



THE VOICE OF THE CARIBBEAN: GENDER- BASED VIOLENCE, UNMET LEGAL NEEDS, AND BARRIERS TO ACCESS TO JUSTICE FROM A GENDER PERSPECTIVE: JUDICIARY REFORM PERSPECTIVES

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Mexican Supreme Court of Justice

The Supreme Court of Justice of the Nation (Spanish: Suprema Corte de Justicia de la Nación, SCJN) is the Mexican institution serving as the country's federal high court and the spearhead organisation for the judiciary of the Mexican Federal Government. It consists of eleven magistrates, known as ministers of the court, one of whom is designated the court's president.

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Introduction

‘All human beings are born free and equal in dignity and rights ...’²

‘Difference is as natural as breathing. Infinite varieties exist of everything under the sun. Civilised society has a duty to accommodate suitably differences among human beings. Only in this manner can we give due respect to everyone’s humanity. No one should have his or her dignity trampled upon, or human rights denied, merely on account of a difference, especially one that poses no threat to public safety or public order.’³

‘... all unjustifiable impediments to access to justice, whether procedurally or substantively and also infrastructurally and systemically, are unconstitutional.’⁴

‘Few gender challenges have more urgency in the Caribbean than gender-based violence (GBV)—violence targeted at a woman because she is a woman, or violence that disproportionately affects women. The prevalence of GBV in the Caribbean stands out in international comparisons. In 2019, five of the top twenty recorded rape rates worldwide were in the Caribbean. Moreover, surveys compiled by UN Women suggest that 46 percent of women in the Caribbean have experienced at least one form of violence in their lifetime.’⁵

Esteemed colleagues and distinguished participants, good day to all. These four quotations summarise the overarching factors that implicate today’s discussion. A discussion that is especially timely because of its importance and because it lies at the heart of justice and equality in the Caribbean region: Gender-Based Violence (‘GBV’) and its intersections with unmet legal needs and the barriers to accessing justice. This panel on ‘The Voice of the Caribbean,’ has graced us with the opportunity to interrogate these challenges and work

¹ Peter Jamadar, LLB, LEC, MDiv, DD, JCCJ, with research and writing assistance from Suraj Sakal, LLB, LEC, JC CCJ (25 September 2024).

² Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217A(III), art 1.

³ *McEwan v A-G of Guyana* [2018] CCJ 30 (AJ) (GY), (2019) 94 WIR 332 at [1].

⁴ ‘Securing Equality for All in the Administration of Justice: Proceedings of the Caribbean Judicial Dialogue’ (University of the West Indies, Mona 2019) 62.

⁵ Martin Cassinelli, ‘Gender-Based Violence is a Problem in the Caribbean. Here’s How Local Leaders in Jamaica and Guyana are Addressing it’ (Atlantic Council : New Atlanticist, 18 September 2023) <<https://www.atlanticcouncil.org/blogs/new-atlanticist/gender-based-violence-caribbean-jamaica-guyana/>> accessed 17 September 2024.

together in building/shaping a just and equitable society for all. At the outset, I wish to state that in the Caribbean we are fast past the time for reform, and urgently ushering in the time for transformation.

The constitutional duty on State agencies and actors (including judiciaries) to be proactive in preventing GBV and effective in protecting and supporting victims and survivors of GBV, is no '*small thing*', as we Caribbean People would say, and must be taken very seriously.

Placement

I have been a judge for over 27 years, sitting in the Supreme Court (high court and appellate court) of Trinidad and Tobago ('JRTT'), and since 2019 in the Caribbean Court of Justice ('CCJ') - a Caribbean Apex Court. I have also been involved in Judicial Education for over 25 years, serving as Chair of the Judicial Education Institute of Trinidad and Tobago ('JEITT') from 2009-2019, and presently as Chair of the Caribbean Association of Judicial Officers ('CAJO') from 2019. I have also been a lead educator with the Commonwealth Judicial Education Institute ('CJEI') for many years, designing and delivering judicial education interventions internationally, and serving as Vice President of Programming since 2018.

Over this period one significant sphere of focus has been gender and equality. I have participated in and led many educational, training, and research interventions in this area, including supporting and authoring several publications. Some milestones include the following publications: (i) Justice Through a Gender Lens: Equality Protocol for Judicial Officers (Trinidad and Tobago),⁶ (ii) Securing Equality for All in the Administration of Justice: Proceedings of the Caribbean Judicial Dialogue,⁷ (iii) Proceeding Fairly: Report on the Extent to which Elements of Procedural Fairness Exist in the Court Systems of the Judiciary of the Republic of Trinidad and Tobago,⁸ (iv) Procedural Fairness A Manual: A Guide to the Implementation of Procedural Fairness in the Court Systems of the Judiciary of the Republic

⁶ 'Justice Through a Gender Lens: Gender Equality Protocol for Judicial Officers' (Judicial Education Institute Trinidad and Tobago 2018)

<https://www.unodc.org/res/ji/import/codes_of_conduct/gptt_final_draft/gptt_final_draft.pdf> accessed 17 September 2024; 'Justice Through a Gender Lens: Gender Equality Protocol for Judicial Officers' (Belize Judiciary 2018)

<https://www.unodc.org/res/ji/import/law_on_administration_of_justice/belize_gender_protocol/belize_gender_protocol.pdf> accessed 17 September 2024.

⁷ 'Securing Equality for All in the Administration of Justice' (n 4).

⁸ Judicial Education Institute of Trinidad and Tobago (JEITT), *Proceeding Fairly: Report on the Extent to which Elements of Procedural Fairness Exist in the Court Systems of the Judiciary of the Republic of Trinidad and Tobago* (2018) <https://www.ttlawcourts.org/jeibooks/books/Proceeding_Fairly_Report.pdf> accessed 17 September 2024.

of Trinidad and Tobago,⁹ and (v) Criminal Bench Book for Barbados, Belize, and Guyana, which includes chapters on Procedural Fairness, Therapeutic Jurisprudence, and Human Trafficking, Forced Labour and Modern Slavery.¹⁰

More current interventions include advocating for Gender-Neutral Drafting and the development of Caribbean-Centric Feminist Legal Methodologies.¹¹ This interest in Caribbean-Centric Feminist Legal Methodologies has led to the judicial application of gender-sensitive methodological approaches to Caribbean jurisprudence, most recently demonstrated in cases such as *Nicholson v Nicholson*.¹²

Overarching Constitutional Contexts

Today I share with you from the perspective of Anglo-Caribbean Judiciaries. Judiciaries which operate in territories that have post-colonial (and Independence/Republican) written constitutions which have privileged human rights provisions, guaranteeing, among other core values and principles, non-discrimination, equality, and protection of the law. In all of these territories, the rule of law is avowed as a substantive principle which includes fundamental rights. A feature in all these constitutions is the affirmation of the inherent dignity and right to freedom of all persons, along the lines of Article 1 of the Universal Declaration of Human Rights ('UDHR'), 1948.

This discussion therefore examines, within these constitutional frameworks, the work of Caribbean judiciaries (court systems and functionaries) to ensure access to justice to all persons and groups. It is undertaken against a historical background of deep-rooted structural, systemic, socio-cultural and legally reinforced inequality towards women, girls, and persons of the

⁹ Judicial Education Institute of Trinidad and Tobago (JEITT), *Procedural Fairness A Manual: A Guide to the Implementation of Procedural Fairness in the Court Systems of the Judiciary of the Republic of Trinidad and Tobago* (2018) <https://www.ttlawcourts.org/jelibooks/books/Procedural_Fairness_A_Manual_new.pdf> accessed 17 September 2024.

¹⁰ Caribbean Association of Judicial Officers (CAJO), *Criminal Bench Book for Barbados, Belize, Guyana* (2023) <<https://thecajo.org/newcajo/wp-content/uploads/2023/09/FINAL-e-book-Crim-BB-for-Barbados-Belize-and-Guyana.pdf>> accessed 17 September 2024.

¹¹ Peter Jamadar, Judge of the Caribbean Court of Justice, 'Gender-Neutral Drafting and Other Related Matters' (The Criminal Justice Unit, Office of the Attorney General and Ministry of Legal Affairs, Trinidad and Tobago, 16 May 2024) <https://ccj.org/wp-content/uploads/2024/06/Jamadar_20240516.pdf> accessed 17 September 2024.; and Peter Jamadar, Judge of the Caribbean Court of Justice, 'Supporting and Inspiring Women in Justice Through Education, Mentoring and Across the Justice Sector – 2024 and Beyond, A Caribbean Perspective' (UNODC Global Women in Justice/for Justice Annual Roundtable, Vienna, 11 March 2024) <https://ccj.org/wp-content/uploads/2024/03/Jamadar_20240311.pdf> accessed by 17 September 2024..

¹² [2024] CCJ 1 (AJ) BZ. See also *OO v BK* [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36.

LGBTQI+ community. In keeping with the topic focus, we will specifically interrogate gender-based violence (‘GBV’) through the twin lenses of (i) unmet legal needs, and (ii) barriers to access to justice, and do so from a gender perspective in the context of Caribbean judiciaries.

Given the stated Caribbean constitutional contexts, there is no need to discuss in any great depth whether women, girls, and persons of the LGBTQI+ community are entitled to equality of treatment and the protection of the law.¹³ However, and in the juridic spheres created by the overlapping of the rights to dignity, freedom, life, and the protection of the law, there are two aspects of Caribbean constitutionality that are worth highlighting: (i) the general duty of the State to take positive actions to afford protection, safety and security for all vulnerable groups in society, and (ii) the particular duty of the judiciary as an arm of the State to do likewise and to protect everyone from violence.

Two Caribbean cases confirm and situate these twofold duties in terms of our explorations into GBV. First, *Maya Leaders Alliance v Attorney General of Belize*,¹⁴ in which the CCJ explained that: ‘The right to protection of the law may, in appropriate cases, require the relevant organs of the State to take positive action in order to secure and ensure the enjoyment of basic constitutional rights.’ And *Francois v Attorney General*,¹⁵ in which Barrow J pointed out that: ‘The state must protect the right of everyone to be free from violence, including domestic violence.’

Thus, Professor Tracy Robinson makes the point, that:¹⁶

... Caribbean bills of rights are not simply concerned with negative duties or non-interference, but that they impose *positive duties* on the state to act to protect human rights violations committed by third parties against citizens (emphasis added).

What emerges, is a general constitutional mandate on all arms and agencies of the State to safeguard the inherent dignity, right to life, and well-being of all persons without exception (subject only to legitimate and lawful exceptions). Which necessarily mandates a specific duty

¹³ See Tracy Robinson, ‘The Rights of Victims of Crime to the Protection of the Law: No “Poor Thing”’ (Caribbean Association of Judicial Officers 2nd Conference, The Bahamas, 6 October 2011).

¹⁴ [2015] CCJ 15 (AJ) (BZ), (2015) 87 WIR 178 at [47]

¹⁵ LC 2001 HC 16, (24 May 2001) at [12]. See also Robinson (n 13) 3-5.

¹⁶ Robinson (n 13) 4.

to protect everyone, including women, girls, and persons in the LGBTQI+ community, from all forms of violence.

Moreover, the constitutional *grundnorm* of human dignity,¹⁷ when linked to the right to life (in the contexts of non-discrimination and equality),¹⁸ has led to the development of the right of all persons to a dignified existence, a life of dignity.¹⁹ As explained, in Caribbean jurisprudence this entitlement creates a concomitant duty on all arms of the state, including the judicial arm, to facilitate it.

This right to a dignified life is both immediate and future facing. It is an aspect of the rule of law and benefits from the protection of the law. In the Inter-American Court of Human Rights Case of the *Street Children*’ (*Villagran-Morales et al*) v *Guatemala*,²⁰ this concept of a right to a dignified existence was articulated as follows:

The right to life is a fundamental human right, and the exercise of this right is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning. Owing to the fundamental nature of the right to life, restrictive approaches to it are inadmissible. In essence, the fundamental right to life includes, not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have the obligation to guarantee the creation of the conditions required

¹⁷ A typical Caribbean example can be found in the Preamble to the Constitution of Belize: ‘WHEREAS the people of Belize (a) affirm that the Nation of Belize shall be founded upon principles which acknowledge ... the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed ...’. See also Preamble to the Constitution of Barbados 1966: ‘Now, therefore, the people of Barbados (a) proclaim that they are a sovereign nation founded upon principles that acknowledge the supremacy of God, the dignity of the human person, their unshakeable faith in fundamental human rights and freedoms and the position of the family in a society of free men and free institutions...’.

¹⁸ Again, a typical Caribbean example can be found in the Constitution of Belize, CAP 4 s 3(a): ‘Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex ... to each and all of the following, namely– (a) life, liberty, security of the person, and the protection of the law;’. See also Constitution of Barbados 1966, s 11: ‘Whereas every person in Barbados is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinions, colour, creed or sex, but subject to respect for the individual rights and freedoms of others and for the public interest, to each and all of the following, namely– (a) life, liberty and security of the person; (b) protection for the privacy of his home and other property and from deprivation of property without compensation; (c) the protection of the law; and (d) freedom of conscience, of expression and of assembly and association...’.

¹⁹ ‘Securing Equality for All in the Administration of Justice’ (n 4) 28-29.

²⁰ *Street Children*’ (*Villagran-Morales et al*) v *Guatemala* (Merits) Inter – American Court of Human Rights Series C No 63 (19 November 1999) at [144]

<https://www.corteidh.or.cr/docs/casos/articulos/Seriec_63_ing.pdf>accessed 8 September 2024.

in order that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it (emphasis added).

Thus, we must treat the fundamental right to a dignified existence, which is necessarily undermined by threats of violence, as assuming constitutional status and benefitting from a positive duty on States and State agencies to take active steps to protect and prevent violations of it. The judicial arm of the State, in its structures, systems, policies, practices, and jurisprudence, must also advance this fundamental right to a dignified existence for all persons.

Defining Gender-Based Violence (‘GBV’): Limitations and Possibilities

In the Caribbean, the Trinidad and Tobago Gender Equality Protocol for Judicial Officers defines GBV as: ‘any harmful act perpetrated against an individual against their will based on their socially defined identity as man or woman... Violence includes, but is not limited to: physical, verbal, sexual, psychological, and socio economic harm.’²¹ In Belize, their Gender Equality Protocol for Judicial Officers defines GBV as: ‘any harmful act perpetrated against an individual against his or her will based on his or her socially defined identity as female or male ... There are different kinds of violence, including (but not limited to) physical, verbal, sexual, psychological and socioeconomic violence.’²²

United Nations (‘UN’) Women Caribbean (citing the Committee on the Elimination of Discrimination against Women) defines GBV as:

... ‘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’. *It is a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men*²³ (emphasis added).

²¹ ‘Justice Through a Gender Lens: Gender Equality Protocol for Judicial Officers’ (Judicial Education Institute Trinidad and Tobago 2018) 7
<https://www.unodc.org/res/ji/import/codes_of_conduct/gptt_final_draft/gptt_final_draft.pdf> accessed 17 September 2024.

²² ‘Justice Through a Gender Lens: Gender Equality Protocol for Judicial Officers’ (Belize Judiciary 2018) 7<https://www.unodc.org/res/ji/import/law_on_administration_of_justice/belize_gender_protocol/belize_gender_protocol.pdf> accessed 17 September 2024.

²³ ‘GBV In The Caribbean’(UN Women Caribbean) <<https://caribbean.unwomen.org/en/caribbean-gender-portal/caribbean-gbv-law-portal/gbv-in-the-caribbean>> accessed 13 September 2024.

UN Women Caribbean also explains the nature of GBV as: ‘a form of discrimination that seriously inhibits women’s ability to enjoy rights and freedoms on a basis of equality with men.’²⁴

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence 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 the private sphere.’²⁵

The United Nations, defines violence against women as ‘any act of gender-based violence that results in, or is likely to result in, physical, sexual, or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.’²⁶

However, the European Commission defines GBV as ‘violence directed against a person because of that person's gender or violence that affects persons of a particular gender disproportionately’.²⁷

These definitions have been set out in some detail purposively and will be developed more in the sections on ‘personhood’, ‘intersectionality’, and ‘legal language’ that follow. Noteworthy for the moment, are the relatively broad and inclusive definitions of GBV in Trinidad and Tobago and Belize (the only two Caribbean territories that have to date promulgated Gender Protocols for Judicial Officers), as compared, say, to the UN Women Caribbean definition (which limits its focus on GBV to violence against women). In both Trinidad and Tobago and Belize, any violence committed against any person based on their gender and against their will is considered GBV – with the caveat that in Trinidad and Tobago and Belize there is still

²⁴ibid. See also UN Committee for the Elimination of All Forms of Discrimination against Women, ‘General Recommendations No 19’ in United Nations International Human Rights Instruments Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies: note / by the Secretariat’ (12 May 2004) UN Doc HRI/GEN/1/Rev7.

²⁵ See Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) (adopted 9 June 1994, entered into force 5 March 1995) (1994) 33 ILM 1534, art 1.

²⁶ World Health Organisation (Violence Against Women, 25 March 2024) <<https://www.who.int/news-room/fact-sheets/detail/violence-against-women#:~:text=The%20United%20Nations%20defines%20violence,private%20life%22%20>> accessed 17 September 2024.

²⁷European Commission (What is Gender-based Violence?) <[https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence_en#:~:text=gender%2Dbased%20violence-.Gender%2Dbased%20violence%20\(GBV\)%20by%20definition,of%20a%20particular%20gender%20disproportionately](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/gender-equality/gender-based-violence/what-gender-based-violence_en#:~:text=gender%2Dbased%20violence-.Gender%2Dbased%20violence%20(GBV)%20by%20definition,of%20a%20particular%20gender%20disproportionately)> accessed 17 September 2024.

reliance on binary (man-woman; male-female; his-her) frameworks. Significantly, the European model is more open-ended and uses the gender-neutral language of ‘person’ simpliciter. Also noteworthy in Trinidad and Tobago and Belize, is the inclusion of psychological and socioeconomic violence.

Personhood

The Chief Justice of Trinidad and Tobago made the salient point in 2019 (‘Securing Equality for All in the Administration of Justice: Proceedings of the Caribbean Judicial Dialogue’), that: ‘What no constitution can or has ever effectively done is define “personhood”. It seems to me that in articulating fundamental rights and freedoms we have neglected the most fundamental right of all – the right to simply “be”.’²⁸ In the introduction to that publication, and agreeing with the Chief Justice, I opined ‘... one root cause for discrimination and inequality, is the failure of legal systems and constitutions in particular, to effectively... define “personhood”.’²⁹ For him, and speaking of the Caribbean, the recognition of personhood is a special imperative ‘in a society still riven by deep structural inequalities on the basis of sex, race, ability and other . . . grounds of discrimination.’³⁰

Framed positively, we could think of reconciling this deficit and need to define personhood (and the right to ‘be’), by the recognition of the inherent value and dignity of all persons as extant ‘I AMs’ who exist/co-exist imbued with a bundle of core rights (‘fundamental’ to existence as a present tense ‘I AM’ and inherent to essential ‘Beingness’).³¹ Each and all persons are thus to be regarded, respected and empowered equally, subject only to legitimate limitations. One core aspect of this recognition and valuing of inherent personhood as ‘I AMness’ and of the concomitant entitlement to assert and enjoy unencumbered one’s ‘I AMness’, is the constitutional acknowledgement, guarantee, protection, and enabling of a dignified existence for all persons.

Thus, as we consider unmet legal needs and barriers to access to justice, a fundamental issue concerns the language we use and whether it undermines societal recognition of and respect for the fundamental ‘I AMness’ of all persons. This insight would align with the more open-

²⁸ ‘Securing Equality for All in the Administration of Justice’ (n 4) 10.

²⁹ *ibid* 2.

³⁰ *ibid* 10.

³¹ The assertion of ‘I AM’ as fundamental to personhood, leads naturally to the recognition by each ‘I AM’ of all others as ‘YOU ARE’ and therefore to an acceptance of a collective ‘WE ARE’, grounded irreducibly in fundamental equality.

ended European gender-neutral model and definition of GBV and with rights-centric definitions of substantive equality.³²

Gender Justice

The Trinidad and Tobago Gender Equality Protocol for Judicial Officers, also offers a definition of ‘Gender Justice’, as follows:³³

This is “[T]he protection and promotion of civil, political, economic and social rights on the basis of gender equality. It necessitates taking a gender perspective on the rights themselves as well as the assessment of access and obstacles to the enjoyment of these rights for women, men, girls and boys and adopting gender-sensitive strategies for protecting and promoting them”.³⁴ *Increasing access to justice, be it formal or informal, hinges on removing economic, political, and systemic and social barriers to meaningful participation.* Achieving gender justice requires effective interventions to fulfil the enjoyment of all fundamental rights (emphasis added).

For our purposes today, what is worth highlighting is the recognition that achieving gender justice necessitates an assessment and amelioration of ‘obstacles’ and ‘barriers’ to the benefits and enjoyment of fundamental rights. We can focus on this to say: an assessment and amelioration of ‘obstacles’ and ‘barriers’ to the enjoyment of a dignified life free of all forms of GBV. And note that achieving these outcomes requires effective interventions.

Unmet Legal Needs and Barriers to Access to Justice: Definition Deficits

In so far as there is a textual focus on women or on binary male-female stereotypes, and not simply on personhood *per se*, there remain remnants of linguistic reinforcing and discriminating models that can adversely affect, say, the LGBTQI+ community. We need only consider the persons who experience life and identify as non-binary, transgender etc and who are also subject to discrimination and GBV, to appreciate these linguistic limitations. When these persons are un- or under-represented in the laws, exacerbated by the lack of gender-

³² See ‘Securing Equality for All in the Administration of Justice’ (n 4) 4, 24-25; and *McEwan* (n 3) at [66] ‘To safeguard equality rights, courts must adopt a substantive approach. Ensuring substantive equality might require equal treatment for those equally circumstanced, different treatment for those who are differently situated, and special treatment for those who merit special treatment.’

³³ JEITT, ‘Justice Through a Gender Lens’ (n 21) 7.

³⁴ Citing Pam Spees, ‘Gender Justice and Accountability in Peace Support Operations Closing the Gaps’ (International Alert, February 2004) < <https://www.international-alert.org/app/uploads/2021/09/Gender-Peace-Support-Ops-Justice-Accountability-EN-2004.pdf> > accessed 17 September 2024.

neutral language in legislation, then the State remains an enabling agent for the perpetuation of GBV.

Intersectionality

In this regard, the impact of intersectionality is also significant. The Trinidad and Tobago Gender Equality Protocol for Judicial Officers defines intersectionality as follows:³⁵

The concept of intersectionality recognizes that social identities and methods of discrimination within a society, based on sex, gender, wealth, status, ethnicity, skin colour, language proficiency, and education level, do not exist independently but are instead interrelated and continuously shaped by one another. It recognizes that a person's gender identity is constituted differently depending on factors such as age, ethnicity, sexual orientation, social class or country of origin.

Belize is similar:³⁶

The concept of intersectionality recognizes that social identities and oppressive institutions within a society, such as racism, ageism, sexism and homophobia, do not exist independently, but are instead interrelated and continuously shaped by one another. For example, an individual's gender identity is constituted differently depending on things such as age, ethnicity, sexual orientation, social class or country of origin.

Thus, in the Caribbean there is an awakening Judiciary awareness of the reality and impact of intersectionality in the justice sector.

Indigenous research done in Trinidad and Tobago among court users, produced an evaluative construct that demonstrates the experiential reality of intersectionality and its impact on access to justice. In that research it was shown that there are:

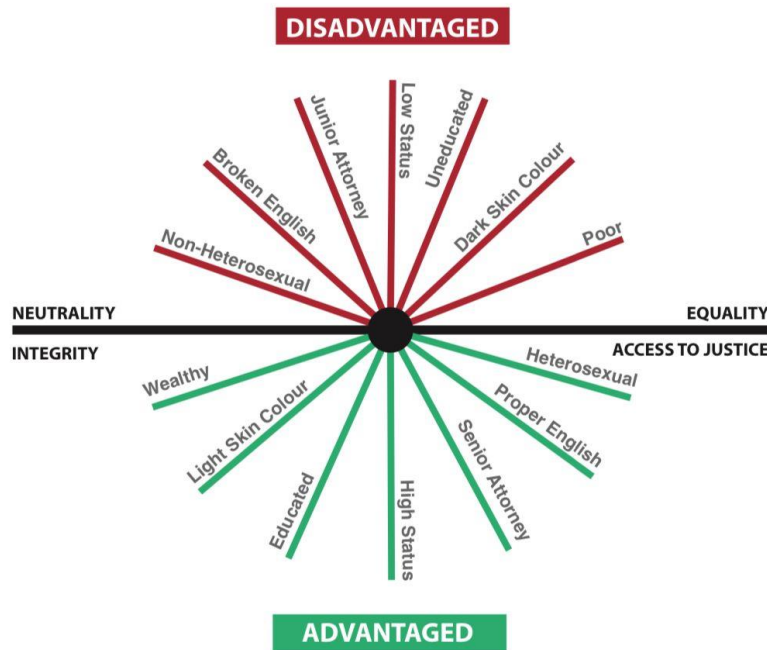
... two clearly defined groups who interact with the court systems of the JRTT: those who are able to experience and perceive the court systems of the JRTT, processes and personnel as working with and for them (the advantaged) and those who feel alienated

³⁵ JEITT, 'Justice Through a Gender Lens' (n 21) 8.

³⁶ Belize Judiciary, 'Justice Through a Gender Lens' (n 22) 8.

and discriminated against by the court systems of the JRTT, processes and personnel (the disadvantaged).³⁷

The following diagram illustrates this court user experience and demonstrates graphically the impact of intersectionality:³⁸



In terms of equality and access to justice, heterosexuals were advantaged, and non-heterosexuals were disadvantaged. Intersectional factors such as skin colour, economic circumstances, English language skills, education, and status all contributed to court users' experiences of discrimination and barriers to access to the courts.

It is therefore also essential to acknowledge how intersectionality impacts persons' experiences of GBV. Gender does not exist in isolation—race, class, education, and sexual orientation etc all intersect with gender, often exacerbating the vulnerabilities faced by victims. For example, LGBTQI+ individuals in the Caribbean are not only at risk of GBV but also face additional stigma and discrimination that can further isolate them from access to justice and the support systems they need. Achieving substantive equality requires an appreciation of these overlapping complexities.

³⁷ *Proceeding Fairly* (n 8) 75.

³⁸ *ibid.*

Legal language

Language shapes the way we think, it roots our minds in perceptions based on what we read and how we communicate. Naturally, with such a powerful subconscious influence on our psyche gendered legal language can discretely perpetuate discriminatory stereotypes, which in turn can impact access to justice and the enjoyment of the fullness of rights.

In the Caribbean, there is supporting research on the impact of language on fairness and equality.³⁹ Dr Celia Blake points out: ‘Some international conventions reach beyond these language-related fair trial rights by proscribing discrimination on the ground of language. The notion of non-discrimination arguably inheres in the concept of equal protection of the law.’⁴⁰

Indeed, as pointed out in a paper that I presented earlier this year to the Criminal Justice Unit, Office of the Attorney General and Ministry of Legal Affairs of Trinidad and Tobago, entitled ‘Gender Neutral Drafting and Other Related Matters’:⁴¹

The use of gender-neutral language is a legislative technique and tool to produce clarity in drafting and understanding and as well to achieve as normative the constitutional standard of equality. The overarching goal is substantive gender equality, resulting ultimately in corresponding transformative social equality.

The language we use matters:⁴²

[L]anguage does not merely reflect the way we think: it also shapes our thinking. If words and expressions that imply that women are inferior to men are constantly used, that assumption of inferiority tends to become part of our mindset. Hence the need to adjust our language when our ideas evolve. Language is a powerful tool ... (Emphasis added.)

³⁹ See ‘Language and Access to Justice’ in ‘Securing Equality for All in the Administration of Justice’ (n 4) 109-120.

⁴⁰ *ibid* 110; citing International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 26.

⁴¹ ‘Gender Neutral Drafting and Other Related Matters’ (n 11) 1.

⁴² Annie Desprez-Bouanchaud, Janet Doolaege and Lydia Ruprecht, ‘Guidelines on Gender-Neutral Language’ (UNESCO, 1999) 4 <<https://unesdoc.unesco.org/ark:/48223/pf0000377299>> accessed 17 September 2024.

Furthermore, the relationship between language and gender has been deeply explored by Sherryl Kleinman, who argues that ‘when any group is made invisible by another, it becomes easier for the more powerful group to do what they want with the less powerful one’.⁴³

‘If equality and the language of the law are to be truly liberated from all bias, then the distinctions between sex and gender need to be addressed, and an inclusive non-binary use of language adopted.’⁴⁴ In addressing GBV, we must ensure that our legal definitions are comprehensive and reflective of these diverse experiences. We must also be willing to challenge linguistic societal norms that enable and perpetuate violence and discrimination.

The legal language we use matters! This includes not just legislative language, but all the language we use, in judgments, orders, court protocols, educational materials etc.

Harsh Realities: The Impact of GBV, Victims and Communities

Gender-based violence leaves deep scars not only on its victims but on entire communities. The physical, psychological, and economic impacts of GBV are devastating and often lifelong and can be inter-generational.

In the Caribbean, GBV manifests in numerous forms, such as physical, sexual, psychological, and economic violence. UN Women Caribbean, one of the leading research and data collection agencies in the Caribbean, reports on GBV in the Caribbean as follows:⁴⁵

Prevalence of gender-based violence in the Caribbean

The pervasiveness of violence against women in the Caribbean has been highlighted in a recent report by the United Nations Office on Drugs and Crime and the Latin America and the Caribbean Region of the World Bank.⁴⁶ According to this report, violence against women affects a significant percentage of women and girls in the Caribbean. *Three of the top ten recorded rape rates in the world occur in the Caribbean.* While the worldwide average for rape was 15 per 100,000, The Bahamas had an average of 133, St Vincent and the Grenadines 112, Jamaica 51, Dominica 34, Barbados 25 and Trinidad and Tobago 18. The report further pointed to a survey which revealed that in

⁴³ Sherryl Kleinman, ‘Essay: Why Sexist Language Matters’ (2002) 25 Qualitative Sociology 299.

⁴⁴ ‘Gender Neutral Drafting and Other Related Matters’ (n 11) 7.

⁴⁵ ‘GBV In The Caribbean’ (n 23).

⁴⁶ Citing United Nations Office on Drugs and Crime (UNODC), ‘Crime, Violence, and Development: Trends, Costs, and Policy Options in the Caribbean’ (2007) <https://www.unodc.org/pdf/research/Cr_and_Vio_Car_E.pdf> accessed 17 September 2024.

nine Caribbean countries 48 percent of adolescent girls' sexual initiation was 'forced' or 'somewhat forced'.

*The UNDP Caribbean Human Development report indicates that 30.4% women in the Caribbean report high rates of fear of sexual assault in comparison to 11.1% of men.*⁴⁷ Moreover it indicated that violent crime has been increasing in the Caribbean and this is accompanied by a decrease in both case clear-up and conviction rates.⁴⁸ (Emphasis added.)

UN Women Caribbean has established a 'Caribbean Women Count' which 'is a central repository of knowledge on the prevalence of the different forms of Intimate Partner Violence (IPV) and non-partner sexual violence from five countries (Grenada, Guyana, Jamaica, Suriname and Trinidad and Tobago) and barriers to accessing services in CARICOM.'⁴⁹ The data is extremely concerning.

Lifetime prevalence rates among women who have experienced any of the four types of IPV (physical, sexual, emotional and economic) vary by country from a high of 55% in Guyana, to 48% in Suriname, 44% in Trinidad and Tobago and 39% in Grenada and Jamaica. Therefore, on average the lifetime prevalence rate among Caribbean women who have experienced IPV is about 46.5%. This is an arresting statistic and makes the point that we are now past speaking of the need for reform and are desperately in need of substantive transformation.

Data from the Belize Crime Observatory on GBV reinforces this point. It demonstrates an increasing upward trend in the number of cases of GBV reported since 2020, from 1848 cases in 2020 to 2856 reported cases in 2022,⁵⁰ which is an increase of 54.5% over about a two-year period. Belize is not alone in this trend. These statistics underscore both the pervasive nature of GBV, and more disturbingly, an increasing trend in occurrences in the Caribbean region. Beyond these numbers are the countless untold stories of psychological and economic violence, where victims are often trapped in cycles of dependency and fear, fed by 'cultures of

⁴⁷ Citing United Nations Development Programme (UNDP), *Caribbean human development report 2012 : human development and shift to better citizen security* (2012) 39 <https://www.undp.org/sites/g/files/zskgke326/files/publications/C_bean_HDR_Jan25_2012_3MB.pdf> accessed 17 September 2024.

⁴⁸ *ibid* 41.

⁴⁹ 'Caribbean Women Count: Ending Violence against Women and Girls Data Hub' (UN Women) <<https://caribbeanwomenscount.unwomen.org/>> accessed 19 September 2024.

⁵⁰ Birgit Gerstenberg, 'Spotlight Initiative to End Violence Against Women and Girls: Belize Annual Narrative Programme Report 01 January 2022- 31 December 2022' (Spotlight Initiative 2022) 4.

silence’.⁵¹ Furthermore, Caribbean research reveals that the victims of GBV are predominantly women.⁵²

The effects of GBV in the Caribbean have been summarised as follows (by UN Women Caribbean):⁵³

Gender-based violence disrupts families, affects women’s economic viability and puts women’s health and lives at risk. It has negative effects on children as children who experience domestic abuse or sexual abuse may have lifelong health and development effects, such as depression, low self-esteem and poor school performance.

Victims frequently endure physical injuries, which may result in chronic health conditions, disabilities, and in extreme cases, loss of life. The psychological toll is equally, if not more, damaging, and behavioural consequences, including alcohol and drug abuse are frequently observed. IPV can also have deleterious effects on sexual and reproductive health and wellbeing. Survivors often suffer from post-traumatic stress disorder (PTSD), depression, anxiety, and other mental health issues, which may persist for years or even decades after the abuse has ended.

Economically, victims of GBV may face significant challenges. Many may be unable to work due to their trauma or injuries, leading to financial instability and dependence on others. This, in turn, traps many victims in cycles of violence, as the lack of financial independence makes it difficult for them to leave abusive situations. The cost of medical care, therapy, and lost wages adds to the burden, not just for the individual but also for the community and national economies.

The long-term societal effects of GBV extend far beyond the individuals directly affected. Entire families and communities feel the weight of this violence, and the trauma often spans generations. Children who witness or experience GBV are at higher risk of repeating the cycle, either as victims or perpetrators, leading to intergenerational trauma that is difficult to break.

⁵¹ ‘GBV In The Caribbean’ (n 23). ‘It is widely acknowledged that police statistics do not present the true picture as regards the incidence of gender-based violence, since many persons do not report it to the police. ... Many women tell no-one about the abuse they experience and in many instances other persons who are aware of the abuse fail to make a report to the police.’

⁵² ‘GBV In The Caribbean’ (n 23). ‘Original research conducted by Elsie Le Franc and others, on interpersonal violence in Barbados, Jamaica and Trinidad and Tobago, found that approximately sixty-eight percent of the 3,401 respondents were victims of violence perpetrated by a relationship partner.’

⁵³ ‘GBV In The Caribbean’ (n 23). Citing Gender, Human Rights and Culture Branch UNFPA Technical Division, ‘UNFPA Strategy and Framework for Action to Addressing Gender-Based Violence 2008-2011’ (2009) 22 < https://www.unfpa.org/sites/default/files/pub-pdf/2009_add_gen_vio.pdf> accessed 13 September 2024.

Communities grappling with high rates of GBV also face economic costs, including increased healthcare expenses, lost productivity, and the need for expanded social services.

One of the most challenging aspects of addressing GBV in the Caribbean is the pervasive social stigma and culture of victim-blaming. In many cases, survivors are shamed, silenced, or even blamed for the abuse they endure. This stigma not only discourages victims from reporting their experiences or seeking help, but it also reinforces a culture of silence that allows violence to thrive unchecked. In many Caribbean societies, patriarchal norms and deeply ingrained gender roles further perpetuate this environment, making it incredibly difficult for victims to escape the cycle of violence or access justice.

Unmet Legal Needs and Barriers to Access to Justice: Response Deficits/Successes

To combat the multifaceted impacts of GBV, we must address both the immediate needs of victims/survivors and the broader cultural and structural issues that create and perpetuate the cycles of GBV. This includes providing survivors with comprehensive support services, such as legal aid, medical care, psychological counselling, and financial assistance, while also working to dismantle the harmful social norms and stigmas that enable GBV to continue. Only by taking a holistic approach can we begin to mitigate the severe impact of gender-based violence on both victims and communities, ensuring that future generations can grow up in a safer, more just society.

What follows is a broad survey of selected areas of Response Deficits/Success that attempts to give a sense of what is happening in the Caribbean around GBV from a gender perspective and in the context of Caribbean judiciaries.

One overarching observation is that the regional focus is largely on women and girls. This is in part because the research data available, influenced by the research and analytics of UN Women Caribbean and other women-focused groups in the region, demonstrates unequivocally that GBV disproportionately affects women and girls more than any other vulnerable groups. However, we must be careful to recognise that other vulnerable groups, such as members of the LGBTGI+ community, men and boys, the elderly, refugees, and migrant workers (as discrete and at times intersecting groups), are also seriously affected by GBV.

(i) Structural and Systemic Socio-cultural and Legal Realities

There is an emerging realisation that unless root causes are addressed, the persistence and prevalence of GBV may not be readily dealt with and or realistically eradicated. Socio-cultural contexts, reinforced by intersecting colonial patriarchal mindsets and structures, play a significant role in creating and sustaining cycles of GBV.

Essentially, one structural and systemic socio-cultural context for GBV is the deep-rooted and culturally ingrained idea that women and girls are objects and commodities over which men have power, control, and authority. And GBV in all its dimensions, like historically permissible corporal punishment of wives and children by husbands and guardians, is still seen as not just permissible but even justifiable.

Thus, both in enacting GBV or in the shame of failing to do so (or to report it), these cycles of GBV are perpetuated. Let us not forget that both the colonial State and Church endorsed and practiced GBV as socio-legally normative. Indeed, the commodification and objectification of women and girls, of humans in the Caribbean, has a deep-rooted history in centuries of colonial and legally sanctioned slavery and indentureship.

This phenomenon has been well researched and documented, and in Caribbean court systems typified by what has been anthropologically defined as ‘Rites of Domination’.⁵⁴ Lazarus-Black explains: ‘Rites of domination include such practices as the intimidation, humiliation and objectification of litigants.’⁵⁵

What is sometimes less well known, is how these socio-cultural power dynamics and practices are re-enacted in courts and court systems which then become ‘Theatres of Conflict’,⁵⁶ that continue to perpetuate and enable GBV.⁵⁷

As such, instead of being a space for the adjudication of justice, Caribbean courtrooms have often been described by researchers as a place for members of the judiciary and

⁵⁴ See Mindie Lazarus-Black, *The rite of domination : tales from Domestic Violence Court* (Centre for Gender and Development Studies, University of the West Indies 2002) <<https://sta.uwi.edu/crgs/documents/2002WorkingPaperSeries.pdf>> accessed 10 September 2024; Mindie Lazarus-Black, ‘The Rites of Domination: Practice, Process and Structure in Lower Courts’ (1997) 24(3) *American Ethnologist* 628.

⁵⁵ Mindie Lazarus-Black, ‘The Rites of Domination: Practice, Process and Structure in Lower Courts’ (1997) 24(3) *American Ethnologist* 628, 637.

⁵⁶ See Mindie Lazarus-Black (n 55); and ‘Securing Equality for All in the Administration of Justice’ (n 4) 73-75.

⁵⁷ *ibid* 73.

members of the public to become the actors and audiences in spectacles of power, i.e. who has power and who does not.

For example, this recreating occurs where the power dynamics in the courtroom re-enact historical and prevailing socio-cultural Rites of Domination, where problems and social hierarchies are routinely performed and not really resolved, and where '[g]iving instructions flows in one direction: from the powerful to the subordinated.'⁵⁸

Lazarus-Black observed how court users are often authoritatively ordered around by multiple hierarchical levels of court officers (from the most junior to judicial officers), their behaviour and responses dictated to them, their facial expressions called out publicly when deemed unsuitable, and their appearance and clothing admonished if thought inappropriate. This treatment of court users has been corroborated by recent research done in the courts of Trinidad and Tobago.⁵⁹ As explained in 'Securing Equality for All in the Administration of Justice': 'Reducing legal proceedings to a 'theatre for conflicts' has the real effect of alienating and excluding vulnerable defendants.'⁶⁰

The Rites of Domination model helps us understand how a society's relations of domination and subordination are perpetuated in legal arenas.⁶¹ The mirroring in court systems of these Rites of Domination, creates a significant judiciary response deficit both in terms of unmet legal needs and barriers to access to justice.

Rites of domination can also be seen when Lazarus-Black highlights that while women and men are meant to be 'equal' in the eyes of the law, gender hierarchy, along with its strict interpretation of societal gender roles remain pervasive socially and fills the court space. This she suggests calls for a 'regendering of the state' to mark out that the state is not objective, neutral and 'without gender'; law and the making of laws is not gender neutral.⁶²

What these examples demonstrate is that judiciaries have a significant role to play in combating GBV, and that Caribbean judiciaries, while they are aware of their responsibilities and are attempting to respond, need to still do much more. The research data on the prevalence of GBV

⁵⁸ See Mindie Lazarus-Black (n 55).

⁵⁹ See *Proceeding Fairly* (n 8).

⁶⁰ 'Securing Equality for All in the Administration of Justice' (n 4) 74.

⁶¹ *ibid* 75.

⁶² 'Securing Equality for All in the Administration of Justice' 75.

cited above, self-evidently demonstrates the reality of widespread response deficits. Caribbean judiciaries are not exempt.

(ii) Sexual Offences: Specialised Courts

There are however some positive developments in the context of Caribbean judiciaries. For example, the establishment of Sexual Offences Courts. Beginning with Antigua and Barbuda, the Sexual Offences Model Court was established in 2019, and others have since been established in Guyana.⁶³ The establishment of these specialised sexual offences problem-solving courts, indicates that Caribbean judiciaries (i) recognise the seriousness of the issues related to GBV, (ii) have identified a main area of its prevalence, and (iii) are prepared to strategically focus on and commit resources to address GBV. In this regard, Caribbean judiciaries are tackling both hitherto unmet legal needs and barriers to access to justice faced by victims of GBV.

(iii) Sexual Offences: Judiciary Guidelines

Another positive development that is judiciary-led, is the 2022 publication and widespread dissemination of the *Revised Model Guidelines for Sexual Offence Cases in the Caribbean Region*.⁶⁴ The Foreword to the Revised Model Guidelines explains its rationale, as follows:

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...

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...

These Revised Model Guidelines serve to strengthen the capacity of the courts to handle sexual offences cases fairly and in a timely manner... The Guidelines set the

⁶³ In Guyana, Sexual Offences Courts have been established in the counties of Demerara, Essequibo, and Berbice.

⁶⁴ Judicial Reform and Institutional Strengthening (JURIST) Project, *Revised Model Guidelines for Sexual Offence Cases in the Caribbean Region* (2022) <<https://ccj.org/wp-content/uploads/2023/03/Revised-Model-Guidelines-for-Sexual-Offence-Cases-2022.pdf>> accessed 13 September 2024.

minimum acceptable standards for the provision of quality service and support to the survivors of sexual assault, and they aim to secure justice to all involved.

In these responses, Caribbean judiciaries are strengthening their capacity to effectively and efficiently address GBV and trying to keep pace with Caribbean Legislatures which have enacted several laws to address GBV.⁶⁵

(iv) Judicial Bench Book Innovations: Therapeutic and Other Approaches

There are other signs of positive judiciary responses to tackling GBV. For example, very recently (in 2023) the Caribbean Association of Judicial Officers ('CAJO'), working together with three Caribbean Judiciaries, researched and published a Criminal Bench Book for Barbados, Belize, and Guyana ('the CBB').⁶⁶ What is significant in the context of GBV, is that it contains specific chapters dedicated to Procedural Fairness, Therapeutic Jurisprudence, Human Trafficking, Forced Labour, and Modern Slavery.

The chapter on Procedural Fairness has sections covering 'The Principles of Equality and Non-Discrimination' and includes 'Best Practices' and 'Special Concerns'. On the matter of equality, it states, among other things:⁶⁷

To discern whether there is discrimination and to achieve non-discrimination, the focus must also include the effect or impact of the law and of actions on the affected persons or groups. Therefore, the principles of equality and non-discrimination do not necessarily require identical treatment in all similar circumstances, and affirmative differential treatment may be both necessary and legitimate to achieve either, or both.

⁶⁵ See 'GBV Developments In The Law' (UN Women Caribbean) <<https://caribbean.unwomen.org/en/caribbean-gender-portal/caribbean-gbv-law-portal/gbv-developments-in-the-law#:~:text=With%20respect%20to%20sexual%20offences,of%20the%20English%20speaking%20Caribbean>> accessed 13 September 2024. See also Thelma Rodney-Edwards, 'CARICOM Model Legislation on Violence against Women in the Areas of Sexual Offences, Domestic Violence and Sexual Harassment : Comparison with International Standards and Existing Commonwealth Caribbean Legislation' in Kirstine Adams, Andrew Byrnes (eds), *Gender equality and the judiciary : using international human rights standards to promote the human rights of women and the girl-child at the national level* (Commonwealth Secretariat 1999) 257-279 <<https://www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/download/1028/1024/8982?inline=1>> accessed 13 September 2024.

⁶⁶ *Criminal Bench Book for Barbados, Belize, Guyana* (n 10) accessed 17 September 2024.

⁶⁷ *ibid* 793.

In the chapter on ‘Therapeutic Jurisprudence’, and citing *Ramcharran v DPP*,⁶⁸ the CBB endorses the following approach which it recommends for judiciaries and judicial officers:⁶⁹

In sum, therapeutic approaches try to maximize the personal and societal wellbeing of individuals and communities, and so focuses on more than just strict legal rights, responsibilities, duties, obligations, and entitlements. It is what is referred to in the academic literature as a ‘Rights Plus’ approach to adjudication, that also consciously focuses on the law’s potential to have a positive impact on people’s lives and on society.

It points out that: ‘Restorative justice seeks to enable ... a justice system which balances the victims’ needs for healing and rights for protection; the need for offender responsibility, rehabilitation and remediation, and the duty to protect the public/ community.’⁷⁰ Clearly, judiciaries that embrace and apply restorative and therapeutic approaches throughout the justice system contribute to addressing the deleterious effects of GBV, including reducing occurrence and recidivism:⁷¹

Therapeutic jurisprudence reaches into the criminal courts through lenses which view the offender’s behaviour as capable of rehabilitation, and the ultimate justice process outcome as possibly transformative – they will never again appear in court as an offender. This therapeutic jurisprudence perspective lends the court a solution focused or problem-solving characteristic ...

Unlike traditional punitive measures, restorative justice focuses on healing and rehabilitation for both victims and offenders. This approach can be particularly effective in cases of GBV, where the goal is not only to punish the perpetrator but also to restore the dignity and agency of the victim.

Having a chapter on ‘Human Trafficking, Forced Labour, and Modern Slavery’ is exceptionally important in the Caribbean, because:⁷²

Forced sexual exploitation, commercial sexual exploitation of children, and the exploitation of migrant and undocumented workers, remain major concerns in the American region, including Commonwealth countries. The Caribbean, with open

⁶⁸ [2022] CCJ 4 (AJ) GY.

⁶⁹ *ibid* at [98].

⁷⁰ *Criminal Bench Book for Barbados, Belize, Guyana* (n 10) 835.

⁷¹ *ibid* 828.

⁷² *ibid* 850.

unsecured borders and economies heavily reliant on tourism, provides opportunities for undocumented migrants seeking employment, as well as a destination for sex tourism, including the commercial sexual exploitation of children.

The decision to include this chapter on ‘Human Trafficking, Forced Labour, and Modern Slavery’ therefore indicates an awareness by Caribbean judiciaries of the intersectional nature of crime and, in particular, the impact of GBV on women and girls.

Thus, this CBB, produced by the regional CAJO is a significant signal that Caribbean judiciaries are actively aware of, concerned about, and addressing GBV.

(v) Judiciary Awareness; Gender Sensitive Adjudication Protocols

As GBV continues to be serious challenge facing societies across the globe, Caribbean judiciaries have also taken steps toward a more gender-sensitive approach to adjudication in GBV cases.

Some Caribbean Judiciaries have researched and promulgated Gender Equality Protocols for Judicial Officers. Trinidad and Tobago and Belize have both done so since 2018.⁷³ Two other jurisdictions, Barbados and Guyana, are still in the process of doing so. As demonstrated throughout this paper, these protocols are extremely useful in facilitating gender sensitive adjudication and therefore effective in adjudicating cases of GBV. Specifically, in these protocols there are sections addressing domestic violence, intimate partner violence, and sexual offences,⁷⁴ areas in which women and girls are disproportionately affected as victims. There are also sections addressing human trafficking, again an area where women and girls are disproportionately affected as victims.⁷⁵

The promulgation of these protocols is further evidence that Caribbean judiciaries are actively aware of, concerned about, and addressing GBV.

(vi) Judiciary Awareness; GBV Jurisprudence

The jurisprudence emerging out of Caribbean courts also demonstrates increasing rights-centric approaches to gender sensitive adjudication. Recent examples include cases such as *Pompey v*

⁷³ JEITT, ‘Justice Through a Gender Lens’ (n 21); Belize Judiciary, ‘Justice Through a Gender Lens’ (n 22).

⁷⁴ JEITT, ‘Justice Through a Gender Lens’ (n 21) 59-82; Belize Judiciary, ‘Justice Through a Gender Lens’ (n 22) 37-84.

⁷⁵ JEITT, ‘Justice Through a Gender Lens’ (n 21) 95-99; Belize Judiciary, ‘Justice Through a Gender Lens’ (n 22) 37-84.

DPP,⁷⁶ *Ramcharran v DPP*,⁷⁷ *OO v BK*⁷⁸ and *Lampkin v Attorney General*,⁷⁹ marking key milestones in this evolving jurisprudence.

Pompey v DPP demonstrates a shift in judicial understanding of GBV and the need for nuanced sentencing in cases involving sexual offences, particularly against minors. By doing so, the court highlighted not only the importance of proportionality in sentencing but also the necessity of institutional responses that understand GBV as a systemic issue.⁸⁰ In *Pompey*, the Court while focusing on GBV, specifically considered ‘Gender Sensitive Sentencing’⁸¹, and pointed to the need for sentences that reflect the harm caused by sexual violence while also considering its broader gendered impacts. The Court underscored the disproportionate effect of sexual violence on girls, emphasising the structural inequalities that render them particularly vulnerable. The Court also remarked on the ‘deep-seated and unconscious cultures of bias and misogyny’⁸² that permeate Caribbean society. Opining that this stands as a call to action for judiciaries to do more than merely enforce the law, advocating for sentencing judges to interrogate the gendered dynamics underlying these offences, to ensure that the law is applied in a manner that not only punishes perpetrators but also seeks to challenge and dismantle the societal norms that perpetuate GBV. This call for judicial officers to educate themselves on gender issues signifies a shift toward a judiciary that does not merely react to violence but is proactive in addressing its root causes.

Ramcharran v DPP similarly reflects the Caribbean judiciaries’ evolving approach to GBV. The significance of the judiciaries’ role in addressing GBV is further reinforced in *OO v BK*, a case that expands the scope of protection under domestic violence legislation in Barbados. In *OO v BK*, the CCJ interpreted the relevant legislation in light of Barbados’ international obligations, particularly under the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* and the *Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women*.

⁷⁶ [2020] CCJ 7 (AJ) GY, GY 2020 CCJ 2 (CARILAW).

⁷⁷ *Ramcharran* (n 68).

⁷⁸ [2023] CCJ 10 (AJ) BB, (2023) 103 WIR 36.

⁷⁹ (TT HC, 16 May 2024) (Mohammed J).

⁸⁰ Justice Rajnauth-Lee, one of the most senior judges of the CCJ and the lone woman judge (at this time), acknowledged the increasing rates of gender-based violence across the region, referencing the establishment of specialised police units and sexual offences courts in some Caribbean countries to address this occurrence.

⁸¹ *Pompey* (n 76) at [95] (Jamadar J).

⁸² *ibid* at [95] (Jamadar J).

Justice Rajnauth-Lee's judgment recognised that domestic violence disproportionately impacts women, and that domestic violence legislation must be interpreted expansively to provide meaningful protection. She noted that the remnants of patriarchal plantation structures continue to shape gender relations in the Caribbean, making it imperative that courts address the underlying systemic inequalities that perpetuate violence against women. The Court also pointed to the necessity for specialised courts to deal with domestic and gender-based violence in a holistic manner. The CCJ's recognition of the need for judicial officers to receive comprehensive training and sensitisation about GBV and human rights marks a significant step forward in addressing the plague of GBV. In all of this, the CCJ is performing a leadership role in developing gender sensitive approaches to GBV.

In Trinidad and Tobago, in a recent High Court judgment in *Lampkin v Attorney General*,⁸³ the Court referenced the above-mentioned international instruments, examined the prevalence of domestic violence in Trinidad and Tobago, and interrogated the country's domestic violence historical background;⁸⁴ identifying these historical roots as contributors to the normalisation of violence against women and the perpetuation of gendered imbalances within Caribbean societies.⁸⁵ The Court in *Lampkin* called for more action by the State and championed a multifaceted approach involving legal measures to protect and support victims, in an effort to 'unravel the grip of domestic violence and safeguard the sanctity of our vulnerable in society.'⁸⁶

Across these cases, we see a common thread: Caribbean judiciaries are increasingly aware of their responsibility not just to adjudicate cases of GBV but to actively contribute to the dismantling of the structural inequalities that allow such violence to thrive. The Caribbean courts are evolving, recognising that GBV is not merely a criminal issue but a societal one, deeply intertwined with gender-based discrimination, and human rights violations. As courts begin to integrate principles of international human rights law - such as in CEDAW, into their interpretations of territorial domestic violence legislation, they are paving the way for a legal system that offers not just legal redress, but transformative justice for survivors of GBV.

⁸³ *Lampkin* (n 79).

⁸⁴ Krim K Lacey, Rohan D Jeremiah and Carolyn M West, 'Domestic Violence Through a Caribbean Lens: Historical Context, Theories, Risks and Consequences' (2019) 30(6) *Journal of Aggression, Maltreatment & Trauma* 761.

⁸⁵ *Lampkin* (n 79) at [121].

⁸⁶ *ibid* at [302].

This progressive shift within Caribbean judiciaries is a welcome response to the realities of GBV in the Caribbean, where GBV remains a pressing issue. However, the cases also highlight that much work remains to be done. The establishment of specialised courts, comprehensive judicial training, and an ongoing commitment to interpreting laws through gender-sensitive lenses, are necessary continuing steps to ensuring that justice is accessible to all. These cases serve as reminders that judiciaries must continue to evolve and innovate if they are to meet the challenges posed by GBV in the Caribbean.

The courts increasing willingness to align with international human rights obligations is a promising development. However, it must be coupled with ongoing efforts to challenge and change the societal norms that continue to marginalise women and other groups made vulnerable and that perpetuate all forms of GBV.

Several themes emerge from Caribbean judiciaries' evolving jurisprudential approaches to GBV. Some of the main ones may be summarised as follows:

1. Constitutional Contexts for Adjudicating GBV.
2. Gender Sensitivity in Sentencing and Judicial Interpretation.
3. Recognition of Structural and Systemic Gender Inequality.
4. Institutional Responses and the Need for Specialised Courts.
5. Alignment with International Human Rights Standards.
6. Intersectionality of GBV and an Awareness of Broader Societal and Historical Contexts.

(vii) Judiciary Awareness; Existing In Integrity, Internal Systems

Judiciaries cannot simply adjudicate in gender sensitive ways and hope to be responsibly addressing GBV. They must exist, structurally and systemically, in internal contexts that ensure the protection from and eradication of GBV. That is, they must exist IN integrity, even as they must act OUT OF integrity in their adjudication.

Judiciaries exist in national cultures and unsurprisingly, internal judiciary cultures mirror societal culture. Thus, societal Rites of Domination that perpetuate GBV in the wider society also exist within the internal judiciary culture. This is a significant deficit that also perpetuates unmet legal needs and creates barriers to access to justice. Overturning these court cultures requires conscious structural and systemic interventions.

Internal protocols, such as the CCJ's 2019 Harassment Policy, are a first step. The CCJ's Annual Report 2019 explains: 'A Harassment Policy aimed at making sure the work environment at the Court and Commission is free of harassment and bullying for all employees was also put in place.'⁸⁷ Of note, is that this Harassment Policy was developed by the Court's Gender Policy Working Group.⁸⁸ The President of the Court would describe it as 'a critical addition to the framework regulating workplace interactions.'⁸⁹

The Trinidad and Tobago Judiciary also has a Harassment Policy (2020). Its purpose is stated as being: 'to providing a safe, healthy and respectful environment for members of the Judiciary, Judiciary employees and persons using premises under the Judiciary's control, free from all forms of Harassment, including sexual Harassment.'⁹⁰ And, the Jamaican Judiciary has a Sexual Harassment Policy (2021). Its purpose is similarly stated.⁹¹

Such policies must also be accompanied by effective and actionable complaints procedures. Again, the CCJ in promulgating its 'Judicial Discipline Regulations'⁹² is seeking to put systems in place to address, among other things, internal incidences of GBV (in all forms). All judiciaries are encouraged to take similar actions, if we are to exist in integrity in addressing GBV.

(viii) Judicial Education and Training

Sustainable judicial reform is impossible without corresponding and supportive judicial education and training. Judicial education and training help close identified gaps between the reality and ideal.

Throughout the Caribbean, there are Judicial Education Committees and Institutes. All have regular and periodic education and training sessions on various areas of law and practice. What is needed, is a continuous and focused emphasis on gender equality and GBV sensitisation and skills-based training. In the Caribbean, there are many indigenous resources that are well-

⁸⁷ See Regional Judicial and Legal Services Commission, 'Annual Report 2019: Strengthening Transformation' (2019) 5 <<https://ccj.org/wp-content/uploads/2021/03/2019RJLSCAnnualReport.pdf>> accessed 24 September 2024.

⁸⁸ *ibid* 29.

⁸⁹ *ibid* 31.)

⁹⁰ Judiciary of Trinidad and Tobago, 'Harassment Policy' (2020) paras 1.0, 1.1.

⁹¹ 'The Judiciary of Jamaica is committed to providing a safe working environment for all its employees; an environment that is free from harassment and discrimination on any grounds, including sexual harassment.'

⁹² See Regional Judicial and Legal Services Commission, 'Judicial Discipline Regulations' (2021) <<https://ccj.org/wp-content/uploads/2021/09/RJLSC-Judicial-Discipline-Regulations01052021.pdf>> accessed 24 September 2024.

suited to support this training. For example, the Gender Equality Protocols of Trinidad and Tobago and Belize, the Caribbean Model Guidelines for Sexual Offence Cases, the Procedural Fairness Report and Manual, and the Criminal Bench Book for Barbados, Belize and Guyana, which are all referenced above, are practical and both knowledge and skills-based resources that are easily deployed.

Addressing GBV requires more than just information and knowledge transfer. It requires a whole system of cultural and individual behavioural change interventions. Judicial education and training designed and deployed to achieve this can close existing gaps and help ameliorate Judiciary deficits that contribute to GBV.

Developing relevant approaches for addressing gender (in)equality and GBV

This paper has focused on Caribbean judiciaries' responses to GBV. More generally however, and in order to effectively address gender inequality and GBV in the Caribbean, we must develop legal methodologies that are both relevant and responsive to our unique cultural and social contexts. This involves multi-faceted and multi-stakeholder strategies that include legal reforms, policy development, enforcement mechanisms, and education and public awareness campaigns. The following non-exhaustive list is illustrative of some of what is required.

- a) Legislative reform - comprehensive legal reform, specific gender equality laws, and specific reform of existing discriminatory laws.
- b) Policy development and implementation - national action plans, gender mainstreaming, and resource allocation.
- c) International conventions - ratification and implementation, with continuous evaluation and response.⁹³

⁹³ For example, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, Thelma Rodney-Edwards, 'CARICOM Model Legislation on Violence against Women in the Areas of Sexual Offences, Domestic Violence and Sexual Harassment : Comparison with International Standards and Existing Commonwealth Caribbean Legislation' in Kirstine Adams, Andrew Byrnes (eds), *Gender equality and the judiciary : using international human rights standards to promote the human rights of women and the girl-child at the national level* (Commonwealth Secretariat 1999) 257-279 <<https://www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/download/1028/1024/8982?inline=1>> accessed 13 September 2024, Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (n 25), Beijing Declaration and Platform for Action, Fourth World Conference on Women (adopted 15 September 1995) A/CONF 177/20 and A/CONF 177/20/Add 1, Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities (adopted 8 June 1999, entered into force 11 March 2004), Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) (opened for signature 11 May 2011, entered into force 1 August 2014) CETS No 210, Organisation of American States (OAS), 'Brasilia Regulations Regarding Access to Justice for Vulnerable People' XIV Ibero-American Judicial Summit Ag/Res 2801 (XLIII-O/13) (Brazil 4 March 2008), Economic Commission for Latin

- d) Accountability mechanisms - monitoring and evaluation of investigative and law enforcement agencies, judiciaries, social services etc.
- e) Public awareness programmes
- f) Support services for victims and survivors of GBV.
- g) Continued research - data collection and publications on GBV.
- h) Collaborations – multi-stakeholder intra-territorial.
- i) Collaborations – multi-stakeholder inter-territorial.
- j) Reform of legal frameworks for comprehensive protection and swift prosecution.
- k) Increasing funding and resources for legal aid and support services.
- l) Education and training programs for law enforcement and judicial officials on gender sensitivity and GBV.
- m) Community engagement and awareness campaigns to change societal attitudes towards GBV.

Regional Collaboration and Standardisation

Given the shared cultural and legal heritage of the Caribbean, regional collaboration is vital to address GBV and gender inequality. However, achieving this may require a respectful approach to balancing regional harmonisation and standardisation on the one hand, and regard for contextual territorial nuance and developmental priorities on the other hand.

To a certain degree, by standardising legal approaches, sharing best practices, and harmonising legislation across the region, we can collectively advance gender justice. For example, the Revised Model Guidelines for Sexual Offences Cases in the Caribbean region, provide a robust framework for handling sexual offences. These guidelines can serve as a model for other areas of law, helping to ensure that victims of GBV receive the justice they deserve, no matter where they live in the Caribbean. There are other existing regional frameworks, such as the Gender Protocols for Belize and Trinidad and Tobago, which promote gender equality and protect the rights of all individuals across our region. Thus, on the one hand and by working together, we can aspire to create a unified approach to addressing GBV that reflects our shared Caribbean values and commitment to justice. But this is not all of our Caribbean reality.

America and the Caribbean (ECLAC) ‘Santo Domingo Consensus’ (Twelfth session of the Regional Conference on Women in Latin America and the Caribbean, Santo Domingo, 15 October 2013).

However, the Caribbean is a diverse region, with common law, civil law, and mixed law territories. Each is unique and at different stages of development (social, economic, legal, political etc). And many are on their own nuanced socio-legal trajectories, driven by local exigencies. The judiciaries of the Caribbean reflect this diversity. It is therefore not entirely realistic to expect uniform or even completely harmonised responses to GBV, and such expectations can be counterproductive and frustrating. However, this does not mean that there are not common value-based responses occurring that can be facilitated. This is the intention behind developing ‘model laws’ and ‘generic guidelines’ to drive socio-legal reform. And these initiatives have had measured success in the region. But these must also give way to territorial nuance.

Conclusion

GBV in the Caribbean is at crisis levels. Statistically, prevalence rates are in an upward spiral. Women, girls, and all groups that have been made vulnerable are suffering the ravages of GBV, with consequential damaging effects for families, communities, and societies. Personhood in the Caribbean is much more than the individual, or even a collection of individuals. Personhood in the Caribbean has deep ancestral roots in and remains very much a collective ‘I Am WE’ lived experience; in which to be an individual person (an ‘I AM’) is to be so in the context of abiding and interconnected social relationships with all other persons.⁹⁴ We are all affected by GBV, even those who may think that they are not.

Parliaments have been responding, passing laws. And as this paper seeks to demonstrate, judiciaries have also been responding in some areas where and in ways in which it can do so. But more needs to be done and done urgently.

What is suggested in conclusion, as an overarching model for responding to GBV in the Caribbean, is a ‘Cross-Fertilisation Model’ for socio-legal reform and transformation in the

⁹⁴ The African concept of ‘ubuntu’ is apposite, as is its development in South Africa as a constitutional principle. See for example, *S v Makwanyane* 1995 6 BCLR 665. In the Constitutional Court of South Africa, Justice Mokgoro’s explanation of ubuntu firstly as personhood is often quoted. She explains that ubuntu encapsulates respect for human dignity and that it manifests in the concept of humanity. (At [307]) In African philosophy, ubuntu originates from the Nuuni language, and is commonly expressed in the phrase: ‘*umuntu ngumuntu ngabantu*’, which means ‘a human being is a human being because of other human beings’. In Indian philosophy, a resonant idea is that of ‘*vasudhaiva kutumbakam*’, which may be found in ancient texts such as the Maha Upanishad and translated from Sanskrit can mean ‘all reality (the world) is one family’. It recognises, and even prioritises, the collective well-being in the context of individual interests, as its emphasis lies in the interconnectedness of all living beings. It finds expression in the Preamble to the Indian Constitution as a constitutional goal, captured in the concept of ‘fraternity’: ‘... fraternity assuring the dignity of the individual and the unity ... of the Nation.’

area of GBV. It is an inclusive model that is built on and facilitates learning from each other in the region, by sharing our stories of success and our challenges in addressing GBV – our lessons learned. All stakeholders are included, and none are left out. Each has a place at the ‘GBV Table’.

What we share are our lived experiences, our legal and other resources, and our best insights. Out of this collaborative and consultative model, each territory can take what is meaningful for its context and adopt, adapt, and apply it, in a continuous process of application, evaluation, and review, thus engaging an ongoing process of transformative reform. In this way, we may be better able to identify and address GBV and its intersections with unmet legal needs and the barriers to accessing justice.

The constitutional duty on State agencies and actors (including Judiciaries) to be proactive in preventing GBV, and effective in protecting and supporting victims and survivors of GBV, is no ‘*small thing*’ and must be taken very seriously.

The time for talk is past, the time for action is now!