that other jurisdictions in the Caribbean will recognise the value of these specialised courts and will follow suit.

Closing Comments

As I close, let me say that I am not one for including in my remarks the comments of other persons. As I prepared these remarks, however, I came across the following comments made by two eminent Judges, and I could not resist.

We Are All Involved

As long ago as 1998, Justice Desiree Bernard (now retired), the esteemed former Chancellor and Chief Justice of Guyana, and the first woman Judge of the CCJ, closed her remarks on the International Day Against Violence Against Women by pointing out:

The time to act has come. We are all involved. We shall all be consumed. We may have in place all of the laws to protect women, men and children from violence whether physical or sexual, but unless we are sensitised to the need for action the laws will be meaningless. We can no longer stand silently by and remain uninvolved. We need to break the silence and exhibit zero tolerance for acts of violence... We must aim to promote in our society a culture of non-violence and respect for human rights.²

May I say that Justice Bernard's comments are as relevant today as they were in 1998.

² Reflections and Opinions, Desiree Patricia Bernard, 2018, Hansib

The Proactive Criminal Trial Judge

In addition, I wish to repeat the words of my brother, Justice Jacob Wit, Judge of the CCJ. He made brief remarks at the Launch of the Sexual Offences Model Court in St John's, Antigua, on 21 January 2019. Speaking on behalf of the President of the Court, Justice Wit concluded his remarks by making this appeal:

The main issue here is, however, not the new case management techniques or the new rules that will govern that new case management; the main challenge is, with all due respect, how to achieve a fundamental change in judicial attitude and that of the lawyers, required properly to guide the new approach. It requires, in fact, a new and fresh look at the role of the criminal trial judge, a role that must be more pro-active, if not – and I know I am in hot waters now – inquisitorial (in the sense of judge-driven). This has nothing to do with judges descending into the arena (an often and superficially used expression). It goes directly to the core of the trial judge's task and constitutional duty: to ensure that trials will be fair, efficient and within a reasonable time.³

I say yes to my Sister and Brother. The time to act is now, and we who are involved in the administration of justice are ideally positioned to make a difference.

Thanks so much for your kind attention.

³ CCJ website, Speeches and Papers.