



JURIST
PROJECT

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Revised Model Guidelines for Sexual Offence Cases in the Caribbean Region

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ChildLink (*Guyana*)

Help & Shelter (*Guyana*)

Productive Organization for Women in Action (*Belize*)

The Department of Human Services and the Women's Department (*Belize*)

RET International (*Belize*)

UNICEF

UNFPA

Women Against Rape (*Antigua and Barbuda*)

ACRONYMS

CARICOM	Caribbean Community
CCJ	Caribbean Court of Justice
CDA	Child Development Agency
CRC	Convention on the Rights of the Child
CRD	Community Rehabilitation Department
CBO	Community Based Organization
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CISOCA	Center for the Investigation of Sexual Offences Against Children and Adults
GBV	Gender-based Violence
JURIST	Judicial Reform and Institutional Strengthening
RBPF	Royal Barbados Police Force
NGO	Non-Government Organization
OCR	Office of the Children's Registrar
OECS	Organization of Eastern Caribbean States
UNICEF	United Nations Children Fund
WDO	Woman Development Officer

FOREWORD

In recent years, there has been a tremendous push for legislative and judicial reforms to discourage and otherwise address sexual and gender-based violence in the Caribbean. Unfortunately, sexual violence remains pervasive throughout the region. Recent data from several Caribbean countries reveal that dealing with such violence continues to be a pressing issue for judiciaries and other actors in the justice system. According to UN Women (Caribbean) the following data have been observed¹:

- In **Jamaica**, 23% of women respondents report experiencing sexual violence in their lifetime at the hands of a non-partner and 8% report experiencing sexual violence perpetrated by their partner.
- In **Guyana**, 16% of women respondents report experiencing sexual violence in their lifetime at the hands of a non-partner and 14% report experiencing sexual violence perpetrated by their partner.
- In **Trinidad & Tobago**, 19% of women respondents report experiencing sexual violence in their lifetime at the hands of a non-partner and 11% report experiencing sexual violence perpetrated by their partner.

These Guidelines are a remarkable achievement of the region. They are the first of their kind that seek to take a comprehensive, collaborative and systemic approach towards addressing the investigation, prosecution and adjudication of sexual assault cases. However, the development of these Guidelines cannot be seen as the final goal. Success lies with their implementation. These Guidelines should therefore not only be on the desk of every justice sector stakeholder whose duty requires her/him to treat with sexual offence matters, but should be frequently used as a reference in guiding and improving justice delivery in these cases. It also provides a benchmark to which every judiciary should aim to achieve.

Sexual violence is not only experienced by women and girls, but also by men and boys. However, in societies marked by gender inequality, women and girls overwhelmingly face the brunt of it in their everyday lives. There is also increased risk and vulnerability when gender intersects with factors such as sexual identity, ethnicity, age and economic status.

The judiciary has an integral role to play in sending the message that sexual violence will not be tolerated and that every person deserves to live a life free from invidious discrimination and mental and physical assaults. Public confidence in the judicial system is earned in large measure by a judiciary's response to these demands of justice. As befitting its vision "**To be a model of Judicial Excellence**", the Caribbean Court of Justice (CCJ) has a responsibility to inspire and lead by example in efforts to promote access to justice for survivors of sexual violence.

These Revised Model Guidelines serve to strengthen the capacity of the courts to handle sexual offences cases fairly and in a timely manner, in keeping with emerging best practices and the policy and legislative reforms that have occurred in recent times. They provide guidance to criminal justice sector stakeholders (in particular, judicial officers, attorneys, prosecutors, police and health and social care providers) during the life cycle of a case. The Guidelines set the minimum acceptable standards for the provision of quality service and support to the survivors of sexual assault, and they aim to

¹ Caribbean Women Count: Ending Violence against Women and Girls Data Hub. Retrieved from <https://caribbeanwomenscount.unwomen.org/>

secure justice to all involved. They are the first of their kind to take a comprehensive, collaborative and systemic approach towards addressing the investigation, prosecution and adjudication of sexual assault cases.

The CCJ is heartened by efforts in the region to realise and continually to enhance gender justice. The progress over the last twenty or so years is evident. Judicial Gender Protocols have been adopted by several judiciaries. Since the launch of the Model Guidelines for Sexual Offences in 2017, Antigua and Barbuda (in partnership with the JURIST Project), and Guyana, have made substantial efforts to implement the Guidelines thereby responding to the needs of survivors and ensuring judicial fairness to both complainants and defendants. In this regard, specialised courtrooms with appropriate procedures and training initiatives for judicial officers have been instituted in these countries.

We acknowledge this progress while recognizing that there is much room for improvement. Some of these limitations lie in substantive statute law, but it is also true that some lie with the courts. For example, there is a need to ensure that survivors are not unwittingly re-traumatized or disadvantaged by unfortunate court rules, processes or traditions. Judicial insensitivity, poor or inadequate dissemination of relevant information, lack of suitable accommodation for vulnerable witnesses, unconscionable delays in the adjudicatory process are all shortcomings that erode trust and encourage the perception that access to justice is unattainable for some.

Continuous judicial education is therefore critical, and these Guidelines serve as an important tool for judiciaries to play a vital role in effecting the cultural shift that is needed.

Development of the Guidelines would not have been possible without the generous funding from the Government of Canada to whom we are deeply indebted. The CCJ and the judiciaries of CARICOM have had a long and productive partnership with Canada in the area of judicial and legal reform. The Guidelines are a great example of the Government of Canada's Feminist International Assistance Policy (FIAP) in action. One of FIAP's goals is to strengthen legal systems and promote reforms that eliminate all forms of discrimination that prevent women and girls from realizing their economic, political and social rights. We also extend appreciation for the generous input and feedback from members of the region's judiciaries, civil society, and NGOs that represent the interests of survivors.

It is with great honour that we present the ***Revised Model Guidelines for Sexual Offence Cases in the Caribbean Region (2022)***.

The Honourable Mr. Justice Adrian Saunders

President, Caribbean Court of Justice

7th October, 2022.

BACKGROUND

The Judicial Reform and Institutional Strengthening (JURIST) Project is a multi-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 (GAC) (formerly known as the Department of Foreign Affairs Trade and Development (DFATD)) 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 (REA).

The Project seeks to improve court administration and the administration of justice in the Caribbean region by strengthening the ability of the courts and the judiciary to resolve cases efficiently and fairly. Special attention will be paid to improving the capacity and skills of the judges, court administrators and court personnel to deliver services that address the different needs of their customers. 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."

A key initiative under the Project is the development of model guidelines for treating sexual offences cases and complainants of sexual assaults (including cases involving children), that is aimed at improving the capacity of courts to deliver gender responsive and customer focused court services.

In May 2015, the Project established an advisory committee consisting of representatives from the CCJ, judiciaries of Trinidad and Tobago, Jamaica and Barbados, UN Women, UNICEF, CARICOM Secretariat and UWI (Jamaica) to monitor the implementation of the initiative. A baseline study was commissioned through UN Women on the legislation, protocols and court systems for sexual offence cases conducted in five CARICOM countries. The following major gaps in the justice chain for sexual offences were identified:

- Poor investigative and evidence gathering procedures by the police;
- Inordinate delays in the completion of cases;
- Undervaluing of sexual offence cases in relation to the public interest so that limited resources are instead reserved for other "serious crimes" such as murder;
- Lack of data collection to form the basis of monitoring and accountability of the courts' performance and quality in responding to sexual offence cases;
- Insufficient interconnectedness between the courts and the other key agencies required to facilitate proper investigation of the crimes and provide care of the victims throughout the process; and
- The survivors' refusal to pursue cases for fear of re-victimisation by the very process of seeking justice.

In 2017, the JURIST Project in collaboration with the CCJ and judiciaries across the Caribbean region, launched *The Model Guidelines for Sexual Offence Cases in the Caribbean Region*.

The Model Guidelines serve to:

- Provide internationally accepted best practices for the management of sexual offence cases; and
- Offer a rights-based approach to the treatment of complainants and vulnerable witnesses, including children, involved in sexual assault cases.

The Model Guidelines aim to:

- Increase public confidence in the justice system as it relates to the handling of sexual assault cases.
- Improve responses to survivors that will enable their full participation in the justice system, increase offender accountability and reduce secondary victimisation.
- Ensure a trained and skilled cadre of cross-sectional professionals including judges, court personnel, police, and attorneys to efficiently respond to sexual assault cases, survivors and witnesses; and
- Ensure speedy adjudication of cases and reduction of case backlogs over time.

In 2019, the Project supported the establishment of a Sexual Offences Model Court (SOMC) at the High Court of Antigua and Barbuda, to implement and test the Model Guidelines. The Model Guidelines have also been adopted by the Guyana judiciary which has also established three sexual offences courts to date.

In the subsequent five years since the launch of the Model Guidelines, the Project has also worked closely with the Antigua and Barbuda High Court, and the Eastern Caribbean Supreme Court (ECSC) to ensure the successful implementation of the Guidelines. This includes leadership and capacity building, and a recently held Knowledge Exchange between the sexual offences courts in the Caribbean jurisdiction. The event was held in March 2022 in a collaborative knowledge co-generation session with approximately 76 multi-sector stakeholders from the Sexual Offences Model Court in Antigua and Barbuda and the sexual offences courts in Guyana, as well as from relevant regional and international organisations.

The Knowledge Exchange resulted in the development of a number of knowledge products that shall serve as accompanying documents to the Guidelines. Furthermore, a recommendation arising from the Knowledge Exchange was the review and amendments of the Model Guidelines, considering the experiences over the last five years of its implementation within the Caribbean.

METHODOLOGY

1. Completion of a desk review of all national laws on sexual offences and national protocols on issues connected to investigation and prosecution of sexual assaults as well as the care provided to complainants. Particular attention was given to Practice Directions impacting court proceedings, to collect data on how challenges like COVID-19 impacted proceedings and also created opportunities for improved access to legal proceedings. However, the primary focus of the desk review was to collect and review legislative reforms impacting sexual offences in the Caribbean since 2017 when the original Model Guidelines were launched. In particular, the desk review also focused on the monitoring and evaluation reports of the specialized Sexual Offence Model Court using the Model Guidelines as its policies and procedure protocol. Further, the results of the knowledge exchange between the two jurisdictions with specialized Sexual Offences Courts implementing the guidelines have been reviewed to identify the areas of the Model Guidelines that have been identified as in need of reform. The wide ambit of the desk review process provided extensive data for the revision process.
2. The desk review process was supplemented by one-on-one interviews and group consultations with key experts across the region including representatives of the judiciary, law enforcement, child protection agencies, women and gender affairs departments, health departments, court administrations and other stakeholders in the justice chain. These regional national consultations were designed to:
 - a. Collect information on new and/or pending legislation and to validate the findings of the desk review.
 - b. Collect information from stakeholders using the Model Guidelines on areas in need of reform.
 - c. Collect information on examples of best practices for investigations, adjudications and care interventions in sexual assault cases.
 - d. Collect information on where the Model Guidelines could be revised to improve its user-friendliness.
3. Additional group consultations were done with NGOs and civil society organizations working with complainants in sexual assault cases; indigenous persons; persons with disabilities and vulnerable groups in three selected CARICOM Member States. These national consultations were designed to capture the experiences and concerns of complainants and vulnerable groups using the institutional mechanisms to compare the actual working of the mechanisms against the protocols and practices in place and, where the Model Guidelines needed to be further revised to increase accessibility for them.
4. Further consultation with the editorial team on the draft Guidelines which were developed to streamline them before finalization.

The information gathered from the desk review and the consultations formed the background for these Revised Model Guidelines.

EXECUTIVE SUMMARY:

SNAPSHOT OF THE GUIDELINES

The Model Guidelines for Sexual Offence Cases in the Caribbean Region in a Snapshot <i>(CCJ, JURIST, 2022)</i>	
Purpose	<ul style="list-style-type: none"> • Provide internationally accepted best practices for the management of sexual offence cases; and • Offer a rights-based approach to the treatment of complainants and vulnerable witnesses, including children, involved in sexual assault cases.
Desired Outcomes	<ul style="list-style-type: none"> • Increased public confidence in the justice system as it relates to the handling of sexual assault cases. • Improved responses to survivors that will enable their full participation in the justice system, increase offender accountability and reduce secondary victimization. • Ensuring a trained and skilled cadre of cross-sectional professionals to respond to sexual assault cases, survivors and witnesses. • Speedy adjudication and reduction of case backlogs over time.
Guiding Principles	<ul style="list-style-type: none"> • The rights of all complainants and defendants will be protected and all service delivery will respect their rights and dignity. • 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 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. • Service delivery will recognize that due to the traumatic and disruptive nature of sexual assaults, support services will be needed for complainants, and this may require multi-disciplinary collaboration with other agencies. • Confidentiality and privacy of complainants will be respected and protected.

Contents	<p>Guidelines for the pre-trial court process, including:</p> <ul style="list-style-type: none"> • summary jurisdiction offences; • first hearing/remand hearing/venue hearing; • bail; • disclosure; • case management in the magistrates’ court; • survivor care and protection; • indictable offences; • preliminary inquiries; • sufficiency hearings; • arraignment; and • case management in the high court. <p>Guidelines for the trial process, including:</p> <ul style="list-style-type: none"> • examination in chief; • cross-examination; • appearance of expert witnesses; • ongoing care & protection of vulnerable witnesses during the trial; • support & care of complainants post-trial; • summing up and directing the jury; • sentencing; • victim impact statement; • other orders that may be made at sentencing; • sexual offenders register; and • data collection & management. <p>Guidelines for establishing specialised sexual offences courts</p> <ul style="list-style-type: none"> • Steps to establishing a court. • More details on the steps.
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Subject Matters Covered	<ul style="list-style-type: none">• Case management for sexual offences at both the pre-trial and trial stage (e.g., special measures such as screens, live link, anatomically correct dolls, directions for jury).• On-going care and support for vulnerable witnesses and complainants during and post-trial (e.g., witness protection measures, supporters, interpreters, prohibition orders to the media, therapeutic services).• Collection and management of court data on sexual assault cases (monitoring & evaluation should include, e.g., developing indicators, data collection, review, analysis & reporting; a list of suggested indicators).• Guidance on sentencing (e.g., steps to determine the appropriate sentence; facts & circumstances, mitigating & aggravating factors to consider).• Protocols for justice sector actors that support the court in the evidence gathering process, i.e., police, medical practitioners and prosecutors (e.g., victim impact statement, expert witnesses).
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PART 1:
Preliminary Matters



1.0 TERMINOLOGY AND DEFINITIONS

Age of Consent: Typically set at 16 years in the sexual offence laws of the Caribbean; however, in St. Vincent the age of consent is set at 15 years old.

Age of Criminal Responsibility: The age at which a person can be prosecuted for a criminal offence in a particular jurisdiction.

Child: Person under the age of 18 years.

Child Offender: Person under the age of 18 years who is in conflict with the law.

Coercion: Coercion is when an individual uses pressure, threats, or intimidation to force another to act a certain way.

Complainant: A person who has made a report to the police and/or on whose behalf the report has been made or criminal prosecution has been initiated against a defendant.

Consent: Consent is the freely given (which can be freely withdrawn) voluntary agreement of the complainant who is at the legal age of consent to engage in the sexual activity in question. Exceptions to voluntariness where the complainant is at the legal age of consent can include: (a) the agreement is expressed by the words or conduct of a person other than the complainant; (b) the complainant is deemed incapable of consenting to the activity; (c) the accused induces the complainant to engage in the activity by abusing a position of trust, power or authority. Furthermore, consent can be vitiated where: (d) the complainant expresses, by words or conduct, a lack of agreement to engage in the activity; or (e) the complainant, having consented to engage in sexual activity, expresses, by words or conduct, a lack of agreement to continue to engage in the activity.

Defendant: A person accused of committing a criminal offence and against whom criminal prosecution has been brought.

Domestic Violence: Domestic violence takes place between intimate partners as well as between family members (for example, mothers-in-law and daughters-in-law). Domestic violence may include sexual, verbal, financial, physical, and psychological abuse. In any reference to domestic violence, it is important to be clear whether the violence is perpetrated by an intimate partner or another family member.

Gender: As defined in the draft Gender Equality Protocol for Judicial Officers in the Caribbean prepared by the Caribbean Association of Judicial Officers (CAJO), UN Women and the JURIST Project, 'gender' refers to the roles, behavior, activities and attributes that a given society at a given time considers appropriate for men and women. It also denotes the social attributes and opportunities associated with being male and female, as well as the relationships between and among men and women. These attributes and relationships are socially constructed and are learned through socialization. They are context-specific and time-specific, and changeable. It is also noted that gender goes beyond the binary of 'man' and 'woman' and also encompasses gender-expansive or gender non-conforming persons who do not identify as man or woman.

Gender-based Violence: Gender-based violence is an umbrella term for any harm that is perpetrated against a person's will, and that results from power inequities that are based on gender roles. Around the world, women and girls are statistically more likely to face various forms of gender-based violence (GBV). For this reason, the term "gender-based violence" is often used interchangeably with the term "violence against women." One reason the term "gender-based violence" is often considered preferable to other terms that describe violence against women is that it highlights the relationship between women's often subordinate status in society and their increased vulnerability to violence. However, it is important to remember that men and boys may also be survivors of sexual and gender-based violence. The abuse may be physical, sexual, psychological, economic, or cultural. Categories of perpetrators may include family members, community members, and/or those acting on behalf of cultural, religious, or state institutions.

Grooming: Occurs when a predator builds a relationship of trust with a child or persons having control of a child in order to establish an emotional connection which will allow them to manipulate, exploit and abuse the child and may include any communication, physical touch, gifts or other manipulation tactic used by a predator.

High Court: A court exercising jurisdiction at the superior level for trials having original jurisdiction over the most serious criminal matters and serving as the appellate court for the Magistrate, District and Parish Courts. The High Court is also referred to as the Supreme Court in some jurisdictions.

Intimate Partner: Includes current or former spouses (legal and common law), non-marital partners (boyfriend, girlfriend, same-sex partner, dating partner). Intimate partners may or may not be cohabitating and the relationship need not involve sexual activities.

Magistrate: A judicial officer exercising jurisdiction at the Summary Jurisdiction level either in criminal or civil proceedings and includes a Parish Court Judge, District Judge or Magistrate.

Perpetrator: Person, group, or institution that directly inflicts or otherwise supports or enables violence or other abuse inflicted on another against her/his will.

Re-victimization: This can also be called 're-traumatization', or 'secondary victimisation', and occurs where a complainant in a sexual offence endures additional trauma by reliving an event by the process of reporting it.

Sexual Assault: Sexual assault is non-consensual touching of a sexual nature that violates the bodily autonomy of the complainant.

Sexual Abuse: Includes sexual contact of any kind that is coerced by force or threat, and the commission of or an attempt to commit any sexual offence.

Sexual Offences: Sexual offences against the person encompass conduct ranging from unwanted sexual touching to sexual violence which results in serious physical injury, and can include sexual interference, invitation to sexual touching, sexual exploitation, incest, offences in relation to child prostitution, sexual assault, sexual assault with a weapon, and aggravated sexual assault.

Special Measures: Menu of options available to the court as set out in law to facilitate the provision of evidence to the court from a vulnerable witness.

Survivor: A person who has experienced gender-based violence or other such abuse. The reason for using this term is that in preference to the word 'victim', the word 'survivor' implies that such persons can take back control of their own lives and be resilient in the face of the trauma and immense obstacles that they may have experienced.

Trafficking in Persons: A crime arising from the recruitment, transportation, transfer, harboring or receipt of persons by means of threats, force, coercion, abduction, deception, abuse of power, abuse of position of vulnerability, giving or receipt of payments by a person having control over another for the purpose of exploitation. Where the exploitation is for a sexual purpose, the crime is prosecuted as a sex offence and may be referred to as sex trafficking.

Vulnerable Witnesses: Vulnerable witnesses include witnesses whose quality of evidence given in criminal proceedings is likely to be diminished by reason of an impairment they possess connected to their age, a physical or intellectual disability, or to an adverse or traumatic experience that they have suffered, which may include the offence they report.

1.1 CONTEXT AND SCOPE OF GUIDELINES

These Revised Model Guidelines are intended to provide improved guidance to Magistrates' Courts, High Courts and Supreme Courts in adjudicating sexual offence cases. The overall aim is to ensure that re-victimization to survivors is minimized as they receive support services to facilitate them being able to give the best quality evidence to the court while ensuring adequate safeguards for the rights of defendants. Further, the Revised Model Guidelines are intended to equip courts to increase access to vulnerable groups while navigating a changing service landscape post COVID-19. This will require them to harness the opportunities for innovation presented in the best practices presented herein as well as the guidance on improving efficiency in court administration to clear backlogs and reflect the evolution of case law.

In the Caribbean, the context of sexual violence is usually attended by trauma to the survivor as well as complicated family and community dynamics. The awareness of these must inform the court and be reflected in the procedures and systems of the court if the overall aim stated above is to be achieved. In particular, court procedures and systems must reflect an awareness of the following:

1. That survivors of sexual violence have experienced serious violations of their fundamental human rights.
2. That the act of sexual violence alleged to have been carried out on the survivor, who is now a complainant in court proceedings, is likely to affect their sense of dignity and personhood and may engender feelings of shame which will make them reluctant to share with authorities the details about what has happened without support and assistance.
3. That the act of sexual violence alleged to have been carried out is likely to have affected the survivor's sense of safety especially if the alleged perpetrator is someone known to the survivor and that feelings of unsafety may make survivors reluctant to participate in court proceedings if protection mechanisms are not in place.

4. That the survivors of sexual violence may have lost family support networks and connections available to other survivors of crime in court proceedings if the alleged perpetrator was a family member or a person known to the survivor and thus it may be necessary to provide alternative support and rehabilitative services to survivors to support their rehabilitation and recovery where those survivors have been deemed to be vulnerable witnesses.
5. That in having to share intimate details of the sexual violence incident in court, the survivor may relive the trauma associated with the event and the court's procedures should be used to reduce the likelihood of such re-victimization.
6. That judicial proceedings are an essential aspect of initiating recovery and rehabilitation for survivors by giving them the opportunity to speak about what has happened to them and to receive redress and acknowledgement of the wrong they have endured, and thus all efforts should be made to encourage and facilitate their participation in court proceedings.
7. That judicial proceedings are an essential part of restoring a sense of safety in communities where sexual offending has occurred and of encouraging persons who have experienced sexual violence to come forward and report incidents of sexual offences when they perceive that they will receive help and be supported.
8. That technological innovations while presenting challenges for adjudicating evidence can be used to increase access and improve efficiency and are an unescapable component of the adjudication process in the future and must be embraced with appropriate safeguards.
9. The primary scope of the Guidelines will be criminal proceedings where an offence under the sexual offences legislation of the jurisdiction is being adjudicated or where the court is conducting a pre-trial inquiry for the adjudication of the offence in another court.
10. In addition, the courts are also tasked to address sexual offences connected to other offences and the Guidelines will be helpful in providing a basic set of considerations for effective adjudication of those matters in ways that protect the rights of survivors and the rights of defendants.
11. The primary users of these Guidelines will be judicial officers, magistrates, prosecutors and court staff involved in the prosecution and adjudication of sexual offences.
12. The courts that will be impacted by these Guidelines include the Magistrates' Courts; the Family/Juvenile Courts, Specialised Sexual Offences Courts; the High Courts; the Supreme Courts; and appellate courts of the Caribbean.

1.2 STATEMENT OF PURPOSE AND GUIDING PRINCIPLES

The main purpose of these Revised Model Guidelines is to provide a set of directions for policies and procedures for the courts in the Caribbean in the adjudication of sexual offence cases. However, the Guidelines also recognize proper adjudication of sexual offences requires the input and services of other agencies such as the police, prosecutorial and medical sectors. These agencies may have existing policies and procedures for their operations, and it is hoped that these Guidelines will strengthen existing practices by demonstrating what will need to be done to properly prepare sexual offence cases for court while protecting the rights of the complainant and aiding their recovery without infringing the rights of the defendant. Specific examples of directives for the police and medical services that will be needed to prepare sexual offence cases for the court are outlined in the knowledge products provided as supplementary documents to these Revised Model Guidelines and can be adopted for implementation in those agencies that may lack specific protocols. In addition, the Revised Model Guidelines are supported by additional knowledge products providing guidelines on how the Model Guidelines can be used to support the establishment of specialized sexual offences courts as well as to support training needs of court staff and judicial officers. Further, the Revised Model Guidelines and the knowledge products for survivors provide an advocacy tool for civil society organizations working with survivors as well as specific guidance for courts on how to better collaborate with civil society organizations working with survivors to minimize re-victimization in the court process and expand the continuum of care for survivors.

The Guidelines take a “rights-based” perspective and is underpinned by the general provisions of the sexual offence laws throughout the Caribbean as well as the international instruments that have influenced the content of policies and protocols protecting the rights of women and children. The most important of these international instruments are the CEDAW Convention, the Convention De Belem Do Para, the CRC, the Convention on Transnational Organized Crime and the Palermo Protocol. Overviews of these conventions are provided in these Revised Model Guidelines.

It is hoped that this comprehensive approach will streamline services, standardize practice, and prioritize the rights and needs of complainants and defendants in achieving best evidence for adjudication while improving access to justice.

GUIDING PRINCIPLES

The following guiding principles will be the foundation of all court proceedings and services provided by the court:

1. The rights of all complainants and defendants will be protected and all service delivery will respect their rights and dignity.
2. All court services will be provided in a non-judgmental way that facilitates the empowerment of complainants.
3. Specialized training is an essential part of ensuring the best evidence is collected from complainants.
4. Service delivery must not re-victimize the complainant or traumatize witnesses.
5. Vulnerable complainants or witnesses will receive specialized support services.

6. Service delivery will recognize that due to the traumatic and disruptive nature of sexual assaults, support services will be needed for complainants, and this may require multi-disciplinary collaboration with other agencies.
7. Confidentiality and privacy of complainants will be respected and protected.
8. Monitoring and evaluation of court proceedings is necessary for improved efficiency of proceedings and improved access to justice.

1.3 OVERVIEW OF THE INTERNATIONAL LEGAL FRAMEWORK

The reported cases of sexual offences in the Caribbean show that most survivors are women and children. However, an increasing number of boys and men are complainants in sexual offense cases due to law reforms removing gender specifications for sexual offence victims and perpetrators in some jurisdictions and increased public education on the nature of sexual abuse, which can affect anyone regardless of gender identity. Thus, courts must be prepared to meet the differentiated needs of women and men, boys and girls, and gender non-conforming persons appearing as complainants, and accused persons in sexual offence cases, while being aware of the role of sexual offences as a manifestation of gender-based violence in the Caribbean region. Sexual offences against women and children are part of the increasing documented general dynamic of gender-based violence against women in the Caribbean despite the region's commitments under numerous international conventions. Nonetheless, these international conventions form the basis of the international legal framework establishing rights and needs of survivors as well as the foundation for all recent legislative and policy reforms in this area in the Caribbean. The primary conventions influencing these Revised Model Guidelines are²:

1. The Convention on the Elimination of All Forms of Violence and Discrimination Against Women (CEDAW)

- Although the original CEDAW document does not explicitly address gender-based violence against women, subsequent actions by the Committee have established that addressing this issue is indeed central to achieving the goals of the Convention. The most significant of these is General Recommendation 19, adopted by the Committee in 1992. This recommendation established that the definition of discrimination against women included in Article 1 of the Convention includes gender-based violence, that is...

“...violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”.
- General Recommendation 19 (1992) also provides that:
 1. “State parties should establish or support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling”.

² All conventions and supporting documents can be accessed by clicking the link embedded in the headings for each convention listed.

2. "State [parties should] ...take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, including, inter alia... Protective measures, including; refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence".

2. Convention on the Rights of the Child and its Optional Protocol

- The Convention sets out the rights of children that are to be protected by States or countries. The Convention's Article 19 (1) requires states to:

"...take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".
- The Optional Protocol to the CRC in 2000 called on States to take steps to identify and prevent the trafficking of children and to prevent commercial sexual exploitation of children.

3. Convention on Transnational Organized Crime and the Palermo Protocol

- The Convention establishes certain offences as international crimes without borders:
 - o Trafficking of persons
 - o Trafficking of weapons
- As crimes without borders, the Convention sets up a mechanism for joint state cooperation to identify perpetrators of these crimes and for shared legal jurisdiction over the prosecution of these crimes. In addition, the Convention sets up a shared international mechanism for identification, rescue, rehabilitation and repatriation of survivors.
- The Palermo Protocol passed under the Convention defines the trafficking in persons and sets up requirements for State governments to prevent, provide assistance to victims and prosecute perpetrators.
- The Protocol defines trafficking of persons as:

"... the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation."

4. Convention of Belem Do Para

- The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women was passed by the General Assembly of the Organization of American States in 1994. It is better known as the Convention of Belem Do Para.
- The Convention asserts that violence against women violates fundamental human rights and freedoms, based on the historically unequal power relations between women and men. It defines violence against women as:

"any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or private sphere, including... .. physical, sexual and psychological violence:

- a. 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;
- b. that occurs in the community and is perpetrated by any person, including, among others, rape, sexual abuse, torture, trafficking in persons, forced prostitution, kidnapping and sexual harassment in the workplace, as well as in educational institutions, health facilities or any other place; and
- c. that is perpetrated or condoned by the state or its agents regardless of where it occurs."



PART 2:

Guidelines for the Pre-Trial Court Process

2.0 INTRODUCTION

Generally, the court has an investigative role in the pre-trial process to investigate whether charges are properly brought, whether bail should be granted, and whether the rights of the accused are being protected. These Revised Model Guidelines will provide directives for those processes and as well as guidelines for the court to ensure that adequate safeguards are in place for the protection and care of the survivor and vulnerable witnesses in sexual offence cases. Virtually all criminal proceedings begin in the Magistrates' Court, and many are tried there. These Revised Model Guidelines will provide pre-trial directives for summary jurisdiction offences that will be tried in the Magistrates' Court and also pre-trial directives for indictable offences that will be tried in the High Court or Supreme Court. The Revised Model Guidelines establish a framework for effective adjudication of sexual offences through strengthened court practice and improved coordination within the justice chain.

The Justice Chain



Improving the efficiency and strengthening its responsiveness to the needs of both survivors of sexual violence as well as the needs of defendants requires strengthening all stakeholders in the justice chain as well as their coordination with each other as set out below. These Revised Model Guidelines are supported by Knowledge Products linked to these Revised Model Guidelines establishing best practice guidelines for police and medical services. However, the role of prosecutors, attorneys, judicial officers and court administrators are the focus of these Revised Model Guidelines and are interwoven throughout its provisions.

The Key Stakeholders in the Justice Chain



2.1 SUMMARY JURISDICTION OFFENCES

1. Many sexual offences are triable in the Magistrates' Court including grooming, indecent assaults, sexual activity (not amounting to intercourse) with a child, inciting a child to sexual activity, stalking, sexual activity in the presence of children, procurement offences, sexual assaults and in some jurisdictions, grievous sexual assaults.
2. Summary jurisdiction offences are intended to be abbreviated proceedings that will lead to expeditious disposal of matters but there may still be some pre-trial matters to be dealt with as set out below.
3. Though summary offences may be more expeditiously dealt with, the court should still be mindful that the impact of these offences can have long term physical, emotional and financial implications for survivors and should be mindful of the needs of survivors even when matters are being summarily resolved.
4. Magistrates also have an oversight role that requires them to manage proceedings to minimize delays by reducing adjournments and setting effective timelines for the production of documents while giving directions at the earliest stages of the proceedings for survivor care and production. Specific guidelines are set out below to support effective management of Magistrate Court proceedings in sexual offence cases.
5. Usually, the court will seek to give directions and resolve many matters at the first hearing so that disclosure can proceed thereafter and then a date set for trial.

2.2 FIRST HEARING/REMAND HEARING/VENUE HEARING

1. Where the defendant has been charged with rape or other indictable sexual offences, they will usually be brought before the Magistrates' Court the next day or within 48 hours for a remand hearing.
2. The Magistrates' Court should inquire when the defendant was charged to determine if the timelines required for bringing persons before the court are being adhered to³ and may ask such questions as may be appropriate to determine the general condition of the defendant.
3. The Magistrate should also enquire whether the defendant has legal representation and strongly encourage the defendant to secure such legal representation at the earliest stages to prevent any delays later on.
4. Where the defendant remains undefended, the Magistrate may ask any Attorney-at-law present in the court to agree to conduct the cross examination of the defendant to prevent any undefended defendant cross examining a vulnerable witness.
5. Where there is no specific legislative guidance on the timelines for Magistrate's Courts, the Magistrate can give specific directions and take any step necessary to effectively manage the cases before the court.

³ Criminal Procedures Rules 2016 of Trinidad and Tobago R. 5.2 (4) requires proceedings in the Magistrate Court to be brought within 6 months of the alleged offence and other timelines for other actions in the proceedings as well as empowers to give specific directions to manage any aspect of the case including times within certain things must be done. Retrieved from https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/12.02.pdf

Best Practice Model
Case Management in Sexual Offence Cases
– St. Vincent and the Grenadines

In St. Vincent and the Grenadines, the parties must fill out a case management form which requires the parties to indicate what applications will be made and to give appropriate details of directions being sought including timelines. In sexual offence cases, the court will appoint legal representation for an unrepresented defendant for the portion of the trial where they will cross examine the complainant to prevent the defendant questioning the complainant himself. Such directions are given at the case management hearing. Case management can also include a “Goodyear indication” where if the person is considering pleading guilty they may in appropriate circumstances receive an indication of what their sentence will be.

6. The complainant is not usually present at the first hearing of the matter and may at that time be attending a medical exam or visiting the scene with the investigating officer or participating in interviews.
7. Where the nature of the offence is one for which diversion may be considered under any existing legislation for offences committed by children or under relevant court practice, the court may inquire whether diversion has been considered by the D.P.P. or police before proceeding further to plea.
8. The court may still consider whether it would be appropriate to divert the proceedings from the court even if diversion has previously been considered especially juveniles offenders charged with minor offences.
9. Where the court will divert the matter, the court may adjourn the matter and make such orders for the attendance of the complainant and other witnesses as shall be deemed appropriate.
10. Usually at the first hearing or shortly thereafter, the court holds a venue hearing to determine whether the matter will be tried in the Magistrates' Court or in the High Court/Supreme Court. Venue hearings are only conducted in cases of hybrid offences.
11. This first hearing is also a remand hearing to determine whether bail will be granted or whether the defendant will be remanded until the matter is brought up for trial, or in respect of indicatable matters brought up for preliminary inquiry.
12. The court may ask about the safety and general condition of the complainant in deciding whether bail should be granted.
13. Where the defendant is a child offender and the decision is made to remand them, the court shall give directions to be remanded in a facility where they will be separated from adults, and such other directions shall be given as will be deemed appropriate.

2.3 BAIL

1. Generally, the court can only refuse bail if it is satisfied that the defendant would fail to surrender to custody, commit an offence while on bail, or would interfere with witnesses, or otherwise obstruct the course of justice, or of the court is barred from granting bail by statute. Bail can also be refused if the offence was committed while the defendant was already on bail for another offence, or for the defendant's own protection. The circumstances in which bail may be refused or conditions attached is generally outlined in law. In most cases, the court must also consider if the defendant has complied with any previous bail conditions, the nature and seriousness of the offence, the character of the defendant and the community ties of the defendant.
2. In sexual offences, in determining the likelihood of interference with the complainant or other witnesses, the court may have regard to the proximity of the defendant's residence to that of the complainant or other witness, any existing biological or other relationship between them, the extent to which (if at all) the complainant was dependent on them for care-giving responsibilities, any previous incident of domestic violence or harassment involving the defendant; the conduct of the defendant towards the complainant up to this point, and any other relevant matter raised by the prosecution.
3. If bail is granted, the court may impose conditions on the defendant's bail. Conditions that the court can impose include requirements not to make contact with any named person or to keep away from certain areas. In making the conditions, the court will consider information provided by the police about the fears a complainant or witness may have. There is also the option of granting protection orders where the legislation permits. Great taken should be taken to avoid granting bail on the defendant's own recognizance in sexual offence cases. Special considerations in relation to defendants charged with offences against children, may also require the need to secure the health and wellbeing of the child. In those cases, conditions may be attached to a bail order requiring the defendant to not contact the child complainant or his/her caregiver, not visit the school of the child complainant, surrender travel documents, or leave the home or residence previously shared with child complainant.
4. The court must be mindful that the complainant has a right to be present at the hearing and the court shall, in open court, give its reasons for granting or refusing bail so that the complainant is aware of the court's processes. This will reduce the likelihood that the complainant may feel that bail is being granted because he or she is not believed or mistakenly thinking that bail means that the defendant has been set unconditionally free.
5. Collaborations with civil society organizations that provide survivor care services is important in ensuring that the survivor can receive support to understand the nature and effect of the bail order and any attendant conditions as well establish a new community network that will provide psychosocial support as an important element of service within the delivery of services through the justice chain.
6. If bail is refused, the court should inform the defendant of his or her right to appeal to the high court or the supreme court.
7. Equally important to the consideration whether bail should be granted and what conditions should be attached, is the role of the court to minimize pre-trial detention where appropriate.

8. Where bail is denied, court should be mindful to set case management hearings within a reasonable time and set dates for further hearings soon thereafter so that the defendant is not held too long on remand.
9. Consideration should be given in court scheduling to prioritizing cases with persons who are held in custody especially involving child defendants and using timelines as set out above.

Best Practice
Timelines for Criminal Proceedings
- Belize

In Belize, the Criminal Procedure Rules have set specific timelines for all aspect of criminal proceedings including sexual offences, from the time of arrest to the disposal of the matter in trial. The new timelines have reduced the length of time that a sexual offence matter takes before it is adjudicated, reduced the number of adjournments that are possible as well as reduced the length of time the matter takes before coming up for trial. This has led to reforms in police investigative practices as well as court listing practices that have helped complainants to have certainty about when their matters will be adjudicated. Commissioner's Rules setting out timelines for law enforcement processes and procedures for dealing with vulnerable persons were passed in 2020.

Source: Regional Consultations – JURIST Project, 2022

10. Further, the court should issue directions to monitor the progress of the case and complaint to ensure that pre-trial detention does not extend beyond a reasonable time especially where delays are caused by failure to support documents to the court within a reasonable time.

2.4 DISCLOSURE

1. At the first hearing, the prosecution shall be required to serve on the defendant the copy of the summons or charge sheet and a fact sheet outlining the nature of the case.
2. At the first hearing, in addition to addressing bail, the court shall also give directions regarding disclosure of the prosecution evidence to the defendant, taking into consideration any required timelines.
3. Where the case file is not completed within the timelines set, the court can order partial disclosure and grant such additional time as the court may determine for full disclosure.
4. Where the defendant is unrepresented, the court shall explain to the defendant how the disclosure is to be effected. Usually for a defendant on bail, disclosure must be personally collected and signed for at the high court or supreme court, while for a defendant in custody, it will usually be delivered to the prison. Care must be taken when disclosing material, especially in a prison, that the material does not become circulated to non-parties, as in sexual offences it is highly personal.
5. The court shall also explain to the defendant that they may be given additional notes of evidence of other matters arising after disclosure that the prosecution intends to rely on.
6. The court shall explain to the defendant that if they intend to raise an alibi as a defence in court, then, where applicable in the local legislation, disclosure of that alibi including name, contact information and address must be served on the prosecution, and the court must set the time within which such alibi notice must be provided.
7. The court may hear an application ex parte in Chambers by the prosecution to withhold or deny any aspect of disclosure required to be made, and where good and sufficient cause is given the court may grant such application.
8. In addition, where legislation exists in the jurisdiction for anonymity applications to be made in respect of vulnerable complainants or witnesses to withhold aspects of the disclosure that may reveal their identity, the court may hear such applications in accordance with the procedures under such legislation and may restrict disclosure of the identity of prescribed persons.
9. The court may also consider issuing prohibition orders to the media preventing disclosure of the identity of any person or of any aspect of the case where application is made by the prosecution or where the court deems it fit so to do.
10. In the Magistrates' Court, once disclosure has been fully complied with a trial date should be set.

2.5 CASE MANAGEMENT IN THE MAGISTRATES' COURT

1. Though most of the case management process ought to be done at the first hearing where directions are given for disclosure and other matters, there may be additional hearings to give further directions to prepare for trial.
2. Typically, the case may be called up at least three times before the actual date for trial is set.
3. The court must minimize the number of hearings in sexual offence cases by ensuring appropriate directions are given and that timelines are adhered to.
4. In some cases, sexual offences in the Magistrates' Court will involve child complainants. Special considerations are required, and directions must be given by the court to ensure safety and protection for children while ensuring support is provided to them.
5. One of the main issues that must be considered by the Magistrates' Court as part of the case management hearings is whether there are ongoing analogous applications pertaining to the circumstances of the case in the Family Court.
6. Sexual offences at the Magistrates' Court level may also have dynamics of domestic violence or child sexual abuse. In the case of sexual offences arising from domestic violence, the court must consider whether protection orders have been given and whether those orders are sufficient to address safety concerns or whether other orders are now needed. Further, the court shall consider whether family court applications have been granted or whether other Family Court applications are needed for the safety and support of the survivor prior to trial.
7. In addition, consideration shall be given by the magistrates to the nature and extent of proceedings in the Family Court that the complainant is involved in and the need to reduce the number of court appearances and hearings that the survivor will be involved in so that re-victimization is minimized. In that regard, the magistrates shall consider at the first hearing or subsequent hearings giving directions for the statements to be taken jointly by the police and the childcare services, or to be shared with them, and for their active participation in providing support and protection to the complainant.
8. The court should also set timelines preferably with specific dates by which actions must be taken, even if no legislation mandates timelines, to ensure that sexual offence matters are expedited.
9. In addition, case management at the Magistrates' Court should involve early identification of the real issues, the needs of the witness (including the need for special measures as well as the need to be informed of the progress of the proceedings), and directions to ensure that as many aspects of the case are dealt with in the same hearing as possible.
10. It has also become increasingly important to incorporate the use of technology as much as possible to keep track of directions made, detention dates, as well as how technology can be used to create improved access for persons with disabilities.
11. New Criminal Procedure Rules and Practice Directions issued since COVID-19 to allow for electronic filing of documents, virtual hearings and should also be included in the directions given during case management and consider given as to how technology can reduce delay and make the proceedings more accessible.

2.6 SURVIVOR CARE AND PROTECTION

1. All witnesses, including those who may be vulnerable or in need of witness protection, may require support before the trial particularly at the stage of reporting the crime where they are interacting with law enforcement. However, vulnerable witnesses and witnesses in need of protection will require additional services.
2. Police should consider at the time of the reporting of the sexual offence, the need to prevent re-victimization of the complainant by ensuring police stations are conducive for taking the statement of the complainant in a private space, for child complaints, this should be a child friendly space.

Best Practice
Support and Referral Center (SARC)
- Antigua and Barbuda

In Antigua and Barbuda, SARC operates as a multi-disciplinary service coordinated serviced delivery mechanism for sexual and gender-based violence including sexual offences. The SARC is coordinated by the Directorate of Gender Affairs and is staffed with police officers who are a part of the Special Victims Support Unit of the Royal Police Force of Antigua and Barbuda. These Police Officers are specially trained to work with vulnerable complainants.

Source: Regional Consultations – JURIST Project, 2022

3. Where the police station does not have appropriate structures, consideration should be given to collaborating with a local NGO or another government agency for interviews for children (and other vulnerable complainants/ witness) to do done in a child-friendly setting.
4. It is also important that police officers consider that the statement taking process may be traumatic for the survivor and that they may need a support person present with them in the interview. That support person may be connected to an NGO or be affiliated with the court or from a government agency. While some police officers may be reluctant to allow a support person not connected to law enforcement or the childcare agencies, the use of support persons have allowed for best evidence to be collected since their presence often helps to calm survivors.
5. Effective survivor care and protection in sexual offence cases will require reducing the number of times that a vulnerable complainant/witness will be asked to repeat the traumatic activities experienced during the sexual offence.
6. One of the effective ways of minimizing such revictimization is to record the statement at the police station with the intention that the recorded statement will be adduced into court as the examination in chief.

7. Other special measures may be required for witnesses/complainants who have been deemed vulnerable from the very start of the proceedings when statements are being taken.
8. The question of whether a witness is vulnerable shall be considered at the first and all subsequent pre-trial hearings and may be raised by the prosecutor, the police, the complainant or the court, where directions are needed from the court. Usually, if there is a victim support unit, the issue of survivor care will usually be dealt with outside of court by the prosecution or the police.
9. In considering whether the complainant or other witness is to be considered a vulnerable witness based on the application of the prosecutor for orders for special measures or orders for a support person to be allowed in court, the court shall have regard to:

- a. The age of the complainant or witness and whether because of age they may need special assistance or facilities to be able to give evidence in court. In regard to the age of a child, the court may also give directions for a voir dire to determine competence.
- b. The presence of any disability that may impair the complainant or other witness in giving evidence and what facilities will be needed to ensure they are able to give the best evidence possible.
- c. In the case of sexual offences, there is high likelihood that the sexual violence incident alleged has caused psychological and emotional trauma and that having to re-tell the intimate details of the event in court may cause severe psychological distress to the complainant that may impair their ability to give evidence.
- d. In addition, the repeated nature of the offence such as stalking or several sexual assaults on a child may have caused disruption in everyday life as well as psychological or emotional trauma.
- e. Membership to an indigenous or migrant/refugee community or where there is evidence that the complainant has been ostracized or targeted for harm by persons within the community and where such community contains all the family ties and traditional support mechanisms for the complainant.

2.6.1 Survivor Care and Protection for Persons with Disabilities

10. It is particularly important for courts to facilitate access for persons with disabilities, but access must begin at the police station when the report is made. The police officer taking the statement should be mindful that persons with disabilities may need support persons and/or interpreters with them when they make reports and should facilitate this and refer persons with disabilities and other vulnerable persons to relevant government agencies, local civil society organizations or NGOs that can provide support.
11. It is also important that whatever special measures are employed at the time the report is made such as support persons, interpreters or speech therapists or where the testimony is video recorded are documented in the file and be used throughout other interactions with the person with disability or other vulnerability.
12. Persons with disabilities have a right to access to justice⁴ and have legal capacity to pursue that justice as complainants and must be provided all facilities to by the court to give effect to that legal capacity⁵.
13. In addition, persons with disabilities and may have some legal capacity as defendants to be determined by the court. The court should also determine what facilities they may need to communicate and access court proceedings.
14. Access to justice for persons with physical disabilities will include physical access to the facilities of police stations and also court buildings via ramps or the placement of entrances at ground level to facility such access.
15. However, access to justice will also require access to communication tools for persons who need assistance to communicate such as speech therapists, sign language interpreters or communication aids such as hearing aids etc.
16. More importantly, though access to justice for persons with disabilities will require procedural accommodation by the court (and law enforcement) to adjust procedures to facilitate full participation of the person with a disability including such adjustments as:

- a. Adaptation of the venue of the proceedings such as using remote live link where possible instead of requiring in person presence in the courtroom;
- b. Adjustments to the pace of the proceedings to allow for breaks (even with remote live link);
- c. Modifications to the method of questioning such as allowing or disallowing leading questions where appropriate, disallowing compound questions, and the venue must be considered even if they are under a guardianship and need assistance to give effect to that legal capacity;
- d. Use of previously recorded testimony as the examination in chief;
- e. Providing extra time to answer and simplifying questions.

⁴ OHCHR (2006. Convention on the Rights of Persons with Disabilities. Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

⁵ Special Rapporteur on the Rights of Persons with Disabilities (2020). International Principles and Guidelines on Access to Justice for Persons with Disabilities. UNHCR. Retrieved from https://www.ohchr.org/sites/default/files/Documents/Issues/Disability/SR_Disability/GoodPractices/Principles_A2_Justice.pdf

17. Where remote live link is being used to support persons with disabilities, additional adaptations may be needed to provide open or closed captioning or interpreters for their testimony as well as the testimony of others.
18. Where documents are being presented on screen, screen reader and magnification apps or software may also be needed to facilitate persons with disabilities being able to follow all the testimony in the case.
19. The case management process must be used to aerate the needs of persons with disabilities and other vulnerable persons participating in the trial process, identifying how those needs will be met to ensure their participation and passing the appropriate orders and direction to facilitate that participation.

2.6.2 Survivor Care and Protection for Indigenous Peoples

20. In relation to persons from indigenous communities, vulnerability may not always as obvious but must be examined in case management.
21. Complainants from indigenous communities may face language barriers in accessing court proceeding and may find court structures and processes difficult to navigate.
22. In addition, practices within the indigenous communities affecting how women interact with others outside of the community such as law enforcement may cause complainant to be hesitant to interact with law enforcement and court officers.
23. Most indigenous communities recognize communal rights in relation to land as well as family life. This may mean that some community members may believe that the wellbeing of the community or the family may be more important than the wellbeing of a single member of the community though this is not always the case.
24. Assessing the vulnerable of the indigenous persons will require:

- a. examination of the level of isolation of the particular complainant or defendant;
- b. examination of available support systems or persons;
- c. examination of level of understanding of the court process;
- d. examination of any specific trauma needs;
- e. examination of specific protection needs of the complainant;
- f. examination of any language barriers challenges;
- g. examination of the supports for transportation, residence and other practical needs of persons from remote communities to enable them to access the proceedings; and
- h. examination feasibility of technological aids including access to internet, electricity and level of familiarity with the technological aid.

25. The case management process must be used to conduct this examination and to make the appropriate practice directions to guide the proceedings.
26. Where support persons or intermediaries are required, care must be taken to ensure that support persons are not dictated by the community and that the complainant/witness has a real say in determining their preference for support persons and intermediaries.
27. Once a witness has been identified as vulnerable, there is potentially a long period before the trial takes place, so that care support services will be needed, and in some instances, witness protection services may also be needed.
28. Basic care and support services that can be mandated by the court may include provision of a supporter to be with the child or vulnerable complainant or witness during the forensic interview or subsequent interviews.
29. If there is no formal care unit within the police department or the childcare services, the supporter may be a friend or relative provided they are not party to the proceedings and they are not involved in pre-trial support or in the role of a formal supporter at trial.
30. The court should explain to the person appointed as a supporter that their role will involve:
 - a. Providing emotional support and to educate and give information.
 - b. Understanding the witness's views, wishes, concerns, and any particular vulnerabilities that might affect them during the trial process (including the witness's views on special measures), and convey these to the relevant criminal justice system agency.
31. In addition, the court can expand the supporter's role to include:
 - a. Liaising with family members and friends of the witness.
 - b. Liaising with legal, health, educational, social work and other professionals and acting as an advocate on behalf of the witness.
 - c. Liaising with those offering therapy and counselling prior to a criminal trial.
 - d. Arranging links with experts in any of the witness's specific vulnerabilities or difficulties, e.g. communication problems, learning disabilities, specific cultural or minority ethnic group concerns or religious priorities.
 - e. Accompanying the complainant on court visits.
32. In terms of assessing the risk to safety and determining what protection services are to be provided, the court may hear from the prosecutor or the complainant or witness on whether they fear reprisals or attacks.
33. Sexual offences, assaults, domestic violence, stalking (which by its nature involves repeated victimization) and racially motivated crimes are particularly likely to lead to intimidation, especially of the complainant and witness protection orders and directions should be considered in those circumstances.

34. Witness protection services that may be mandated by the court include: patrols in the community; a contact card for a witness to call in an emergency; planning any visits of the witness to the police to avoid any encounters with the alleged defendant and their associates; and providing transportation to and from the police station. In exceptional cases, it may include relocation of the witness to another community to stay with family or to be in a safe home for a particular length of time or until the witness has been able to give evidence in court.
35. While witnesses should be assured that their details will be kept confidential during the investigation, the court may also explain that they should take common sense safety precautions as the suspect may find out their name or address, and they should be advised to contact the police or the prosecutor if they feel unsafe.
36. During the case management process, the court may also consider applications by the prosecutor for court room visits to familiarize the complainant with the layout of the court and where they and the support person will sit during the trial.
37. In addition, the court may be asked to hear applications by the prosecutor for the use of special measures as these are important tools for survivor care.
38. The special measures that may be used may include video live link from a remote location, the use of intermediaries or interpreters, the use of screens, the use of anatomically correct dolls or directions on the restriction of cross examination by the defendant.
39. Court-ordered visits of the court room should, where practicable, involve giving vulnerable witnesses information about special measures including the opportunity to practice using the live link facility if that will be used in the trial.
40. In addition, the court management process must involve explaining to the supporter and/or an intermediary such as an interpreter, the limitations of their role. For instance, it should be clarified that while they can provide practical emotional help and support to the witness, they cannot express their own views and beliefs concerning the evidence of the witness and cannot discuss details of the case or the evidence that is to be given, or has been given.
41. The court cannot of its own accord decide that a complainant or witness should be considered a vulnerable witness without application by the prosecution and the court must be careful not to taint its mind as to vulnerability or the mind of the jury in respect of any witness without proper procedure.

3.0 INDICTABLE OFFENCES

1. Indictable offences are triable in the High Court/Supreme Court but are usually initiated in the Magistrates' Court.
2. The first hearing of the matter will typically be a remand hearing in the Magistrates' Court shortly after charges have been brought, usually within 48 hours.
3. Guidelines for the remand hearing have been provided above. The primary consideration for the court is the need to protect the safety of the virtual complainant from any interference or tampering by the defendant and to secure the attendance of the defendant at the preliminary inquiry.
4. In indictable proceedings, attention must be given to ensuring that cases move through the criminal process without undue delay since long delays usually result in re-traumatization of complainants whose healing and recovery will be set back by having to revisit traumatic details of the sexual offence. It is important to note that delay can lead to a survivor losing faith in the court process, and therefore refusing to participate, with the result that some offenders are not brought to justice.

3.1 PRELIMINARY INQUIRIES

1. In indictable sexual offence cases, a preliminary inquiry is sometimes required to be conducted in the magistrates' court to determine if there is a case to answer where the defendant will not agree to a paper committal.
2. The court should explain to the defendant at the time the disclosure order is made that they will have the option to indicate to the prosecution agreement to a paper committal. In this way, the matter can be sent straight to the higher court for arraignment instead of holding a preliminary inquiry.
3. At the hearing of the preliminary inquiry, the court will usually ask at the beginning of the proceedings whether there is an agreement on a paper committal or if any matters disclosed are agreed.
4. Where there is no paper committal, the preliminary inquiry hearing will also help in identifying the issues on which evidence will be heard at the trial, what witnesses will be called, and in encouraging the prosecution and the defence to consider what other matters may need to be addressed to promote a fair trial.
5. The court will give directions for additional disclosure where necessary. Where an anonymity order was requested and granted, those portions ordered to be blacked out or removed should be removed before disclosure is made.

6. The court will also hear any applications brought by the prosecutor for the conduct of the preliminary inquiry.
7. The court may also hear applications by the prosecutor to amend the charge sheet to add additional charges for other offences arising from the same factual situations which may have arisen in the preliminary inquiry.

Best Practice
Paper Committals
- Jamaica

In 2014, Jamaica passed the Committal Proceedings Act to abolish the system of preliminary inquiries. The act now introduces committal proceedings in the magistrates' court in respect of indictable offences. The committal proceedings may be conducted wholly on the basis of the written statements taken from the complainant, accused and other witnesses. The magistrates' will decide on the basis of the written statements whether the accused will be committed to stand trial or shall be discharged. The accused or his or her attorney-at-law may make a submission for taking oral evidence, or the magistrates' may require oral evidence to be taken in their discretion. Where a statement was made by a child, the magistrate shall require an assessment of the child by a psychiatrist or probation officer as to the child's understanding of the nature of an oath and the duty of telling the truth. Unrepresented persons shall be informed of the process and their rights in committal proceedings. The act also prescribes the manner in which the police shall take statements that will be submitted into court.

Source: Regional Consultations – JURIST Project, 2016

8. The court's interest in managing the process is to see where agreement can be reached between the prosecution and the defence on the facts so that the matter can be expeditiously resolved.
9. In some jurisdictions, it is also possible for a voluntary bill of indictment to be laid to avoid a preliminary indictment or a sufficiency hearing.

3.2 SUFFICIENCY HEARINGS

1. In some jurisdictions in the Caribbean, preliminary inquiries are not held, and instead the law utilizes the mechanism of the 'sufficiency hearing'.
2. The sufficiency hearing seeks to establish the strength of the case against the defendant and whether the elements of the charge are sufficiently made out to warrant a trial.
3. The defendant, defence counsel, and prosecuting counsel are required to be present at the sufficiency hearing.
4. The court may also require the presence of the complainant.
5. At the sufficiency hearing, the previously recorded statements of the complainant, especially the forensic interview, and the witness statements are submitted in court and are also served on the defence.
6. The court may also hear submission from the defendant or defence counsel, as well as hear submissions from the prosecution.
7. In the sufficiency hearing, the court must determine that a prima facie case against the defendant has been made out that they are required to answer before setting the matter for trial in the higher court.
8. Where an offence is a hybrid offence, the court is also empowered to try the matter summarily with the consent of the defendant at the sufficiency hearing.
9. If the court decides that the charge has not been sufficiently made out to warrant a trial on the basis of the evidence, the court will discharge the defendant.
10. Where the court makes a decision to discharge the defendant, the court should consider whether any orders should be made for the safety of the complainant including no-contact orders and whether any family court applications may be warranted or other referral for the provision of support services to the complainant.
11. Where the court decides that the evidence sufficiently makes out a case against the defendant such that a trial is warranted in the higher court, the court will remit the matter for trial in the higher court and make such provision for extending bail already granted or revoking bail and remanding the defendant as may be warranted on the application of the prosecution and the evidence presented.
12. Where the court decides either to discharge the defendant or to remit the matter for trial and to grant bail, this should if possible, and if desirable to the complainant, be explained in the presence of the complainant.

3.3 ARRAIGNMENT

1. For indictable proceedings, the arraignment is the first hearing of the matter in the higher court and usually takes place at its first sitting for the particular session.
2. The main purposes of the arraignment are to address bail, inform the defendant of the right to legal representation, the range of sentences that are applicable or the options for sentencing, and to take the plea of the defendant in an indictable proceeding.
3. Where a child is brought before the court to be arraigned with a sexual offence, the court shall inquire of the age of the defendant as well as the age of the complainant and shall ask for proof of age.
4. Where the defendant is a child, the relevant child offenders' criminal process shall be utilized.
5. Where appropriate the court shall also set a date for the case management hearing and complete the case management form, by asking the defendant about the particulars of any alibi defence where that has not been previously disclosed, identifying any issues of fact or law to be resolved at the case management hearing, asking about witnesses requiring summons, requesting any indication of special assistance requirements or whether experts will be called, and indicating the directions that will be given for the appearance of such experts as well as the timelines for the trial.
6. A child defendant shall be informed of their rights including the right to legal representation and where required by law, legal counsel shall be provided.
7. Where a child offender has been brought to court for sentencing pursuant to a plea-bargaining arrangement, the court may review the plea bargain to ensure the protection of the rights of the child if there was no legal representation at the time of plea.
8. In setting the date when the matter will next be brought up before the court, the court shall have regard to any timelines prescribed as well as to the need to ensure sexual offence cases are not delayed without good reason and that appropriate explanation, support and protection services are afforded to the complainant.
9. In all arraignment hearings, the court shall consider the safety and support needs of the complainant whether bail is to be granted or denied and make such directions or orders as shall be needed.

3.4 CASE MANAGEMENT IN THE HIGH COURT

1. The case management hearing is the first part of the trial process and allows the court to give directions for the trial proceedings⁶. In the Magistrates' Court, case management may be dealt with at the first hearing without the requirement for a specific case management hearing. In the high court, the case management process begins at arraignment and may involve thereafter, a specific case management hearing, or several, after arraignment to give specific directions for how the trial will proceed especially directions in regard to vulnerable witnesses.
2. Where applicable, the parties shall be required to complete and submit the case management forms prior to the date being set for the proceedings.
3. The court shall hear applications at the case management hearing in the high court for directions to be given on the following:
 - a. Attendance of a support person with the complainant at the trial.
 - b. Questioning of the complainant through the use of an intermediary or other communications specialist.
 - c. Arrangements for the complainant or other vulnerable witness to access the court building through a private entrance.
 - d. Restrictions on disclosure.
 - e. Use of video link facilities if appropriate.
 - f. Directions for restriction on certain lines of questioning such as previous sexual history.
 - g. Directions for concurrent family proceedings.
 - h. Other special arrangements such as interpreter, need for breaks, etc. as may be needed to facilitate the trial process.
4. The Magistrates' Court can make directions on the same issues in summary jurisdiction offence cases where application is made by the prosecution.
5. In addition, both the Magistrates' Court and the High Court shall hear applications by the prosecution for the complainant or other witness to be considered a vulnerable witness.
6. In considering whether the complainant or other witness is to be considered a vulnerable witness, the court shall have regard to:
 - a. The age of the complainant or witness and whether because of age, they may need special assistance or facilities to be able to give evidence in court. In regard to the age of a child, the court may also give directions for a voir dire to determine competence.
 - b. The presence of any disability that may impair the complainant or other witness in giving evidence and what facilities will be needed to ensure they are able to give the best evidence possible.

⁶ Specific provisions for the case management process have now been enacted in some jurisdictions. The new Criminal Procedure Rules of Trinidad and Tobago, 2016 sets out extensive guidance for judicial offices on the process of case management hearings as well as areas for which directions must be given by the Court. It is a good model for countries now seeking to pass specific regulations on case management. It may be retrieved from https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/12.02.pdf

- c. The presence of any adverse or traumatic experience that may cause emotional or psychological distress to the complainant or witness. In the case of sexual offences, there is a likelihood that the sexual violence incident alleged has caused psychological and emotional trauma and that having to re-tell the intimate details of the event in court may cause psychological distress to the complainant that may impair their ability to give evidence.
7. In regards to persons from indigenous communities, as with the Magistrates' Court, the court must be mindful that experiences of trauma will not just be based on the impact of the sexual assault on the complainant but on such issues as: loss of identity where the complainant is blamed or rejected by the community; significant stress from having to come outside the community to interact with police, court officials and other agencies in structures that may oppose male/female interaction established by the indigenous community; and loss of spiritual or social support due to separation from traditional cultural norms during the trial period and the realization that the decision to report the abuse may have altered those norms in the community as well as changed family and community dynamics. These issues will require specialist interventions and counseling and magistrates and judges should be alert to their manifestation.
8. One new development that is seeking to address these challenges is the use of specialized sexual offence courts. Using specialized courts allow for court structure and procedures to be adapted to the needs of complainants and defendants where vulnerability is identified, and courts will be operated by judicial officers and courts staff with specialized knowledge and expertise in adjudicating sexual offence cases.
9. Where the Magistrates' Court or High Court determines that the complainant or other witness is a vulnerable witness, the court shall consider what special measures will be required to be used to facilitate the complainant or witness giving evidence.
10. Special measures may include:

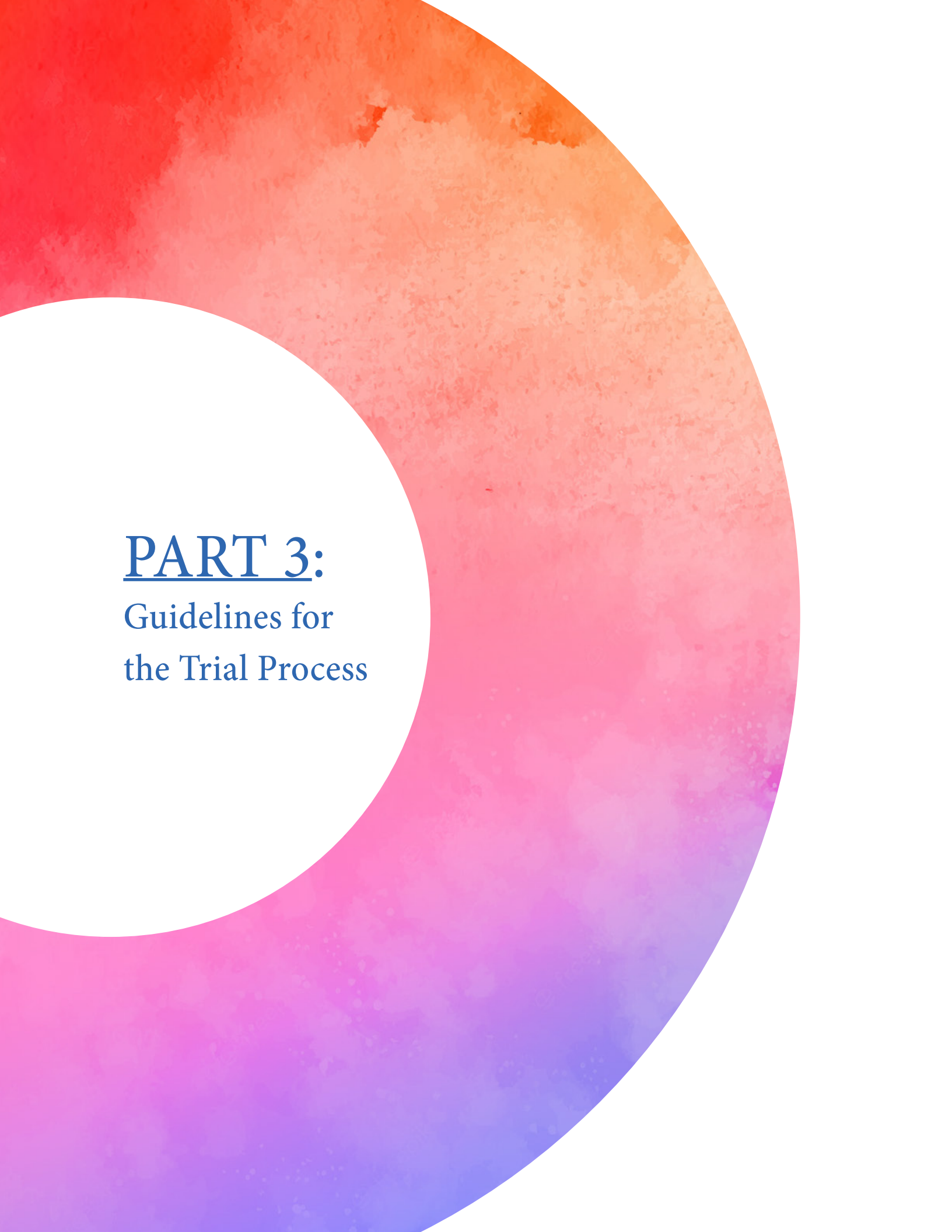
- a. Screens - so that the witness does not have to see the defendant in the court room.
- b. Live link - allowing a witness to give evidence from a facility outside the courtroom.
- c. Supporter - there may be a designated supporter for the witness in the live link room or in the court room.
- d. Video-recorded examination-in-chief - allowing a previously recorded interview with the vulnerable witness being admitted in court as the examination-in-chief.
- e. In camera proceedings - where this is not automatically provided for, both the Magistrates' Court and the High Courts must consider whether to clear the court of members of the public and other witnesses before the evidence of a vulnerable witness is taken.
- f. Removal of wigs and gowns by judges and advocates.
- g. Intermediary - allowing an approved intermediary (a communications specialist) to help a vulnerable adult or child witness to communicate with the police, legal representatives and the court.
- h. Aids to communication - allowing a witness to use communication aids such as a symbol book or alphabet boards.
- i. Use of anatomically correct dolls - consideration must be given as to what specialist assistance will be needed for dolls to be used.
- j. Use of interpreters - where the complainant or witness has language barriers, an interpreter must be provided.

11. The court shall also give directions in case management on: what time of day would be best for particular witnesses to give evidence; how much time the witness will need on the stand; how an intermediary will be used and what lines of questioning will not be permitted.
12. Where a sexual assault case is a high-profile case that has had much media attention in a particular area, it may also be important to consider whether there is a need to change the venue for the hearing and what arrangements would be needed to effect a change of venue or whether press prohibition orders will be issued.
13. The court shall also give directions for the protection of any witness deemed particularly vulnerable to threats or intimidation especially where their testimony is likely to be diminished by reason of fear or distress. The factors considered by the court in determining the level of fear or distress include:
 - a. The nature and circumstances of the offence.
 - b. The age and circumstances of the witness.
 - c. The behavior of the defendant or their family and associates.
 - d. Any known threats or intimidation tactics used against the witness.
14. The directions given for protection of the witness may include protection orders, orders prohibiting contact, relocation of the witness, or other measures as requested by the prosecutor.
15. In some instances, it will be necessary for the court to address safety and protection issues in an ex parte application or in an application in chambers where it is felt that the disclosure of the need for protection may lead to the defendant or persons connected to the defendant interfering with or threatening the witness.
16. If a complainant desires to withdraw from the proceedings, a statement should generally be taken for the court to be satisfied that no pressure has been brought.

Best Practice
Case Management in Sexual Offence Cases
- St. Lucia

The Criminal Division Rules now set timelines for all aspects of the criminal process and mandate case management in all criminal proceedings. The judge is able to give directions for all aspects of the trial and in particular to direct the use of special measures and give directions on the lines of questioning that will not be allowed in respect to vulnerable witnesses or to children. The use of the case management process is reported to have significantly reduced the length of time sexual offences take in the court system and has improved the support mechanisms for vulnerable witnesses in the trial process.

Source: Regional Consultations – JURIST Project, 2016



PART 3:
Guidelines for
the Trial Process

4.0 INTRODUCTION

1. These guidelines for the court trial processes will provide standardized directives for the adjudication of sexual assaults to ensure that the best evidence possible is presented in a way that protects the rights of complainants and defendants as well as ensure that re-traumatization of the complainant is minimized.
2. These guidelines will cover the basic components of the trial process in the Magistrates' Court and the High Court and provide a set of trial process guidelines for sexual offences.
3. These guidelines do not replace practice directions and rules of court setting timelines and mandating other procedures in criminal proceedings in the Magistrates' Courts and higher courts and should be read alongside any such existing practice directions or rules of court.
4. Magistrates' Court proceedings are intended to be expedited hearings and cases are expected to proceed to trial without the formality required in the High Court. However, the same protections are afforded for the protection of the rights of complainants and defendants and similar criminal procedure rules apply.
5. The trial process in both the Magistrates' Court and the higher courts require the same adherence to the rules of evidence and the same protection for the rights of the complainant and the rights of the defendant.

4.1 GENERAL GUIDELINES FOR EXAMINATION IN CHIEF

1. Legislation usually provides that some or all of the evidence in sexual offence cases be taken in camera unless otherwise directed by the court. Where there is no such provision, the court has a discretion to hear certain proceedings in camera and in exercising this discretion the court will balance the interests of the complainant and other vulnerable witnesses with the concept of open justice.
2. Sexual offence cases should be heard in camera even where no specific legal mandate is provided. This can be done as part of the duty of the court to manage its proceedings and also in recognition that owing to the sensitivity of the nature of sexual offences cases and the need to protect complainants and defendants from harassment or intimidation.
3. While it is usually best for trials to be heard in open court, COVID-19 and the enforced closure of public spaces including court brought about a series of innovations that have remained as settled practice post COVID-19. One of the most important was conducting trials virtually.
4. Though most of the jurisdictions in the Caribbean had made provisions for remote live link testimony during face-to-face trials, only a few courts held entire trials virtually. As a result of COVID-19, this has now become an aspect of criminal and civil proceedings in the Caribbean.

5. Practice Directions allowing for virtual hearings or for parts of the case to be heard virtually through remote live link must make provisions for the approved app or network that will be used, most countries in the region have allowed hearings via Skype, Zoom or even telephone calls for some hearings.
6. Practice Directions should also make provision for how oaths should be taken and how physical evidence will be presented in virtual settings.
7. One of the COVID-19 adjustments made that has now become standard practice in some jurisdictions is the establishment and expansion of e-filing options through e-litigation portals. Practice Directions can allow e-filing for both criminal and civil proceedings where a dedicated and secure litigation portion has been established or through email at designated email addresses.
8. For e-filing other specific directions will be required for format of documents, headings, how fees are to be paid and other practical matters normally done in person in order to truly render the proceedings fully virtual.
9. Virtual hearings or provisions for remote live link will also require directions on the venue from which complainants are to give their testimony as well as the venue from which defendants are to give testimony and the venues for attorneys for the defence and prosecutors.
10. Where the complainant will give evidence via video link from a remote location into the courtroom, they may not be able to see everyone in the court as the video link feed is usually restricted to the bench and the bar table in the High Court. However, Magistrates' Courts in the Caribbean have smaller court rooms, the entirety of which may be visible on the screen so placement of cameras must be considered.
11. Further, there are challenges associated with using live link evidence and virtual hearing as the equipment may have delays or may not work or for example a child witness may need a booster seat. In both the High Court and the Magistrates' Court, these issues should be worked out in the absence of the jury and the court should do a trial run with the equipment before the trial begins.
12. In some cases, Practice Directions will be necessary for the conduct of attorneys-at-law in virtual settings as well to restrict private recordings of the virtual hearing by attorneys or other parties with access to a Zoom link where the hearing is being done via Zoom.
13. Another important change that has become more prominent since COVID-19, is the move towards judge alone trials. Judge alone trials can be useful in sexual offence cases to minimize the impact of stereotypes and bias that have been associated with some jury trials in the past, though judge alone trials is not a guarantee against such bias if the judicial officer has not had specialized training.
14. Judge alone trials may also move matters quicker to court and reduce the long delays that have been reported in some jurisdictions in sexual offence cases as well as reduce the number of nolle prosequis where victims abandon cases due to delay.

Best Practice
Judge Alone Trials
- Belize

In 2011, Belize through amendments to the Indictable Procedures Act, judge alone trials were allowed for murder and some other offences.

This category was further expanded in 2022 through further amendments to Indictable Procedures Act to allow for Judge alone trials in additional offences including sexual offences, trafficking in persons cases, commercial sexual exploitation of children cases, abduction of children and manslaughter.

Belize now has over 10 years of enacted laws and experience in Judge alone trials. Judge alone trials in Belize have also withstood appeals up to the CCJ. In *Manzanero v R [2020] CCJ 17 (AJ) BZ*, the CCJ ruled that a Judge alone trial in which a judge ruled against a defendant's voir dire application and then later found him guilty could not impute bias against that defendant. The Court found that the trial Judge had properly directed herself, had properly explained why she accepted the evidence of the witness and that the application of the test where there was a fear of prejudgment did not reveal any such prejudgment.

Source: Regional Consultation, JURIST Project 2022

15. In both in person hearings and virtual settings, the court must give directions as to the seating of a support person appointed in respect of a vulnerable witness as well as other logistic arrangements to facilitate the appearance of the support person. In cases, where the support person is appointed in respect of the complainant, they will be required to be in court for the duration of the trial.
16. In most cases, they are better used when placed in the line of sight of the complainant so that the complainant can focus on them during the proceedings rather than directly beside the complainant, except in the case of small children where physical nearby presence is necessary to prevent distress. Ideally, there should be a pool of persons already trained as to their duties as support persons attached to a support unit, but where that is not available, support persons may be sourced from NGOs.
17. Consideration can be given to whether the examination in chief of a vulnerable witness may be done with the assistance of an intermediary chosen by the court pursuant to proper directions being given. This has been used effectively in cases where the defendant in a sexual offence case is unrepresented to prevent the defendant directly questioning a child complainant. The process is similar to a judge vetting the jury questions and then asking the questions from the jury on their behalf. However, intermediaries serving in this capacity must be trained beforehand so that they understand the processes and terminology of the court.

18. In addition, where evidence in chief will be taken with the assistance of an intermediary, logistic arrangements will need to be organized to facilitate that on the day they are required to appear.

Best Practice
Use of Support Persons and Intermediaries For Vulnerable Witness
- St. Vincent and Grenadines

The Witness (Special Measures) Act 2013 allows for the use of extensive special measures in respect of vulnerable witnesses. These measures include the appointment of a support person to accompany the vulnerable witness to court and to remain with them in the trial. In sexual offence cases, this is practically facilitated by the family court which has criminal jurisdiction in sexual offence cases and sits as a sexual offence court utilizing its specialist staff such as social workers and counsellors. In addition, where the court rules that a vulnerable complainant or witness is not capable of answering questions without the use of an intermediary, the court may appoint an intermediary to facilitate the examination of the vulnerable complainant or witness. The intermediary appointed is a specialist attached to the court. The examination proceeds by questions being directed to the intermediary who repeats them to the vulnerable witness and then repeats the vulnerable witness' response to the court. The intermediary may be used in court or in a live link facility.

Source: Regional Consultations – JURIST Project, 2016

19. In respect of child witnesses, where the court deems it necessary to conduct a voir dire to assess competence, there should be emphasis on whether the child understands the difference between the truth and lies and the consequences of telling a lie.
20. Where the complainant or other witness will give evidence from behind a screen in the court room, the screen must be set up in advance, and typically the witness should be brought into court from a private entrance.
21. In addition, as best as possible, the court must consider directions in cases involving child complainants how to make the court setting a more child friendly space including removing formal robes and directions to attorneys to use simpler language as well as allowances for breaks.
22. The court ought to make arrangements prior to the start of the proceedings, where directions were given in case management for the use of the screen, to allow the prosecution to bring the witness to court and familiarize them with the process of giving evidence from behind the screen.
23. Where the screen is being used in a jury trial, the jury must be able to see both the accused and the witness giving evidence behind the screen.

24. The court may also allow the submission of a previously video recorded statement as the examination in chief. The use of previously recorded statements can speed up trials by eliminating the need for live examination in chief and to reduce revictimization and traumatization that may occur when the complainant is forced to recall and describe graphic details of the acts committed against them.
25. The use of the previously recorded statement as the examination in chief will also minimize recanting and minimize having to treat complainants as hostile witnesses.
26. Where a previously video recorded statement will be submitted for the examination in chief, the court will require a separate hearing to discuss any applications to exclude inadmissible portions from the recording, giving directions as to how the recording will be presented in court and whether a transcript of the recording will be used to assist.
27. Usually, even where a previously video recorded statement is admitted, the court will still be required to give directions that the complainant or witness shall be available for cross examination if required. However, such cross examination will almost always then be done from behind a screen or via live link.
28. Where a complainant will give evidence in person, or is vulnerable, the court shall consider prioritizing the case. In addition, it may direct that the witnesses should be on stand-by on the day of trial in a separate neutral location to minimize any possibility of an encounter with the defendant.

4.2 GENERAL GUIDELINES FOR CROSS-EXAMINATION

1. The cross examination will be via live link where the examination in chief was done via live link (with or without playing a pre-recorded video as evidence).
2. The court shall give directions as to the mode of asking questions to facilitate the live link, which can include direction as to intonation and the manner of asking questions.
3. The court shall issue such directions to manage the cross-examination process as shall be required to ensure that the defendant is allowed to lead his or her defence.
4. In respect of any witness in sexual offence cases, the court must consider restricting questions as to previous sexual history, where irrelevant or restricted by law.
5. While the use of special measures such as screens and intermediaries, is particularly important in cross examination, the Judge must explore whether in the particular case a complainant who wishes not to use the screen or an intermediary should be permitted to do so and may request expert guidance from the counsellor or social worker supporting the complainant.
6. The court should prevent any questions being asked which are designed to raise irrelevant scandal and simply to cause embarrassment.

7. The court ought, in any sexual offence trial, to prohibit an unrepresented defendant from questioning in person the complainant or any vulnerable witness. This should be considered at the case management hearing, with appropriate directions made, including the appointment of a legal representative for the defendant specifically to cross-examine where restricted.
8. The court may also need to give a direction to the jury, where a legal representative has been appointed to cross-examine for an otherwise unrepresented defendant, that the appointment of such a person is a standard procedure and no adverse inferences should be drawn against the defendant.

Best Practice
Requesting Attorney Support for Cross Examination where
the Defendant is Unrepresented
- Antigua and Barbuda

In the Sexual Offences Model Court in Antigua and Barbuda, the court uses judicial discretion to ask attorneys who are present in court to assist with cross examination of an unrepresented defendant to ensure that an unrepresented defendant does not personally cross examine a vulnerable complainant.

In addition, victims can access medical care, social services, legal assistance, and counseling through the Office of the Directorate and local agencies who are a part of the response network. Services are provided from the point of making a report and throughout the criminal proceedings as well as beyond the resolution of criminal proceedings.

Source: Knowledge Projects, 2021 – JURIST Project 2022

4.3 GENERAL GUIDELINES FOR APPEARANCE OF EXPERT WITNESSES

1. In sexual offence cases, the expert most likely to be called is a medical professional. In some jurisdictions, the personal attendance of the medical examiner is not required and copies of the medical certificate recording the injuries present on the complainant can be submitted in court.
2. At the case management hearing, the court will give directions for the attendance of experts and the submission of expert testimony.
3. While the order of appearance of witnesses will be determined by the prosecution or the defence, the court shall ensure that the order is established during the case management hearing and give due consideration to any vulnerable witness needs.
4. Typically, the expert has had previous experience giving evidence in court and has been prepared by the prosecutor or the defence before the trial on such issues as:
 - a. Looking professional and dressing accordingly.
 - b. Avoiding using difficult words, for example, medical jargon. When such language is unavoidable, the terminology should be explained. As far as possible, use plain language.
 - c. Being mindful not to go outside of their expertise, and therefore indicating when they are not in a position to offer opinion.
 - d. Treating legal practitioners with respect even if not in agreement with their opinions or tactics.
 - e. Distinguishing between what is a factual statement and what is an opinion in their responses.

Best Practice
Attendance of Expert
- Guyana

Under the **Evidence Act**, the medical certificate of the forensic medical examiner is admissible, and there is no need for a stamp or a seal, even a photocopy can be admitted. This removes the need for personal appearance of the expert to admit documents.

Source: Regional Consultations – JURIST Project, 2016

4.4 ONGOING CARE AND PROTECTION OF VULNERABLE WITNESSES DURING THE TRIAL

1. A complainant or other witness, who has been declared a vulnerable witness, will need continued care and support during the court process, particularly if the witness has been identified as vulnerable or liable to intimidation. Care and support units will continue their work to provide care and support as well as other practical help for witnesses, such as help with transport to get to court and liaison with the courts over any disabilities or other special needs. They also facilitate effective communication with the police, the child protection services, D.P.P. and legal representatives as required.
2. If there is no specific care and support unit, this may be done by the investigating officer or liaison officer or a supporter from an NGO or other agency already recognized or appointed to provide support services.
3. However, the court appointed supporter can provide the witness with information about the court process.
4. The court, in collaboration with the relevant agencies, should provide an orientation video for orientating witnesses with the proceedings of court and the use of special measures in court.
5. Judges and magistrates are expected to take an active role in the management of cases involving vulnerable and intimidated witnesses, and to ensure that elements of the court process that cause undue distress to such witnesses are minimized.
6. On-going support may also include referring the vulnerable witness to psychotherapy or counseling therapies, from the outset in the magistrates' court. Attention needs to be paid to how such therapy may become relevant during the trial.
7. If the court has approved the use of an intermediary to assist the witness, then that intermediary will be present to assist the witness in communicating their evidence to the court, but not as a supporter.
8. The role of an intermediary is separate from that of the court supporter, and they should be available during pre-trial preparation to assist in the preparation of the witness. An intermediary will usually have undertaken an assessment of a vulnerable witness at an early stage in the proceedings and may be asked to provide a report for the judge, the prosecution and the defence. This report should highlight matters such as limited concentration spans and times when the witness appeared to be experiencing trauma.
9. Any pre-trial orders in relation to care and support or use of special measures for a person with disability or other vulnerable witness must be maintained throughout the trial and any civil society organization supporting them should be informed of such orders and kept informed of the progress of the case.
10. NGO and civil society in addition to assisting with victim care and support can also support the trial process by providing neutral venues for remote live link testimony in a setting where psychosocial support is also provided to vulnerable witnesses.

Best Practice
Collaboration with Civil Society
- Guyana

In Guyana, the Sexual Offences Courts as well as the Magistrates Courts currently collaborate with a local NGO, ChildLink to provide remote live link services for vulnerable complainants and witness across the country. ChildLink's offices provide neutral venues staffed by persons familiar with the court system and with psychosocial support officers who support vulnerable complainants. ChildLink provides direct live feed into the court and supports previous recording of statements of children in collaboration with the Guyana Police Force.

Source: Regional Consultations – JURIST Project, 2022

4.5 SUPPORT AND CARE OF COMPLAINANTS POST-TRIAL

1. A complainant or other witness who was declared a vulnerable witness during the trial may need on-going care and support after the termination of the proceedings. The prosecutor ought to arrange on-going care services but where social workers or other support personnel are attached to the court, the court may make a referral to such personnel for care and support services to be provided to the vulnerable witnesses after the termination of the proceedings, where it is deemed appropriate to do so.
2. In addition, where an accused person has been held on remand for an extended period for a sexual offence and then acquitted of the charges, the court may make a referral to assist with reintegration into the community.
3. Whenever the court deems fit, it may authorize continued protection for a vulnerable complainant, witness, or defendant in order to prevent reprisals⁷.
4. Where required, and this applies in particular in the Magistrate's Court, a verdict or decision shall be explained clearly and carefully so that both the complainant and the defendant can understand the outcome.
5. Special care may be needed to ensure that complainants from indigenous communities or persons with a disability are referred to further therapeutic services and that care services are extended to them beyond the completion of the trial, especially where the court is of the view that the person may have difficulty reintegrating into their community.

⁷ In 2022, Belize passed the Protection of Witnesses Act which extends powers of Court to make order prior to, during or after trial for protection of witnesses including Anonymity Orders, restrictions on disclosure and other protections. Retrieved from <https://www.agm.gov.bz/wp-content/uploads/2022/05/Act-No-8-of-2022-Protection-of-Witnesses-Act-2022.pdf>

6. In particular, the court should consider the fact that the complainant may face ostracizing or isolation by the community as a result of the sexual assault and may not have support mechanisms within their family or community to return to. Care services can facilitate their recovery and reintegration or relocation to another community and are best provided through multi-sectoral teams.

Best Practice

Multi-Sectoral Steering Committee for the Sexual Offences Model Court - Antigua and Barbuda

In Antigua and Barbuda, new policies and procedures focusing on survivor-centered service provision prior to, during, and post-trial in criminal proceedings coordinated by the Directorate of Gender Affairs have been developed for all victims of gender-based violence. Further, the Sexual Offences Model Court has a Multi-Sector Steering Committee with representatives from the court, law enforcement, health, social services, civil society organizations to ensure the court and the public remains responsive to the needs of complainants in sexual offences cases and to assist in coordinating care and protection services for survivors.

However, timeliness in sharing information on the progress of cases to all stakeholders in the justice chain is crucial to the provision of services to survivors as well as the protection of their rights. It is important to maintain strengthened collaboration between the stakeholder organizations.

Source: Regional Consultations – JURIST Project - 2022

4.6 SUMMING UP AND DIRECTING THE JURY

1. In jury trials, the prosecution and the defence are entitled to make closing speeches to the jury to summarize the main points of the case that they have presented to the court.
2. After the closing speeches, the court is required to give directions to the jury on the treatment of evidence presented to aid in their deliberations as well as on directions on such issues as good and bad character, collusion or contamination and admissibility and treatment of material discovered in the possession of the defendant as may be needed.
3. In sexual offence cases, the judge may direct the jury to be aware of stereotyping the complainant. This can arise especially in relation to delays in making a report, a complainant's reaction to the defendant's behavior, and any previous relationship between the parties. The Bench Book of Jamaica⁸ and *R v Miller*⁹ may be considered for guidance.
4. However, the direction should not make it appear that the judge is supporting one view or another.
5. Where the judge intends to warn the jury about stereotyping or unfair assumptions, he or she should indicate that to counsel before their speeches so that they may address that in their final remarks to the jury if needed. Moreover, it is desirable that directions should be discussed with counsel and their precise content agreed in advance.
6. It may also be prudent for the judge to raise with counsel, in the absence of the jury, the specific legal issues which need to be the subject of specific references in the summing-up.

⁸ Government of Jamaica, (2017). Supreme Court of Judicature of Jamaica Criminal Bench Book.

⁹ [2010] EWCA Crim 1578.

Best Practice
Summing-up Directions on Stereotyping or Unfair Assumptions
- UK and Trinidad and Tobago

The Crown Court Bench Book, 2010 provides the following sample directions to the jury on unfair assumptions;

“It would be understandable if one or more of you came to this trial with assumptions as to what constitutes rape, what kind of person may be the victim of rape, what kind of person may be a rapist, or what a person who is being, or has been, raped will do or say. It is important that you should leave behind any such assumptions about the nature of the offence because experience tells the courts that there is no stereotype for a rape, or a rapist, or a victim of rape. The offence can take place in almost any circumstances between all kinds of different people who react in a variety of ways. Please approach the case dispassionately, putting aside any view as to what you might or might not have expected to hear, and make your judgement strictly on the evidence you have heard from the witnesses.”

Trinidad and Tobago Bench Book, 2015:

The Bench Book adopts the UK guidelines but also goes further to indicate that the direction of the judge should not be given without discussion between the judge and the advocates before speeches. In particular, the judge should not appear to be endorsing argument for one side at the expense of the other and the direction must be fair and balanced.

Source: Regional Consultations, JURIST Project 2022

5.0 GUIDELINES FOR SENTENCING

The sexual offence legislation in each jurisdiction will set out the maximum and sometimes minimum sentences applicable for offences. However, the court in assessing each offence must determine the appropriate sentence for the specific circumstances of the crime. In recent years, there have been formal sentencing guidelines and cased law emanating from the CCJ to provide additional guidance to judicial officers on sentencing, these Revised Guidelines will highlight some of those developments.

5.1 INTRODUCTION

1. The purpose of sentencing in sexual offence cases, as in other criminal offences, is to contribute to respect for the law and the maintenance of a just, peaceful and safe society by imposing sanctions that denounce unlawful conduct, deter offenders, assist in rehabilitation, promote a sense of responsibility and provide reparations to the complainant.
2. To achieve this, the court strives to ensure that the sentence is proportionate to the gravity of the offence while accounting for any mitigating factors.
3. The court may look at the factors below as examples for determining sentences to determine the starting point where the legislation does not give mandatory sentences. After establishing the starting point, aggravating and mitigating factors may be considered to determine what the final sentence will be.

5.2 DETERMINING THE SENTENCE

1. The steps typically followed by the court in determining the appropriate sentence for each circumstance include:
 - a. Determining the category of the offence and the high and low ranges in that category.
 - b. Determining what is the starting point for sentencing for the particular offence.
 - c. Determining if there are any aggravating circumstances and the dangerousness of the offence before the court.
 - d. Identifying if there are any mitigating circumstances and which should be taken into account.
 - e. Determining what would be the reduction in sentence where the defendant pleaded guilty.
 - f. Determining the dangerousness of the offender.
 - g. Determining totality of the sentence to be served, where there are multiple convictions in the same trial to determine which sentences will run concurrently and which will run consecutively to ensure that the total sentence to be served is just.

- h. Determining what ancillary orders may be needed especially in cases involving children and persons with a disability.
 - i. Preparing reasons for the decision being made.
 - j. Determining whether there will be any reduction for time spent on bail or on remand. However, it is to be noted from the direction of the CCJ in **Da Costa Hall v The Queen**¹⁰ that the judge should explain how time spent on remand has been dealt with in the sentencing process. In addition, if the judge chooses to depart from the prima facie rule, of giving full credit for time served prior to sentencing, the judge must set out reasons for such departure.
2. The facts and circumstances of each case will guide the length and type of each sentence. The court may consider what the facts and circumstances reveal about:
 - a. The degree of planning and deliberation.
 - b. The continuation of the offence or multiple offences.
 - c. The randomness of the act on the complainant and the nature of violence used to subdue or overpower the complainant or degree of force involved.
 - d. The state of consciousness or unconsciousness of the complainant when the offence occurred.
 - e. The age of the complainant.
 - f. Any physical or mental disability of the complainant.
 - g. Offenders acting in concert.
 - h. Use of pornography with child survivors.
 - i. STDs resulting from the assault.
3. The presence of these factors will help the court to decide what will be the starting point for the determination of the sentence.
4. In addition, in some jurisdictions, Practice Directions¹¹ now require sentence indications to be given on the basis of the principles set out in **R v Goodyear**¹². The court may give a sentencing direction as to the maximum sentence that may be applied if a guilty plea is submitted by the defendant at the beginning of the trial or during the trial process. The judge may request a pre-sentencing report and shall give both sides the opportunity to be heard. The judge may reserve the right to give an indication until the judge has the requisite information to give such indication. Where an indication is refused a later request for an indication later in the proceedings may be field by the defendant.
5. While the court may also consider previous sentences passed for the offence, when dealing with sexual offences the court must in addition consider the prevalence of the offence in the particular community at the time, so that a previous decision which may have been based on a different

¹⁰ Da Costa v Hall [2011] CCJ 6 (AJ). Retrieved from <http://www.caribbeancourtsofjustice.org/wp-content/uploads/2021/02/JUDGMENT-OF-DA-COSTA-HALL-V-THE-QUEEN-CONSOLIDATED.pdf>

¹¹ Eastern Caribbean Criminal Procedure Rules, Practice Direction No. 2 of 2015: Sentence Indications (Re-Issue). Retrieved from <https://www.eccourts.org/wp-content/uploads/2012/09/Sentence-Indications-re-issue-PD-No.-2-of-2015.pdf>

¹² R v Goodyear [2005] EWCA Crim.888. Retrieved from <https://www.casemine.com/judgement/uk/5b46f1f82c94e0775e7ef2ba>

degree of prevalence may not be persuasive. Nonetheless, in the Caribbean, general sentencing guidelines have been framed by judicial precedent and directions in previous cases, especially in **Winston Joseph et al v R4** which remains the official guideline for the Eastern Caribbean countries.

6. Aggravating factors may include:
 - predatory sexual behavior;
 - forcible confinement;
 - age of the survivor and knowledge of true age;
 - degree of vulnerability of the survivor (inarticulate, easily manipulated, disabled);
 - whether the complainant was targeted as a member of religious community or minority group;
 - whether defendant knew he had an STD and intended to transmit it;
 - relationship of trust or offender was in position of authority;
 - degree of invasion of sexual integrity;
 - degree of violence or force used and/or repeated acts of violence;
 - whether a weapon was involved;
 - manner of interference (attempted acts, kissing, touching outside of clothes, touching inside of clothes, digital penetration, oral sex, full intercourse);
 - whether there was risk of STDs;
 - impact on the survivor, family and offender;
 - public abhorrence to the offence;
 - attitude of the offender;
 - biological or psychological factors;
 - likelihood of rehabilitation; and
 - likelihood of reoffence.
7. Mitigating factors may include:
 - age of offender;
 - guilty plea (early or late, the saving of court resources);
 - prior record (related or unrelated);
 - expression of remorse;
 - cooperation with authorities; and
 - background or heritage and the kinds of sentences that may be appropriate for persons from indigenous communities or persons with a disability or other background information that may be relevant.
8. Specific guidance has now been provided for determining sentences where the defendant has multiple convictions for the sexual offences in the same proceedings. That guidance is set out below.

**Best Practice
Pompey Guidance**

- Linton Pompey v D.P.P. [2020] CCI 7 (AJ) GY

The CCJ heard an appeal in Pompey against a conviction for sentences, involving 2 counts of rape and 1 count of sexual assault of a child, to run consecutively for a total of 37 years. The CCJ held that the sentence was excessive having regard to the principle of totality. The totality principle requires that a sentence for more than one offence must reflect all the offending behaviour before the court, but the total or overall sentence must be just and proportionate. Thus, while consecutive sentences were appropriate in the instant case, the total of 37 years was excessive.

The court also provided the following general guidance to courts in determining sentences:

1. Sentences should not be passed immediately after verdict (especially where a long sentence is likely) instead a separate hearing should be set to allow for mitigating and aggravating factors to be presented as well as victim impact statements.
2. With regards to the totality principle in sentences for multiple serious offences;
 - a. consider what is appropriate for each individual offence;
 - b. ask whether, if the sentences are served concurrently, the total length of time to be served will reflect the overall seriousness of the criminality;
 - c. if yes then the sentences may run concurrently, if no then the sentences may run consecutively but test the overall sentence against the requirement that it be just and proportionate;
 - d. if the sentence running consecutively would be excessive and thus not just and proportionate, the judge must go back to the drawing board and restructure the sentences with the totality principle in mind; and
 - e. the judge must carefully explain the rationale for the sentence and its structure in a way that will be best understood by the parties and the public.
3. Judges should be guided by any available Sentencing Guidelines ranges for the most prevalent crimes.
4. Recommendations : Sentencing Handbook of Trinidad and Tobago ; Criminal Bench Book for Magistrates and Parish Court Judges in the Caribbean Region; Sentencing Guidelines Jamaica; Eastern Caribbean Supreme Court Sentencing Guidelines; *Calvin Ramcharran v D.P.P. [2022] CCJ 4 (AJ) GY.*

Source: Consultations for the JURIST Project, 2022

9. Specific sexual offences may have mandatory sentences depending on the age of the complainant and the age of the defendant.
10. In some jurisdictions, where the complainant and the defendant are both children or close in age, lower sentences will be made, including in some cases non-custodial sentences. A victim impact statement **must be sought**. The court should take the opportunity to determine the impact of the sexual offence on the complainant, especially where no remorse has been expressed or where the offence forms part of a pattern of offences by the same offender.

5.3 VICTIM IMPACT STATEMENT

1. The victim impact statement is organized by the prosecution and facilitated by the court. The purpose of the victim impact statement is to give information to the court as to how the offence has affected the complainant and help the court understand the complainant's views about the offending as well as make the offender aware of how their offending has impacted the complainant.
2. A victim impact statement may be given in writing or in person. If in person, the court shall give directions such as whether the statement will be given in open court or from a remote location via live link. Where the complainant gave evidence via live link, the victim impact statement should also be given via live link.
3. The court shall also give directions for the presence of a support person with the complainant for the victim impact statement where needed.
4. Where the complainant is a young child, the court may give directions for the victim impact statement to be given through or with the assistance of an intermediary but should consider whether the attendant hardship and trauma that may be caused to the child will outweigh the usefulness of the victim impact statement.
5. The victim impact statement should contain details of any physical injury or emotional harm or financial or other loss to the complainant as a result of the offence as well as any other impact on relationships, work, changes in attitude or behavior, mental health and impact on lifestyle. The victim impact statement can also highlight on-going medical needs, STDs or any other result of the offence. The court must not allow the victim impact statement to contain false statements or be used to threaten the prisoner or anyone else.
6. The victim impact statement may also contain pictures or other visual representation. In addition, the court can give direction to allow the victim impact statement to be submitted as a video recording or audio recording if appropriate.
7. Practice directions may be issued to create a standard form for the victim impact statement.

5.4 OTHER ORDERS THAT MAY BE MADE AT SENTENCING

1. The court may also consider whether ancillary orders need to be made such as:
 - a. Orders barring contact between the offender's family and the complainant.
 - b. Compensation or restitution payments to the complainant.
 - c. Mandatory counseling for the defendant especially where non-custodial sentences are considered. Such counseling should consider the specialized needs of the defendant with appropriate orders for the submission of progress reports as well as the appearance of the defendant before the court.

- d. Such apologies to the complainant in non-custodial sentences only as the magistrate may deem appropriate.
 - e. Confiscation of property such as a financial benefit derived from the offence, such as publishing private images or disseminating child pornography.
 - f. Deprivation or destruction of property such as equipment used in the commission of the crime, for example a phone or computer or car.
 - g. Directions relating to the listing of the offender's name on a sexual offender's register.
2. In respect of an adult complainant in a relationship involving domestic violence, the court should also consider the need for other family matters such other orders that may be needed to assist in recovery or to extend protection and care and support to the complainant.

5.5 SEXUAL OFFENDERS REGISTER

1. In some jurisdictions, there are provisions for a sexual offenders' register in the sexual offences legislation. The legislation may designate that convicted persons in all or specific offences will be registered.
2. It is recommended that a sexual offence register should contain primarily convictions of serious sexual offences and make a further provision for application to be made by the D.P.P. in special circumstances for non-serious sexual offences where the public interest would require that due to prevalence of the crime or for serial offenders.
3. The main purpose of a sexual offenders' register is to help police services prevent and investigate sex crimes by giving police agencies access to a data bank containing confidential personal information about convicted sex offenders, particularly their residences, to track and inhibit sex offences¹³.
4. The court may make the order at the time of sentencing for the defendant to register or the prosecutor may apply after sentencing for orders for registration.
5. When the order is made for registration of the offender, the court shall also give directions for the date by which the defendant should register to his or her nearest police station.
6. The court shall also consider, in giving directions for registration, the duration of the registration, and whether the defendant will also be required to register for other crimes that surrounded the commission of the sexual offence such as breaking and entering or trespassing where these were done with the intent to commit the sexual offence for which the defendant has been convicted.
7. Where the legislation makes a distinction between adult sex offenders and child sex offenders, the legislation will often exempt children from registration. If the legislation does not specifically include children, the court should determine whether the hardship that will be caused to the child will outweigh the interest of justice that will be served by the child being registered.

¹³ In Trinidad and Tobago, the Sexual Offences Registry is currently available to the public as an online searchable database with full details on offenders convicted of sexual offences.

8. The court shall also give directions that the offender should notify the police of all changes of address, and sometimes to reconfirm their current address each year, and the court shall explain that non-compliance attracts a criminal sanction.

Best Practice
Sexual Offences Registry
- Canada

The **Protecting Victims from Sex Offenders Act SC 2010** now allows for automatic inclusion of convicted offenders in the registry, mandatory DNA sampling of sex offenders, registration of sex offenders convicted abroad, notifications to other police. The registry is not accessible by the public and is restricted to police officers allowing all police services to search the registry and can use the information to notify other police when sex offenders are traveling to their area. Offenders convicted of more than one sexual offence remain on the register for life. Offenders are required to notify police of any change in address, work, vehicle they own or use. The registry also includes information about the offender's method of operating to assist other police officers investigating crime.

Source: Public Safety Canada.

Retrieved from <https://www.publicsafety.gc.ca/index-en.aspx>

6.0 GUIDELINES FOR DATA COLLECTION AND MANAGEMENT

1. Data collection and data management are important aspects of assessing the effectiveness of the Magistrates' and High Courts (or Supreme Court) in addressing sexual assault cases.
2. Monitoring and evaluation should involve the following components:
 - a. Development of indicators for the assessment of service delivery and the incorporation of the indicators into the computerized database system of the court.
 - b. Continuous data collection on the delivery of service by incorporating all aspects of service delivery into the computerized database system with appropriate safeguards for the protection of confidentiality.
 - c. Periodic review and analysis of data collected by means of internal review systems and reports generated from the computerized database system.
 - d. Conducting annual reviews and preparation of annual reports that provide assessments on the attainment of the indicators established.
3. Some suggested indicators that may be used for the assessment of services are:
 - a. Total number of cases filed in court.
 - b. Number of cases disposed of by the court.
 - c. Number of disposed cases that are sexual offences.
 - d. Type and number of each sexual offence dealt with by the court over the monitoring period.
 - e. The range of sentences issued.
 - f. The ages of the complainant and the ages of the defendants.
 - g. Number of complainants who were persons with a disability.
 - h. Number and type of special measures used by the courts in the various categories of sexual offence cases.
 - i. Number and type of care/support services offered to complainants in the various types of sexual offence cases.
 - j. Number of child offenders appearing in sexual offences before the court.
 - k. Number and type of sexual offences for which child offenders appeared before the court.
 - l. The range of sentences issued in respect of child offenders.
 - m. Number and type of cases in which special measures were used.
 - n. Number and type of support services provided to complainants.
4. To ensure continuous data collection, both Magistrates' Courts and High Courts should be required to maintain an appropriate computerized database of returns on all sexual assault cases that disaggregates data according to the indicators above and to include these indicators in the returns from the court to form part of the court's statistical report.

5. In addition to the returns, to ensure systemic periodic reviews of the statistics, the procedures and practices for the courts should require a bi-annual review of the returns submitted by each court with a view to identifying patterns, with a view to promoting consistency of sentencing across the courts.
6. In addition, the patterns in offending and any spikes in certain offences that may be highlighted by the bi-annual review should be shared with the D.P.P.
7. One of the most important issues to be monitored in the court statistics by each head of court is the clearance rates of the courts to determine effectiveness as well as to structure interventions to clear backlogs.
8. Annual statistics provided to the heads of judiciary for each jurisdiction should provide desegregated data based on the recommended indicators above.
9. Annual reports of the courts should be re-structured to provide information on clearance rates, desegregate data on the types of sexual offences before the courts, the ages of the defendant and the complainants and the sentences issued as well as care and support services offered to the complainant and the use of special measures.
10. Each court shall have a data collection unit or at a minimum a staff member exclusively assigned to be the monitoring and evaluation officer with responsibility for supervising data collection, populating the database and preparing reports as required. The experience of the Sexual Offences Model Court demonstrates that if there is no dedicated staff member responsible for data collection or populating the data management system, then consistency in data collection and analysis cannot be maintained.

Best Practice
Evaluation of Disposal Rates
- Belize

In 2022, Belize as part of its contribution to judicial consultations for these revisions initiated a rapid assessment of outcomes of sexual offence cases and collected anecdotal data from judges indicating that there were delays in trying sexual offences cases due the backlog caused by court closures during COVID-19 pandemic and also the prioritization of murder cases in clearing backlogs.

The outcomes also showed that delay was a factor in reduced witness participation often leading to Nolle Prosequis being issues in a substantial number of cases. The decision was made to pilot having a dedicated Judge try sexual offence cases to clear the current backlog and to prevent adding more cases to the backlog. This Pilot will also provide valuable data as to whether a specialized sexual offences court was needed.

Source: Regional Consultations – JURIST Project, 2022

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PART 4:

Guidelines for Offenders
Rehabilitation and
Management

7.0 INTRODUCTION

The court may consider the opportunities and potential for rehabilitation whenever possible. Some sexual offenders have a very high rate of recidivism and not all cases are appropriate for rehabilitation. The interests of justice must be weighed against the likelihood of reoffending and whether rehabilitative intervention may reduce that likelihood. Further, the legislative reforms in the jurisdictions have created specialised treatment for child offenders in sexual offence cases.

7.1 ADULT OFFENDERS

1. The court's options for rehabilitation of an adult sex offender are often limited. To determine whether a defendant is a suitable candidate for rehabilitation, the court may seek a comprehensive psychosexual evaluation of the defendant.
2. The court may request the psychosexual evaluation to be done as part of the pre-sentencing procedures. Usually, the court will appoint a specialist to undertake the evaluation and prepare a report for the court.
3. Once the court obtains an evaluation report suggesting that a defendant may be a candidate for intervention and rehabilitation, the court then must consider the appropriate placement or service delivery mechanism.
4. Rehabilitation is unlikely to be successful where the defendant has shown no remorse or where the defendant showed a pattern of repeat offences or exhibited targeting and planning behavior.
5. Most of the options for rehabilitation of adult sex offenders, would ideally be part of prison treatment programs that can provide supervision and psychiatric services as well as behavior modification training.
6. Where appropriate and where programs are available, the court can mandate as part of the sentencing option, participation in prison rehabilitation programs and require reporting on progress to be made to the court.
7. Adult offenders who successfully complete treatment may benefit from it in parole applications or applying for sentences to be reduced or for transfer to a lower risk facility or lower risk area of the particular prison.
8. Adult offenders will often not have access to family-based or community-based programs, though these are to be encouraged, and for most sexual offences, as an alternative to custody, the court may not be able to give an alternative sentence outside of a fine.
9. Even after completing a prison treatment program and after release from prison after completing his or her sentence, an adult sex offender may still require aftercare programs and the court should require participation in aftercare as a condition for early release where sentences are being reviewed for reduction or early release.

10. In appropriate cases, the court may sentence an adult sex offender to probation and attach participation in a sex offender treatment program in the community as a condition to the probation.
11. The court shall also consider referrals for recovery programs for persons acquitted of sexual offences who were held on remand for extended periods and any services available to aid in reintegration.

7.2 CHILD OFFENDERS

1. Legislation establishing a special mechanism for child offenders exists throughout the Caribbean creating a separate criminal justice regime for child offenders. Most of these laws are based on international commitments contained in Conventions impacting child offenders such as the Beijing Rules, the Tokyo Rules and the Riyadh Guidelines. The general aims thereof, are to prevent re-offending and to provide opportunities for rehabilitation while ensuring there is accountability of child offenders for what has been done.
2. In addition, throughout the Caribbean, laws have been passed to protect the rights of children and mandating that decisions made concerning them are done “in the best interests of the child” while taking account of his/her age, development and social intelligence.
3. However, in most jurisdictions, sexual offences are excluded from the special mechanism for orders that include rehabilitation and treatment of child offenders under existing child offender legislation.
4. Nonetheless, the sexual offences legislation of most jurisdictions provides for a lower sentence where the alleged defendant is close in age to the complainant or was a child at the time the offence was committed.
5. Where the legislation provides for lower sentences for offenders under the age of 18 years, the following factors should be considered in determining the appropriate sentence for the child offender:
 - a. Any diminished capacity by reason of age or other factor in the offender or the complainant.
 - b. Any mitigating circumstance such as remorse expressed by the offender.
 - c. Any recommendation from child protection services or the department responsible for child offenders as to the appropriate sentence.
 - d. The impact of the offence on the complainant’s life and prospects.
 - e. Any continuing trauma or medical condition that the complainant will have to live with such as an STD.
 - f. Available rehabilitative programs for the complainant.
 - g. Available alternative sentencing regime for the offence and the structure for implementing and supervising the alternative sentence measure.
 - h. Whether a custodial sentence would be more appropriate due to the prevalence, seriousness

- or gravity of the offence.
- i. Available rehabilitative programs for child sex offenders.
 - j. Available measures for addressing breaches of any alternative sentence or a rehabilitative condition attached to a sentence imposed by the court.
6. Typically, non-custodial measures that are provided for in legislation in respect of child offenders include:
- a. A discharge where permitted by legislation, when discharging a child under a diversion scheme, the court may consider whether there is a need to attach conditions to provide for sensitivity training or other rehabilitative measure, or whether some aspect of restorative justice as detailed below should be employed, or whether child protection proceedings should be instituted. Conditional discharge orders will usually be binding over a specific period during which the child offender is prohibited from committing further offences. The court should consider whether the binding over period will be for all offences or restricted to sexual offences.
 - b. A probation order - while prohibiting the offender from committing another offence during the stated time of the probation, such orders require the child offender to sign in on a regular basis with the police as an accountability measure, and should include participation in a counseling program, school attendance and such other conditions as may be necessary shall be attached.
 - c. A mandatory counseling order-such counseling should be provided by specialists capable of providing professional therapy for the specific needs of sexual offenders. Such counseling orders may be more appropriate for child offenders. In the discretion of the judge, such counseling order may also require the offender to issue a formal apology to the complainant where the court deems that necessary. However, an apology is never appropriate for adult offenders or as a substitute for a custodial sentence and cannot be the only non-custodial measure issued. Further, where counseling is ordered, the court shall require progress reports to be issued to the court by the counselor and shall require the defendant to appear before the court for the court to assess the impact of such counseling.
 - d. A community service order - these are work orders for the child offender to carry out specific job tasks at a specific facility for a specified period of time. Community service orders require supervision since any failure by the child offender to do the work assigned constitutes a breach of the order and the court may then impose a custodial sentence.
 - e. A fine - this is payment of a specified sum to the court. Fines are not always regarded as an effective measure for child offenders as they are unlikely to have the means to pay the fines which could result in them being imprisoned. In most cases, the fines are paid by the parent so there is little direct rehabilitative value for the child.
 - f. A combination order - the court will usually be able to combine various orders if the court deems it necessary based on the circumstances of the case and the needs of justice.
 - g. Suspension of a custodial sentence - the court can issue a custodial sentence and make an order to suspend the service of the sentence unless there is a commission of another offence.

- h. A custodial sentence - in some cases, it will not be appropriate to impose a non-custodial sentence. However, even where the court issues a custodial sentence, the maximum sentence should generally not be issued. The court should consider where the custodial sentence will be served to ensure the safety of the child offender and to maximize any opportunities for rehabilitation while ensuring the safety of other children.
7. The court will need to consider what orders may need to be made to ensure records of a child are expunged. In some jurisdictions, records are automatically expunged by administrative action of the court or police. In other jurisdictions, the person seeking the record to be expunged will need to make an application to the court for an order for records to be expunged.

7.3 RESTORATIVE JUSTICE FOR CHILD OFFENDERS

1. Restorative justice options are never appropriate for adult offenders but may be considered for offences where non-custodial sentences are allowed for sexual offence cases especially where offenders are children.
2. Restorative justice options are aimed at ensuring that the child offender is held accountable for their actions in committing a sexual offence while facilitating rehabilitation and the restoring of relationships where suitable.
3. It is believed that attaching accountability to the measure of rehabilitation can contribute to the child's positive development as well as to their openness to influence by service programs which may then reduce recidivism since children are still evolving in their developmental capacities.
4. Accountability usually requires "accepting responsibility" for the wrong done. This may require admitting to the behavior. It is also important that this information remain confidential.
5. Restorative justice measures implemented by the court are usually conditions attached to a non-custodial or alternative sentence especially where the court decides to discharge or conditionally discharge the child offender.
6. The restorative justice measures may include:
 - a. An apology letter - where the offender writes a letter of apology to the complainant. The offender may be required to read this to the complainant and their support person in court. This may be attached to an order for counseling with provisions for the court to be updated on the progress of the counseling.
 - b. A survivor-offender conference - where the survivor is able to confront the offender about what happened and share the negative impacts of the offender's actions and receive an apology from the offender. This will require supervision and support from the child protection services to ensure the trauma needs of the complainant are met during such conferences.
 - c. Accountability worksheet - this may include specific steps and a series of actions to be taken by the child offender which then must be evaluated and reported to the court. This will require supervision by the department or agency with responsibility for child offenders.

- d. Community service - this will include some non-compensatory acts of service that the offender will be required to provide to the community. The community service will require supervision to ensure the safety of the offender and compliance with the terms of the service required to be done by the court. The completion of community service will also be required to be reported to the court.
7. In addition, persons from indigenous communities may have their own form of restorative justice. The court may consider if community measures for restorative justice would be more effective in providing rehabilitation while meeting the needs of justice overall for the child offender.
8. When making orders for restorative justice, the court may also need to consider attaching conditions to provide rehabilitation, for example:
 - a. Detox services for any substance abuse problems of the child offender.
 - b. Counseling and other mental health therapies.
 - c. Anger management programs.
 - d. Mentoring programs.
 - e. Life-skills training including respect for sexual and reproductive rights of others and learning about their own rights.
 - f. Parenting empowerment programs that may be needed for the parents of the child offender.
9. Typically, these conditions are combined to ensure that the child offender involved in restorative justice is accountable and receives skills in the following three areas (based on cognitive behavior therapy⁵):
 - a. Skills-training (behavioral component) - social skills training, being a curriculum of prosocial, interpersonal skills, showing what to do instead of aggression, and dealing with anger-provoking events.
 - b. Anger management training (affective component) - teaching children what not to do if provoked and self-control competencies.
 - c. Moral responsibility training (cognitive component) - promoting values that respect the rights of others, raising a level of sense of fairness and justice, therefore helping children use interpersonal and anger management skills taught.
10. The court should also ensure that the requisite therapeutic and rehabilitative services are being provided to the complainant and where the complainant is a child should consider any child protection orders that may need to be made in respect of the child including supervision or care orders where necessary.
11. To prevent and minimize recidivism, the court may order offenders to be subject to an assessment of the danger posed by the offenders and the possible risks of future further sexual offences, in particular against children. The arrangements for such assessment, such as who should do the assessment and directions for what to include in a pre-sentence report can also be made by the court.

¹⁴ Becker, J.V. & Hunter, J.A. (1997). Understanding and treating child and adolescent sexual offenders. In T.H. Ollendick and R.J. Prinz (Eds.), *Advances in Clinical Child Psychology* 19. New York: Plenum Press

PART 5:

Establishing a Specialized Sexual Offence Court



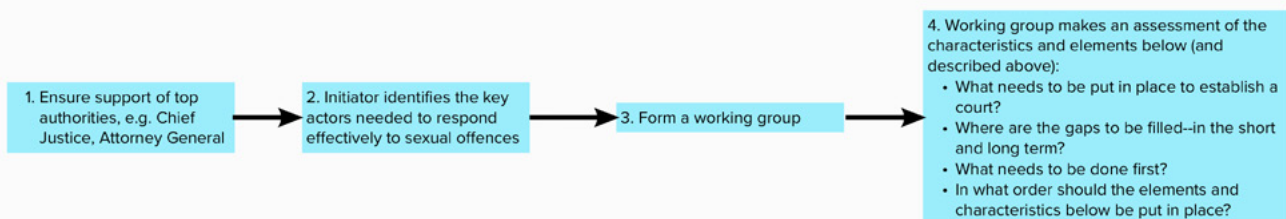
8.0 INTRODUCTION

To support and give guidance to jurisdictions wishing to strengthen existing Sexual Offences Courts or establish new specialized Sexual Offences Courts. In particular, the guidelines under this Part will provide a comprehensive overview of the components to be considered for successful implementation of a Sexual Offence Court and the steps required to maintain the success of an existing court.

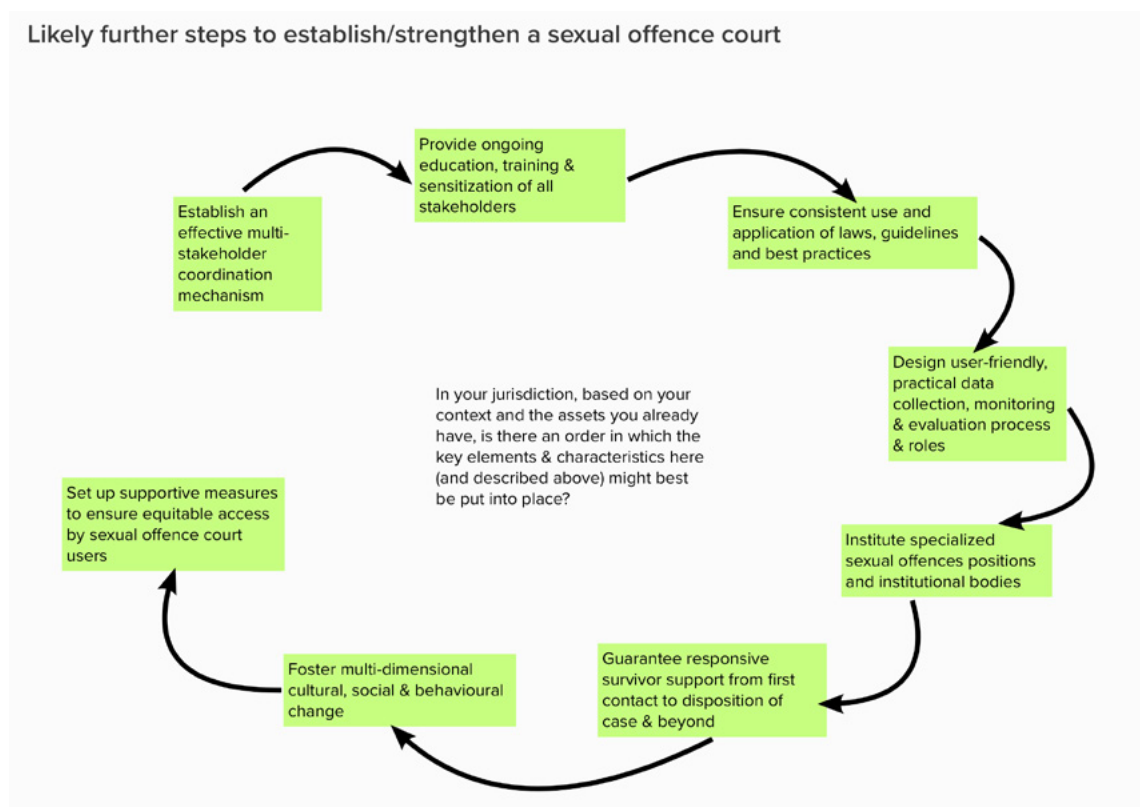
8.1 STEPS TO ESTABLISHING A COURT

1. The steps required to establish a court should be based on the particular resources available in the specific jurisdiction as well as the peculiarities of prevalence of sexual offences and the needs of complainants.
2. Thus, a Baseline Study to assess the current situation and gaps in care as well as the available resources is a necessary preliminary step.
3. Establishing a working group to undertake the Baseline Study can help to mobilize support for the court and the resources that will be needed to establish it.
4. Once there is information on the potential caseload and information on the needs of complainants have been identified then mobilizing the resources to meet those needs will require collaboration w between the court and other actors in the justice chain as well as civil society organizations working with survivors.
5. The info-graphic below establish these key preliminary steps that are required to establish a sexual offences court.

Potential initial steps to establish a sexual offence court



6. The working group should be made up of key technical representatives and decision makers from the agencies who comprise the justice chain viz., law enforcement, public prosecution, attorney-general, health, social services, child welfare, civil society organizations and the court.
7. The working group can later serve as the multi-sectoral stakeholder committee to monitor the progress of the court.
8. The other elements of and characteristic of a successful justice system to support a sexual offences court are set out below:



Source: Responding Effectively to Sexual Offence Cases in the Caribbean: Systems and Practices

8.2 THE CHARACTERISTICS ABOVE DESCRIBED IN MORE DETAIL

1. **The establishment of an effective multi-sectoral coordination mechanism:** This may be the working group repurposed. There should be a guidance document setting out the roles and responsibilities of each representative and setting timelines for actions to be taken by the group, data collection procedures, laws and guidelines.
2. **Provision of ongoing education, training and sensitization of stakeholders:** In particular judicial as well as non-judicial stakeholders and members of the multi-sectoral coordination mechanism need orientation as well as ongoing training on relevant laws, the Revised Model Guidelines, gender sensitivity, biases in treatment, care and support of survivors.
3. **Ensure consistent use of the Guidelines and other laws and policies:** The effective establishment of a court that works will depend on the culture and practice it embodies. The Revised Model Guidelines present standardized set of guidelines on all aspects of the adjudication process that will inform and improve practice.
4. **Design user friendly, practical data collection and monitoring and evaluation system:** Efficient and accurate data collection on the disposal rates, outcomes of cases, delays and adjournments can ensure that the court remains responsive to the needs of both complainants and defendants and the needs of justice. Data collection can be costly and time consuming, so the most effective way to ensure it will be done is to integrate it into any existing systems the court already uses. It is also helpful, if there is a designated staff member assigned with responsibility to oversee data collection.
5. **Institute specialised sexual offences positions and institutional bodies:** Sexual offences courts do not operate in a vacuum, the outcome of cases is dependent on the quality of evidence presented to the court, the quality of evidence is influenced by the quality of the techniques and systems in place to collect the evidence. "One stop shop" services such as exists in Jamaica through CISOCA and the coordinated services through SARC in Antigua and Barbuda offer the best option to reduce re-victimization and the provision of victim-centered services. Through these mechanisms survivors can make reports to the police, get medical checks and treatment, receive counseling and services for other victim care and protection needs in one location or from a trained team of agencies.
6. **Training and selection of judicial officers and court staff:** Judicial officers and court staff serving in specialised sexual offence courts must be selected with care and be trained on all aspects of their duties to ensure that they possess understanding of gender-based violence, addressing bias and trauma needs of survivors. Where possible, recruit/assign personnel with project management, budget and procurement skills, to coordinate the establishment and monitoring of the special court.
7. **Responsive survivor support from reporting to disposition of case:** While the specialised services that support court proceedings is important, there is a need for responsive survivor support arises from the time the report is made and must be provided from the first interaction with law enforcement to the disposal and post-disposal of the case.
8. **Multi-dimensional cultural, social and behaviour change at the community level:** Public opinion on issues connected to stereotypes and bias can negatively affect the outcome of cases especially in jury trials, therefore, it is necessary to continually address and influence changes in public perception of complainants as well as defendants.

9. **Supportive measures to ensure equitable access by sexual offence court users.** Sexual offence complainants are often vulnerable complainants and so, will usually require some special measure in court to be able to properly give evidence. Consideration must be given to ensuring that the court is outfitted with the various special measures provided for in the Revised Model Guidelines.

Best Practice
Model Sexual Offence Court
- Antigua and Barbuda

The JURIST Project in 2018 established the specialized Sexual Offences Court in Antigua and Barbuda. The SOMC was established as a High Court under the jurisdiction of the Eastern Caribbean Supreme Court (ECSC).

The SOMC utilizes the Model Guidelines as the procedural guidance for the court and is equipped with mechanisms for the use of the special measures provided for in the Model Guidelines. The SOMC is staffed with specialized experts including a dedicated judicial officer, support staff and a multi-disciplinary monitoring team.

The Multi-Stakeholder Steering Committee (MSSC) for the court allows for ready access to and collaboration with key stakeholders who are required to support the processes of the court such as law enforcement, medical, social services and civil society partners.

Further, the MSSC provides a space for advocacy for the court and public education mechanism on the role of the court and the rights of complainants and defendants to support law and policy developments on sexual offence cases.

The experience of the SOMC has also provided valuable experiential data on the areas for reform of the Model Guidelines. The SOMC is a continuous learning tool on the adjudication of sexual offences and how to properly engage government and non-government stakeholders in the development and sustainability of the court.

Source: Regional Consultations - JURIST Project - 2022



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ANNEX



ANNEX

LIST OF PARTNERS

The JURIST Project acknowledges with gratitude the support and participation of 76 participants in the regional Knowledge Exchange between the Sexual Offences Model Court (SOMC) in Antigua and Barbuda and the Guyana Sexual Offences Courts that took place in January to March of 2022. This resource is based on the ideas shared and collectively generated during two four-hour regional collaborative knowledge exchange and co-generation workshops on March 4 and 11, 2022, as well as during several preparatory meetings in January and February.

In particular, the Project wishes to acknowledge the contributions of the following organizations and individuals:

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- Justices Ann-Marie Smith and Colin Williams
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- Directorate of Gender Affairs (DoGA)
- Ministry of Legal Affairs
- Medical Officer of Health (ag)
- Royal Police Force
- Department of Public Prosecution
- Women against Rape Inc.
- Antigua and Barbuda Bar Association

Guyana Sexual Offences Courts:

- Chancellor (ag) Yonette Cummings-Edwards and Chief Justice Roxane George-Wilshire
- Supreme Court Judges and Judicial Research Assistants
- Magistrates
- Department of Public Prosecution
- ChildLink Inc.
- Blossom Inc.
- Red Thread

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- Department of Public Prosecutions

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- Eastern Caribbean Supreme Court (ECSC)
- Global Affairs Canada (GAC)
- United Nations Children’s Fund (UNICEF)-Guyana
- United Nations Children’s Fund (UNICEF)-Office for the Eastern Caribbean Region
- UN Women Multi-Country Office for the Caribbean
- JURIST Project staff

Facilitation team: Michael Hope-Simpson, Christine Peringer and Natalie Zend of ZENDialogue

1. THE MODEL GUIDELINES FOR SEXUAL OFFENCES IN THE CARIBBEAN REGION IN A SNAPSHOT

The Model Guidelines for Sexual Offence Cases in the Caribbean Region in a Snapshot <i>(CCJ, JURIST, 2022)</i>	
Purpose	<ul style="list-style-type: none"> • Provide internationally accepted best practices for the management of sexual offence cases; and • Offer a rights-based approach to the treatment of complainants and vulnerable witnesses, including children, involved in sexual assault cases.
Desired Outcomes	<ul style="list-style-type: none"> • Increased public confidence in the justice system as it relates to the handling of sexual assault cases. • Improved responses to survivors that will enable their full participation in the justice system, increase offender accountability and reduce secondary victimization. • Ensuring a trained and skilled cadre of cross-sectional professionals to respond to sexual assault cases, survivors and witnesses. • Speedy adjudication and reduction of case backlogs over time.
Guiding Principles	<ol style="list-style-type: none"> 1. The rights of all complainants and defendants will be protected and all service delivery will respect their rights and dignity. 2. All court services will be provided in a non-judgmental way that facilitates the empowerment of complainants. 3. Specialized training is an essential part of ensuring the best evidence is collected from complainants. 4. Service delivery must not re-victimize the complainant or traumatize witnesses. 5. Vulnerable complainants or witnesses will receive specialized support services. 6. Service delivery will recognize that due to the traumatic and disruptive nature of sexual assaults, support services will be needed for complainants and this may require multi-disciplinary collaboration with other agencies. 7. Confidentiality and privacy of complainants will be respected and protected.

<p>Contents</p>	<p>Guidelines for the pre-trial court process, including:</p> <ul style="list-style-type: none"> • summary jurisdiction offences; • first hearing/remand hearing/venue hearing; • bail; • disclosure; • case management in the magistrates’ court; • survivor care and protection; • indictable offences; • preliminary inquiries; • sufficiency hearings; • arraignment; and • case management in the high court. <p>Guidelines for the trial process, including:</p> <ul style="list-style-type: none"> • examination in chief; • cross-examination; • appearance of expert witnesses; • ongoing care & protection of vulnerable witnesses during the trial; • support & care of complainants post-trial; • summing up and directing the jury; • sentencing; • victim impact statement; • other orders that may be made at sentencing; • sexual offenders register; and • data collection & management.
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<p>Subject Matters Covered</p>	<ul style="list-style-type: none"> • Case management for sexual offences at both the pre-trial and trial stage (e.g., special measures such as screens, live link, anatomically correct dolls, directions for jury). • On-going care and support for vulnerable witnesses and complainants during and post-trial (e.g., witness protection measures, supporters, interpreters, prohibition orders to the media, therapeutic services). • Collection and management of court data on sexual assault cases (the components monitoring & evaluation should include, e.g., developing indicators, data collection, review, analysis & reporting; a list of suggested indicators). • Guidance on sentencing (e.g., steps to determine the appropriate sentence; facts & circumstances, mitigating & aggravating factors to consider). • Protocols for justice sector actors that support the court in the evidence gathering process, i.e., police, medical practitioners and prosecutors (e.g., victim impact statement, expert witnesses).
<p>References</p>	<ul style="list-style-type: none"> • <u>Revised Model Guidelines for Sexual Offence Cases in the Caribbean Region</u> • <u>Frequently Asked Questions: Model Guidelines for Sexual Offence Cases in the Caribbean Region</u> • <u>Guidelines for the Police Forensic Interview in Sexual Assault Cases</u> • <u>Survivor’s Rights Charter for Sexual Assaults</u> • <u>The Sexual Offences Model Court in Antigua and Barbuda: Frequently Asked Questions</u> • <u>Video on the Guyana Child Advocacy Centers (2019, 8 mins)</u>

2. THE JUSTICE CHAIN SNAPSHOT

The justice chain is comprised of the four distinct stages a complainant must navigate in seeking justice in the formal justice system. The first graphic below shows the four stages and their interconnectedness. The second graphic shows the key actors providing services to complainants at each stage.





Source: *Sexual Offences Model Court in Antigua and Barbuda: Frequently Asked Questions*

3. GENERIC MAP OF THE KEY ACTORS NEEDED FOR CARIBBEAN JURISDICTIONS TO RESPOND EFFECTIVELY TO SEXUAL OFFENCE CASES

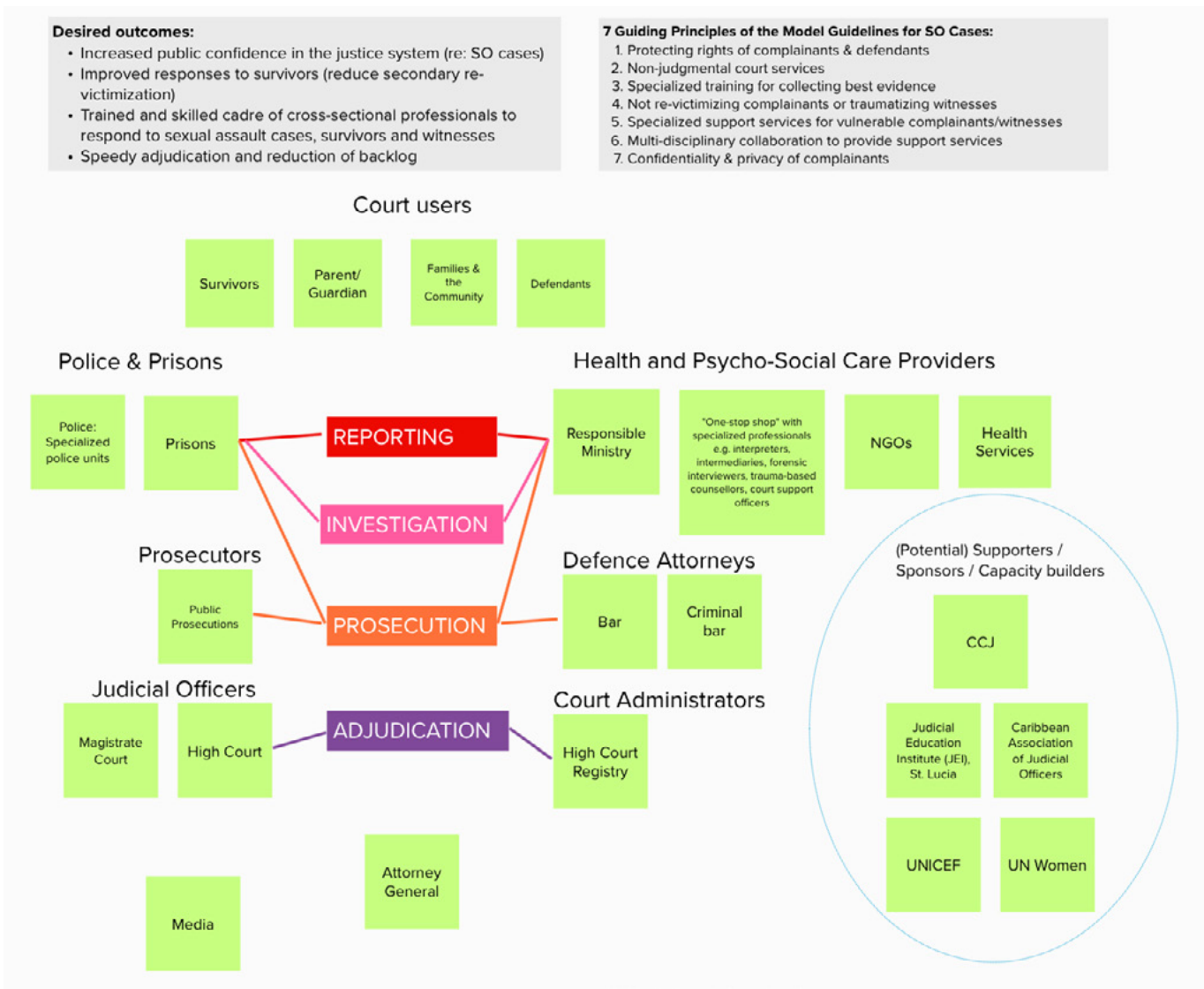
This actor map is based on a synthesis of mapping of relevant actors in Antigua and Barbuda and in Guyana.

Desired outcomes:

- Increased public confidence in the justice system (re: SO cases)
- Improved responses to survivors (reduce secondary re-victimization)
- Trained and skilled cadre of cross-sectional professionals to respond to sexual assault cases, survivors and witnesses
- Speedy adjudication and reduction of backlog

7 Guiding Principles of the Model Guidelines for SO Cases:

1. Protecting rights of complainants & defendants
2. Non-judgmental court services
3. Specialized training for collecting best evidence
4. Not re-victimizing complainants or traumatizing witnesses
5. Specialized support services for vulnerable complainants/witnesses
6. Multi-disciplinary collaboration to provide support services
7. Confidentiality & privacy of complainants



4. NECESSARY CHARACTERISTICS AND ELEMENTS FOR JUSTICE SYSTEMS IN THE CARIBBEAN REGION TO RESPOND EFFECTIVELY TO SEXUAL OFFENCE CASES

The following are the necessary characteristics and elements to enable a justice system to respond effectively to sexual offence cases in the Caribbean. These characteristics and elements were identified in March 2022 in two collaborative knowledge co-generation sessions. A total of approximately fifty people participated in the sessions, including multi-sector stakeholders from the Sexual Offences Model Court in Antigua and Barbuda and the sexual offences courts in Guyana, as well as from relevant regional and international organizations such as the Caribbean Court of Justice, UNICEF and UN Women.

Jurisdictions now contemplating establishing a specialised sexual offences court can use this list as a checklist to establish the court as well as an assessment tool to identify what elements are lacking or where additional investment is needed to establish a court or strengthen an existing one. In particular, the list can assist in answering the following questions: Which of the characteristics and elements already exist in your jurisdiction? Where might a small investment leverage big impact? Where might you focus your efforts next to build from where you are now?

1. Effective multi-stakeholder coordination mechanism

A foundation for effectiveness is coordination among the multiple individuals and organizations needed to respond to sexual offence cases. Key stakeholders should include representatives from the police, health services, public prosecutor, relevant social service ministry, attorney general, and civil society organizations (survivor advocates) (See the *Generic Map of System of Actors*). It may also be necessary to have an overall sexual offences coordinator.

The multi-stakeholder coordination mechanism should include three essential elements:

- a. Agreement on roles and responsibilities according to each actor's accountability and mandates, with each contributing to the purpose of the *Revised Model Guidelines* and upholding its guiding principles (*Revised Model Guidelines*, pg. 21). Roles and responsibilities to be defined might relate for example to the implementation of laws, guidelines, and good practices; target timelines for key stages in the process; and data collection and use. Agreements could be affirmed in legislation, policy, a practice direction, in a partnership agreement or memorandum of understanding or in terms of reference.
- b. A multi-stakeholder committee with regular (e.g. quarterly) meetings to support coordination, capacity-building, joint planning, monitoring and learning, and ongoing performance improvement.
- c. A digital system to enable referrals, information-sharing and reporting by relevant actors at every stage of the journey of a complainant or defendant through the justice chain.

2. Ongoing education, training and sensitization of all stakeholders

It is important to provide initial and ongoing education for all relevant actors on their roles and responsibilities as well as the specialized knowledge, attitude and skills required for addressing sexual offence cases. In addition, training on gender sensitivity and biases in the treatment, care and support of complainants and witnesses is necessary for police officers, prosecutors, lawyers, doctors, interpreters, magistrates, and judges. Further, sensitization training on the *Revised Model Guidelines and all relevant laws and practice directions* is essential for intermediaries, forensic interviewers, trauma-based counsellors and court support officers as well as jurors to ensure the continued improvement of the response to sexual offence cases.

Training programs and materials already developed can provide a basis for ongoing training and educational materials offered at a regional level (including online). This might be complemented by training that targets specific needs and gaps identified in any given jurisdiction. Experience shows the importance for sustainability of embedding specialized sexual offences-related training and sensitization into pre-service and periodic in-service education and training of relevant professionals.

3. Consistent use and application of laws, guidelines and best practices

Effectiveness is defined by the consistent use and application, by all key actors, of relevant laws, guidelines (including the *Revised Model Guidelines for Sexual Offence Cases in the Caribbean*) and evolving best practice. Key attributes of good practice include timeliness, gender sensitivity, and the extent to which the human rights, confidentiality and privacy of complainants are respected and protected. Critical areas for good practice by the relevant actors for an effective system response include investigation, rape kit usage, the use of survivor advocates, special measures, bail and sentencing practices, and case preparation and management, as well as each stage in the pre-trial process and trial process outlined in the *Revised Model Guidelines*.

4. User-friendly data collection, monitoring and evaluation process and roles

To improve responses to sexual offence cases, it is helpful continually to assess the extent to which responses are effective, to track progress toward desired outcomes, and to regularly reflect, learn and adjust. This requires a user-friendly data collection, monitoring and evaluation process and roles.

Elements of a practical data collection, monitoring and evaluation process might include:

- a. **Integration of sexual offense-related indicators, monitoring and evaluation into existing court data collection systems** (e.g. a secure computerized database), in collaboration with the court statistics unit. The *Revised Model Guidelines* (p. 68) outline key components of monitoring and evaluation and provide a list of 14 suggested indicators. In addition, targets might be set, and data collected, on the time taken for key stages of the process, such as the filing of the police report, the submission of the medical report, the process in the Magistrate Court, preparation of the case by the prosecutor, and disposition of the case in the High Court. Such targets and tracking of timelines would help to further reduce backlog and delays, thus helping to address and prevent reluctance to report sexual offences, attrition, trauma and re-victimization. Finally, data should be disaggregated by sex of the complainant/witness and of the defendant.

- b. **Access to the court database by various actors along the justice chain**, including police officers, magistrates, and support providers. This would allow players to input the information relevant to their role in the process. For example, psychosocial service providers might be the actors best suited to provide data on indicator 3.n. recommended in the Model Guidelines, “number and type of support services provided to complainant.” This database might be integrated with the digital coordination system outlined above in the section on multi-stakeholder coordination.
- c. **Engagement of the multi-stakeholder committee in monitoring and evaluation.** The role of the committee might include periodically (e.g. annually) reviewing the data collected, as well as engaging in brainstorming and discussion of achievements, good practices, challenges, and lessons learned, followed by action planning to apply the learning. The regular meetings of a coordinating committee are also in and of themselves a form of monitoring and evaluation.

5. Specialized sexual offences positions and institutional bodies

An effective response to sexual offence cases requires designated professional positions and specialized bodies with specific responsibility for sexual offence cases. These might include:

- Special police units for sexual offences, with specially trained officers, ideally in every police station;
- “One stop shops” to provide investigative, medical, legal and psycho-social services to survivors, ideally in each magisterial district/police division (see the [*Video on the Guyana Child Advocacy Centers–2019, 8 mins*](#) for an example of what this can look like);
- Specialized sexual offences prosecutors, ideally for both magistrate and high courts; and
- Specialized sexual offences courts (ideally at both magistrate and high court levels), with specially trained designated magistrates and judges. These courts would include special infrastructure and technology, such as a separate entrance and a separate waiting room for complainants and vulnerable witnesses, technology such as a video link, and a special room to enable remote testimony and hearings. Such courts have been established in Antigua and Barbuda (the Sexual Offences Model Court, est. 2019) and in Guyana (in Georgetown, est. 2017, Berbice and Essequibo, est. 2019).

6. Responsive survivor support from first contact to disposition of case and beyond

An effective response to sexual offence cases entails the provision of responsive support to complainants and vulnerable witnesses from first contact to disposition of the case and beyond.

The initial point of contact—whether a police station, “one stop shop,” or the relevant government agency—should be with a supportive, specially-trained professional well equipped to make appropriate referrals and help complainants find their way to the next step in the process. The support provided should involve continual communication with the victim from that initial contact through to and following resolution of the matter.

Ideally, support provided by responsive social service partners includes an assigned court support officer or advocate to accompany and assist the complainant to understand and navigate the justice system every step of the way. It might also include robust counselling services, intermediaries to support two-way communication between the complainant and the court, and trauma-informed forensic interviewing (see the *Guidelines for the Police Forensic Interview in Sexual Assault Cases*). In some cases, survivors may require specific supports such as language interpreters, legal aid, and transportation assistance and accommodation for those coming from a distance. Post-trial, complainants may need support with their recovery and reintegration into school, work, or community, or relocation to another community.

7. Multi-dimensional cultural, social and behavioural change

Responding effectively to sexual offences requires cultural, social and behavioural change in at least two main dimensions. First, for survivors to access justice, they and their family and community members need to know where to go to file a report. They need to take sexual offences seriously enough to be willing to seek justice. And they need to have sufficient confidence in the process of investigation and prosecution to engage the judicial system. The *Survivor's Rights Charter for Sexual Assaults* can be a useful resource to inform survivors of their rights and entitlements throughout the process. Second, addressing sexual violence requires clarifying misconceptions around gender stereotyping, and transforming understandings and approaches to sexual consent and bodily autonomy.

Promising entry points for change might include:

- School-based education programmes to increase children's awareness of their sexual and reproductive health and rights. This might include development or enhancement of curricula in areas such as health, life education and comprehensive sexuality education.
- Engagement of community-based organizations and groups, including faith-based groups, as advocates on the issue of sexual assault, abuse and violence.
- Engagement of the media as allies, building capacity for sensitive and informative reporting on the issue, and for supportive messaging that targets children, families and communities.

8. Selection of trained Judicial Officers and Court Staff

In addition to providing training and sensitization, it is essential that judicial officers and court staff are carefully selected based on their understanding of the particular needs of survivors and sensitivity to the vulnerabilities they are likely to encounter in the course of the adjudication process. Further, court administrators and other court staff should also be selected with a view to their responsiveness training and their awareness of the specialised needs of survivors as well as defendants.

9. Supportive measures to ensure equitable access by sexual offence court users

An effective response to sexual offences entails ensuring access to justice by anyone regardless of geography, disability, income level, or other status.

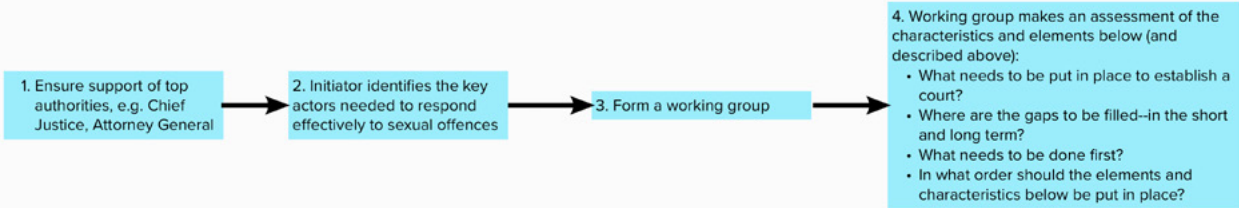
Supportive measures to ensure equitable access to justice by both sexual offence survivors and defendants might include:

- Legal aid;
- Support to those from remote areas, such as accommodation, travel, internet access, or mobile services;
- Accommodations for persons with disabilities; and
- Local availability of specialized professionals and bodies (such as special police units, “one stop shops,” and specialized sexual offences courts), for example in each policy division or magisterial district.

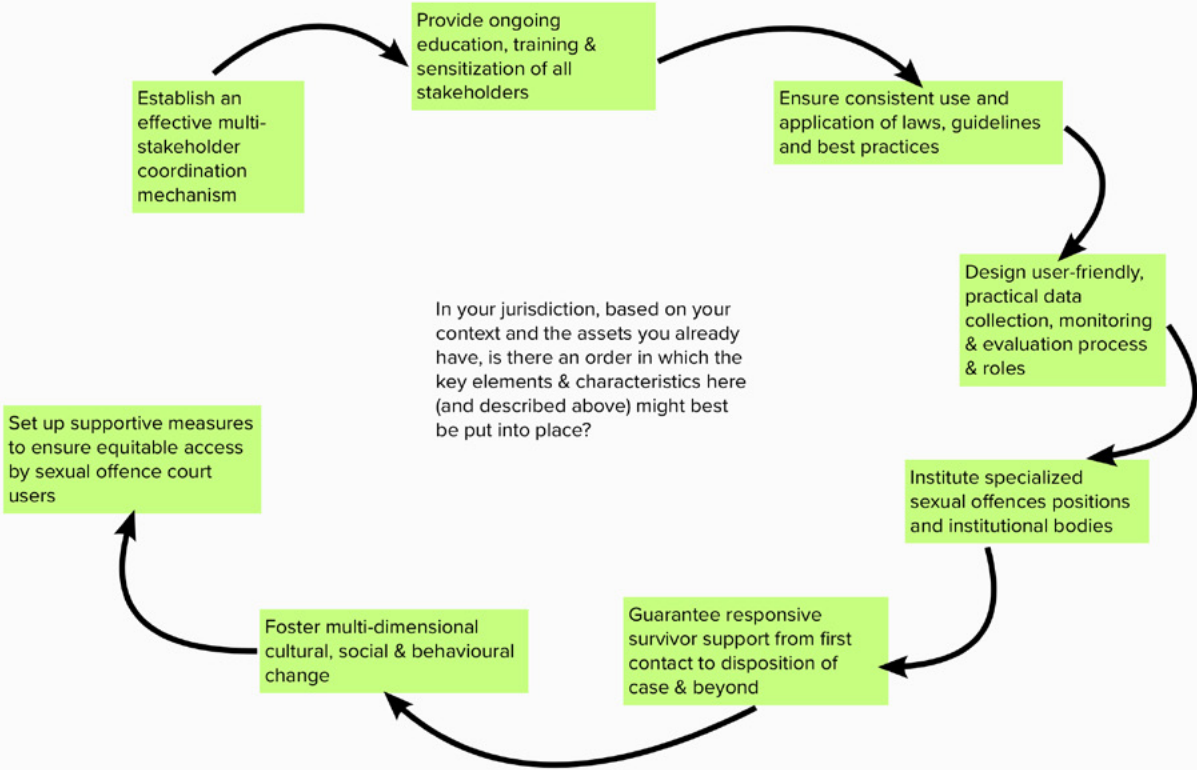
5. RECOMMENDED STEPS FOR ESTABLISHING SPECIALISED SEXUAL OFFENCES COURT IN THE CARIBBEAN REGION

The infographics below are based on the key characteristics and elements to enable a justice system to respond effectively to sexual offence cases as identified by stakeholders.

Potential initial steps to establish a sexual offence court



Likely further steps to establish/strengthen a sexual offence court



6. THE REVISED MODEL GUIDELINES IN PRACTICE

The *Revised Model Guidelines for Sexual Offence Cases in the Caribbean Region* was launched in 2022. The revision reflects the input of stakeholders on the implementation of the *Model Guidelines* and the best practices developed in the 5 years since the original *Model Guidelines* were launched. These questions were explored in March 2022 in a collaborative knowledge co-generation session with about forty multi-sector stakeholders from the Sexual Offences Model Court in Antigua and Barbuda and the sexual offences courts in Guyana, as well as from relevant regional and international organizations such as the Caribbean Court of Justice and UNICEF. The results are as follows.

A. **TOP GOOD PRACTICES FROM THE REVISED MODEL GUIDELINES:**

1. **Paper committals to reduce delays and backlog**

In committal proceedings, magistrates decide whether the accused will be discharged or committed to stand trial. In a paper committal, the proceedings are conducted entirely based on written statements taken from the complainant, the accused and other witnesses. A paper committal allows for the matter to be sent straight to the high court without the need to hold a preliminary inquiry in the magistrate court. Because in some jurisdictions such as Guyana it had not been unknown for a preliminary inquiry to take more than five years, paper committals can significantly reduce delays and backlog. They can also eliminate the need for the complainant to appear in the magistrate court, thus reducing the potential for re-traumatization. **Guyana's Sexual Offences Act No. 7 of 2010** provides for paper committals to be held instead of preliminary inquiries, in accordance with the procedure set out in the First Schedule. Jamaica and Barbados also have paper committal systems.

See Revised Model Guidelines section 3.1 on Preliminary Inquiries as well as the "Best Practice" text box on Paper Committals - Jamaica, p. 41.

2. **Care and protection of complainants and vulnerable witnesses pre-, during and post-trial**

Support services are being provided to complainants and vulnerable witnesses in both jurisdictions. Further, there is a recognition of the need for survivor care and protection for persons with disabilities and indigenous peoples. Key current practices include:

- a. **One-stop shops or child advocacy centres** where survivors can access a variety of supports and services, benefitting from coordination between the police, the relevant social service and health ministries, and NGOs.
- b. **Provision of a support person** to provide emotional and practical support to the child/vulnerable complainant and their families throughout the court process. Their role includes helping with navigating the court system; keeping survivors and their families informed of the status of proceedings; coordinating psycho-social service delivery, liaising with legal, health, educational, social work and other professionals and acting as an advocate on behalf of the complainant; and accompanying the complainant during the forensic interview, on court visits and during the pre-trial and trial process as well as post-trial.
- c. **Provision of psychosocial support** and advocacy, including psychotherapy or counselling, and post-trial support for reintegration into school and/or the community.
- d. **Confidentiality** of the victim during the investigation, to protect their safety.

See *Revised Model Guidelines*, section 2.6 on *Survivor Care and Protection* and “Best Practice” text box on the *Support and Referral Center in Antigua and Barbuda* pg. 34; section 4.4 on *Ongoing Care and Protection of Vulnerable Witnesses During the Trial*, section 4.5 on *Support and Care of Complainants Post-Trial*, and “Best Practice” text box on *Use of Support Persons and Intermediaries for Vulnerable Witness—St. Vincent and Grenadines*, p. 52.

3. Special measures to support vulnerable witnesses in giving evidence

Several special measures are recommended in the *Revised Model Guidelines* to support the giving of evidence by vulnerable complainants and witnesses in ways that minimize re-traumatization and maximize the quality of the evidence given. The top special measures implemented in Guyana and/or Antigua and Barbuda include:

- a. **Screens and a private entrance** so that the witness does not have to see the accused when testifying;*
- b. **Special measures rooms** so that complainants can testify from another room without having to face the accused.* These rooms might be located in the court or in the appropriate government ministry, agency, or one-stop-shop.
- c. **Live link and remote testimony** from the special measures room or another location such as the witness’ home, to video screens or monitors in the high court (and ideally magistrate courts as well). This allows the witness to give evidence without needing to be in the same room as the accused.*
- d. **In camera proceedings** (summary or indictable) in which the court is cleared of members of the public and other witnesses before the evidence of a vulnerable witness is taken, to create a safer and more private space for the giving of testimony;
- e. **Removal of robes** by judges and advocates, to create a less intimidating and friendlier atmosphere for the vulnerable witness;
- f. **Use of designated supporters** in the live link room or the court room, to support the witness during the forensic interview and any subsequent testimony;
- g. **Use of intermediaries** (ideally specially trained) to help a vulnerable adult or child witness to communicate with the police, prosecutors, defence lawyers, judges and court officials during the examination-in-chief, whether in court or by live link;
- h. **Use of interpreters** to support witnesses with language barriers.

See *Revised Model Guidelines*, section 3.4 on *Case Management in the High Court*, section 4.1 on *General Guidelines for Examination in Chief*, and “Best Practice” text box on *Use of Support Persons and Intermediaries for Vulnerable Witness—St. Vincent and Grenadines*, p. 52. See also *Guidelines for the Police Forensic Interview in Sexual Assault Cases*.

* It is worth noting that stakeholders in Antigua and Barbuda have observed that while these special measures cater to complainants who prefer not to have to encounter the accused, some survivors actually prefer to face the accused directly.

4. Legal representation for unrepresented defendants

Though no country in the region currently provides free legal representation for unrepresented defendants, the Judge in the High Court in Antigua and Barbuda asks any attorney that may be present in court to voluntarily conduct the cross examination of an unrepresented defendant to prevent them cross examining the complainant. In St. Vincent, the court will inquire as to legal representation of an unrepresented defendant during case management and appoint a legal representative for the cross examination to ensure that the complainant is not personally questioned by the accused.

See Revised Model Guidelines, section 4.2 on General Guidelines for Cross-Examination, “Best Practice” text box on Requesting Attorney Support for Cross Examination where the Defendant is Unrepresented - Antigua and Barbuda, pg. 454; and “Best Practice” text box on Case Management in Sexual Offences Cases—St. Vincent and the Grenadines, pg. 29.

5. Special directions to the jury to be aware of stereotyping or unfair assumptions about the complainant

After closing speeches by the prosecution and defence, the judge is required to give directions to the jury on the treatment of evidence. In sexual offence cases, the judge may warn the jury about stereotyping the complainant or making unfair assumptions, for example regarding delays in making a report, a complainant’s reaction to the defendant’s behaviour, or any previous relationship between the parties. Belize, Trinidad and Tobago, Guyana, Antigua and Barbuda now indicate that this is done in sexual offence cases.

See Revised Model Guidelines, section 4.6 on Summing Up and Directing the Jury and “Best Practice” text box on “Summing-up Directions on Stereotyping or Unfair Assumptions—UK and Trinidad and Tobago, p. 60.

6. Bail & sentencing guidelines

The Eastern Caribbean Supreme Court as well as Trinidad and Tobago has sentencing guidelines setting out guidance for the duration of sentences for courts under their jurisdiction. This is helpful to ensuring fairness for the accused, with sentences for sexual offences that are proportionate compared to sentences for other types of offences. In addition, some key decisions of the Caribbean Court of Justice have now established precedent for the Caribbean on how sentences are to be arrived at in particular cases.

See Revised Model Guidelines, section 5.0 on Guidelines for Sentencing and “Best Practice” text box on Pompey Guidance, pg. 64.

7. Recording of the forensic interview

The use of recorded testimony/forensic interviewing in the preliminary inquiry/paper committal and as the examination-in-chief is recommended in the *Revised Model Guidelines* as a special measure. This can help to speed the trial by eliminating or reducing the need for live testimony and cross-examination in court. It can prevent the re-victimization and re-traumatization that occurs with retelling the story repeatedly. And because it relies on a single, early testimony, it can also prevent recantation, which occurs when children who reported that they were sexually abused subsequently state that their earlier report was a lie. In some jurisdictions of the region this may require legislative reform.

See Model Guidelines, section 3.4 on Case Management in the High Court and section 4.1 on General Guidelines for Examination in Chief.

8. Setting of timelines to ensure that sexual offence matters are expedited

The setting of timelines by the court, even if no legislation mandates timelines, is recommended in the *Revised Model Guidelines*. The Revised Model Guidelines indicate the need for timelines to cover the entire process of the complainant's interaction with the justice chain from the time of the report to the Police or one-stop shop to the end of the adjudication process. In addition, the while some jurisdictions may implement specific legal reform or Practice Direction to establish timelines, the judge can issue timelines in each case for the submission of reports and for all other action that is required to be done in the adjudication process as part of their management of the process. Ideally, court appointed timelines should be set during the case management process.

See Revised Model Guidelines, section 2.5 on Case Management in the Magistrates' Court, and "Best Practice" text box on Case Management in Sexual Offence Cases—St. Vincent and Grenadines, pg. 29; "Best Practice" text box on Timelines for Criminal Proceedings in Belize, Pg. 31; "Best Practice" text box on Case Management in Sexual Offences Cases in Lucia, p. 47.

9. Appropriate rape kit administration

The rape kit ideally is administered by a specially trained, victim-focused district medical officer. It might be administered at the government ministry or agency responsible for gender affairs or child protection, with police in attendance. Care is required to identify the right number and type of professional (doctor, police, child protection officer...) that need to be in the medical examination room to ensure sound results, timely reporting, and as much emotional safety for the survivor as possible.

See [Guidelines for Medical Forensic Examination in Sexual Assault Cases](#).

10. Forensic interview by trained personnel

The forensic interview is typically done by police as part of the investigation. However, having trained personnel from an NGO conduct it at a one-stop shop, as in Guyana, or a trained police officer as in Antigua and Barbuda can help to create safer and more supportive conditions for vulnerable witnesses. It can also support a better investigation and result in better evidence for the preliminary inquiry/paper committal and trial.

See [Guidelines for the Police Forensic Interview in Sexual Assault Cases](#).

11. Voluntary bill of indictment

In some jurisdictions, the Department of Public Prosecution (DPP) is empowered to move a case straight to trial, entirely bypassing the preliminary inquiry or paper committal in the magistrates' court. Instead, the DPP can issue what is called a voluntary bill of indictment in which prosecution and defence agree on the issues of the trial and have the evidence read without calling witnesses to the trial. This can speed up the disposition of matters and shorten the trial.

See Revised Model Guidelines, section 3.1 on Preliminary Inquiries pg. 40.

12. Audio or video recording of sexual offences trials

Audio or video-recording trials, as is done in Guyana, speeds up transcription. The court recording unit produces a transcript at the end of the day. Judges can focus on reviewing the complainant's evidence and can complete their summing up quickly thanks to the recording and transcription process. This leads to shorter trials, thus reducing delays and backlogs.

See Revised Model Guidelines, section 3.4 on Case Management in the High Court.

13. Judge-alone trials

Providing judge-alone trials as an option for the accused, as in Antigua and Barbuda as of 2021, not only allows for trials to proceed even under pandemic-related restrictions. It also allows for faster processing of the trial, thus reducing delays, backlogs, and associated attrition, re-victimization and re-traumatization. In addition, it may result in a fairer trial, as juries are not always adequately sensitized to the issues involved with sexual offence cases.

See Revised Model Guidelines, section 4.1 on General Guidelines for Examination in Chief and "Best Practice" textbox on Judge Alone Trials - Belize, pg. 51.



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