

Assessing Responses to Caribbean Judiciary Staff

A Brief Exploratory Account of Regard, Respect, and Appreciation for Staff amid the COVID-19 pandemic and in relation to Caribbean Cultures of Classism, Status, Patriarchy, and Institutional Hierarchy

Elron Elahie, Research and Programme Coordinator Peter Jamadar, Chairman The CAJO wishes to thank all those who took time and care to participate in the survey for this brief research project.

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Overview

In March of 2020, the Caribbean region was forced to urgently respond to the escalating COVID-19 pandemic. Common to the responses adopted by Caribbean governments were restriction measures that sought to keep as many people as possible at home – 'Stay-at-Home' policies. Legislation and Public Health regulations were quickly introduced leaving regional judiciaries to confront providing safe, efficient, and adequate access to justice in a time where in-person group meeting was not allowed or heavily curbed – 'social distancing' policies. Caribbean Judiciaries thus implemented a series of different policies ranging from complete work from home measures with emergency filing and hearings done via web-video software, to very restricted in-person access for emergency matters. But regardless of the measures adopted, a driving force behind the success of each judiciary's operations remained the same: the staff.

As the governments' and judiciaries' measures took effect and the adaptation to this new state of affairs continued, messages of admiration for staff commitment came in to the CAJO's Management Committee. Appreciation for administration's efforts also shone. But there were also instances of staff members feeling un- or under-appreciated and not sufficiently regarded, respected, or thought of. Given this mixed feedback, the CAJO sought to succinctly explore the experiences of judiciary staff in relation to the COVID-19 measures that were being implemented. Premised on existing regional and international work on experiences at court systems¹, the CAJO was also interested in getting a glimpse at the operating cultures within these judiciaries, to enable a deeper understanding and analysis of the dynamics that may be at work, and to aid in its development of targeted education programmes.

I Peter Jamadar and Elron Elahie, 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 (Judicial Education Institute of Trinidad and Tobago, 2018); D Johnson, E R Maguire, and J B Kuhns, 'Public Perceptions of the Legitimacy of the Law and Legal Authorities: Evidence from the Caribbean' (2014) 48 Law and Society Review 947; David B Rottman, Randall Hansen, Nicole Mott and Lynn Grimes, 'Perceptions of the Courts in Your Community: The Influence of Experience, Race and Ethnicity, Final Report' (National Criminal Justice Reform Service 2013); Rachel Swaner, Cassandra Ramdath, Andrew Martinez, Josephine Hahn, and Sienna Walker, 'What Do Defendants Really Think? Procedural Justice and Legitimacy in the Criminal Justice System' (Centre for Court Innovation 2018); Susan M Olson and David A Huth, 'Explaining Public Attitudes Towards Local Courts' (1998) 20 The Justice System Journal 41; Pascoe Pleasance and Nigel Balmer, 'Measuring the Accessibility and Equality of Civil Justice' [2018] Hague Journal on the Rule of Law 10; Jessica Jacobson, Gillian Hunter, and Amy Kirby, 'Structured mayhem: Personal experiences of the Crown Court' (Criminal Justice Alliance 2015) https://criminaljusticealliance.org/wp-content/uploads/2015/11/Structured-Mayhem1.pdf accessed on 01 May 2020



Overview

The fundamental underlying premise of this research being, that without adequate staff satisfaction and fulfilment in their roles and functions, and in relation to the treatment, regard and respect experienced by them in their jobs, including appropriate recognition and reward, the overall performance of judiciaries would be detrimentally affected, particularly in times of emergencies or unprecedented events that have wide-reaching effects and consequences. In earlier research done by the JEITT, on Procedural Fairness and its impacts on public trust and confidence in judiciaries, it was clear that a lack of essential respect and regard for court users had deleterious effects on the effectiveness of court systems.2 This research is therefore seen as a first step towards interrogating judiciaries' staff concerns and doing so from individual and group perspectives, and as well through systemic, structural and cultural lenses.

In this interrogation, we have adopted general understandings of particular cultures as they exist within the Caribbean space. Patriarchy is generally understood as the subversion of women and their interests in favour of men and their interests. In the Caribbean, this is further experienced through hegemonic masculinity which means that anyone (especially women) who departs from what is accepted as the ideal masculinity or male-ness, experiences unfair or disproportionate treatment.³ Classism is generally understood as the disproportionate and unfair treatment which is experienced by people who do not belong to upper social classes (often by virtue of their wealth), while treatment based on status refers to unfair and disproportionate treatment experienced by those who are not highly regarded in society (often due to their wealth, ethnicity, formal education, influence, or connections).4 Institutional hierarchy can be simply understood as the organisational design of an institution that designates tiers and levels to certain roles. Generally, and within the Caribbean space, such hierarchy is often understood to be reflective of traditional colonial and capitalist models and is often attributed to the perpetuation of inequality and disproportionate treatment.5

⁵ Bruno Amable, 'Institutions, Complementarity, and Hierarchy' in *The Diversity of Modern Capitalism* (Oxford Scholarship Online, 2005)



Proceeding Fairly (n1); Elron Elahie, Reflections of an Interested Observer: Ethnographic Musings on the Court

User's Experience in Trinidad and Tobago (Judicial Education Institute of Trinidad and Tobago 2018)

Preeti Rawat, 'Patriarchal Beliefs, Women's Empowerment, and General Well-being' (2014) 39 Vikalpa 43;
Laurence Telson, 'Man-up: Hegemonic Masculinity in the Caribbean' (Caribbean DEV Trends+, 22 May 2019) https://blogs.iadb.org/caribbean-dev-trends/en/man-up-hegemonic-masculinity-in-the-caribbean/ accessed May 10

⁴ William Ming Liu, 'Social Class, Classism, and Mental and Physical Health' in *Social Class and Classism in the Helping Professions: Research, Theory, and Practice* (SAGE Publications, 2012); Cecilia Ridgeway, 'Why Status Matters for Inequality' (2014) 79 American Sociological Review 1

Measures Adopted

Across the Caribbean region, judiciaries have adopted measures (and supporting legislation, policies, and directions) to secure business continuity while protecting the health and safety of employees and court users.

Among the measures adopted, common practices across judiciaries included implementing work from home systems in which staff, where possible, continue to work but from the safety of their homes. In some countries, e-filing systems were implemented; even simply receipt via email. For services that could not be migrated to a work from home basis, reduced opening hours and rostered work schedules were implemented to ensure that not many staff were in the same space during the workday. In addition, social distancing measures were enforced, and protective wear made necessary to prevent any contamination.

For judicial officers, the hearing of matters virtually, using web-based video software has become the norm. Many Caribbean countries have successfully had matters heard on such software.

Generally, judiciaries across the Caribbean swiftly adopted a slew of measures to protect staff and to mitigate, as best as possible, obstacles to providing swift and accessible justice.⁶

⁶ An in-depth look at challenges, actions, and solutions faced and implemented by judiciaries (and state agencies and bar associations) across the region can be found in Adapting to the COVID-19 Reality: A Roadmap for Caribbean Judiciaries Outcome Report.



Methodology

The data collection tool, a <u>survey questionnaire</u>, was fashioned pursuant to feedback received from judicial officers regarding staff commitment and experience from judiciaries' COVID-19 measures and existing data on institutional and relational court structures and realities. The survey consisted of 10 questions, which were a mix of simple response, Likert scale⁷ evaluations, and open-ended questions.

The first question sought to gauge the quality and appreciation of staff efforts. Questions two - four sought to discover whether members of the judiciary (staff, judicial officers, and administration) had any awareness or knowledge of how wider social cultures operated within their workspaces. Questions 5-7 attempted to garner from respondents whether they are open to receiving continued education on prevailing cultures and their impact on judicial workspaces, including an open-ended question that asked respondents to provide recommendations regarding what more can be done to enhance this learning and subsequent workplace experiences. The final questions, eight – ten, collected demographic data of respondents including age, gender identity, and jurisdiction. This survey questionnaire was anonymously completed.

The target number of surveys distributed was 185. The survey distribution engaged a stratified simple random model, as specific groups were selected (staff, judicial officers, administration) and the surveys were sent at random, with the desired numbers being: seventy (70) staff, seventy (70) judicial officers, and thirty (30) administrators. Fifteen (15) members of the CAJO's Management Committee and support staff were also asked to complete the survey. However, these targets were not met as the estimate number of surveys distributed was 120. The response rate (responses received/surveys distributed x 100) was:

| Responses Received | 52 |
|---------------------|-----|
| Surveys Distributed | 120 |
| Response Rate | 43% |

⁷ A Likert scale is a psychometric scale commonly involved in research that employs questionnaires. It is one of the most widely used approaches to scaling responses in survey research



Methodology

Though not a high response rate, this survey remains exploratory and an array of jurisdictions were represented (as shown later on). Further, the COVID-19 realities rendered many targeted participants either inaccessible or consumed with adjusting to the 'new normal', and so hindered access to and completion of the survey.

They data collection period was also relatively short, which compounded participants' inability to respond. Surveys were distributed and data was collected over a two-week period.

In spite of these factors, the final response rate and participation spread make these results a significant entry point into the interrogation that was intended.



Demographics

Of the fifty-two (52) respondents, 17% were between the age of 25-35 years, 23% between 26-45, 31% between 46-55, and 29% between 56-70+ (see Fig 1).

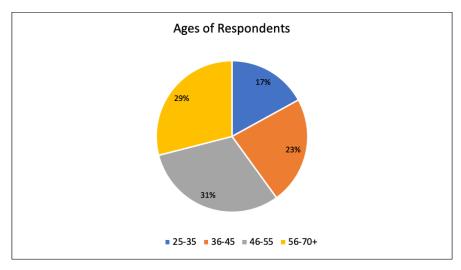


Fig 1: Chart showing the age of respondents

With regard to gender identities of the respondents, 56% identified as women, 40% as men, with 2% as other, and 2% opted to not say (see Fig 2).

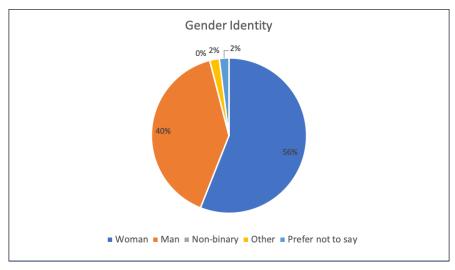


Fig 2: Chart showing the gender identities of respondents



Demographics

Responses were garnered from across the Caribbean region. The regions with the most representation were: Guyana (23%), Trinidad and Tobago (17%), Suriname (15%), and Belize (13%). Fig 3 shows the full breakdown.

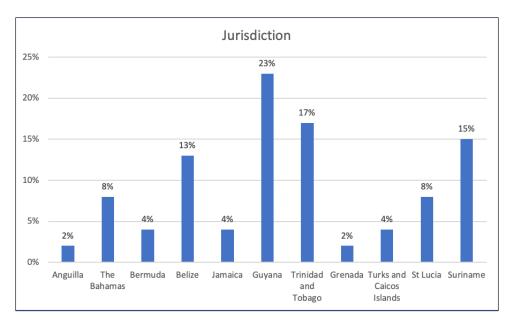


Fig 3: Chart showing respondents' jurisdictions



Assessment and Appreciation of Staff Responses amid COVID-19

Respondents were asked to assess, on a scale of 1-5, with 1 being the lowest and 5 being the highest, general judiciary staff responses to court operation amid COVID-19 measures. 50% of respondents rated staff responses at 4, with 32.7% rating responses as 5; the highest measure. No respondents rated staff response as 1 and only 17.3% rated either 2 or 3. Fig. 4 below shows the graphical breakdown of these responses.

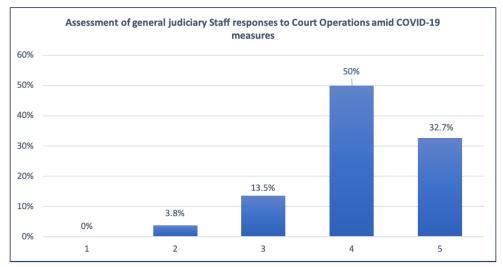


Fig 4: Graph showing assessment of general judiciary staff responses to court operations amid COVID-19 Measures

Respondents were then asked to assess, using the same scale, their appreciation for these staff responses. Similar to the above results, Fig 5 shows that most respondents rated their appreciation as either 4 or 5 (86.6%). 13.5% rated their appreciation as 3, and none of the respondents rated their appreciation as 1 or 2.



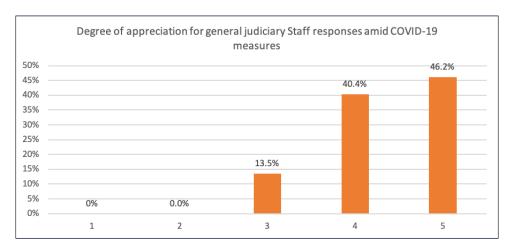


Fig 5: Graph showing assessment of appreciation for general judiciary staff responses to court operations amid COVID-19 measures

When asked to assess other judicial officers' and court administrators' appreciation for staff, respondents showed a slight variance in their response when compared to the first and second questions. 25% of respondents rated other judicial officer and court administrator appreciation at 5, 46.2% at 4, and 28.8% at 2 and 3. Fig 6 shows this breakdown.

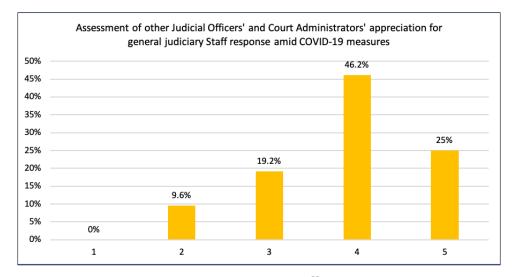


Fig 6: Graph showing assessment of judicial officers' and court administrators' appreciation for general judiciary staff responses to court operations amid COVID-19 measures



It is therefore fair to say, that the vast majority of participants were of the view that the staff of judiciaries across the region responded commendably in the face of the COVID-19 challenges, and that these efforts were deeply appreciated across the board.

Prevailing Cultures and the Judicial Workspace

Respondents were then asked to rate, on a scale of I to 5, where I is not at all and 5 is very much, the extent to which Caribbean cultures of classism, status, patriarchy, and institutional hierarchy operate within their judicial workspace. 44.2% of respondents believed that these cultures operate either very much (5) or at a fair amount (4). 42.3% stated that these cultures somewhat (3) operate in their workspaces and I3.4% stated that these cultures operate a little (2) or not at all (I). Fig 7 shows this data.

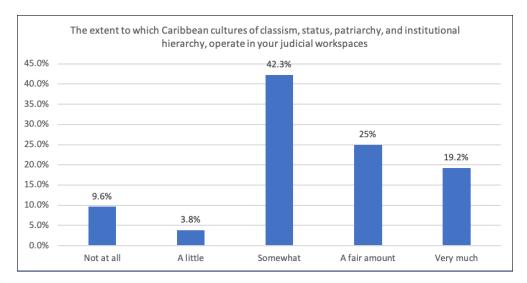


Fig 7: Graph showing assessment of the extent to which Caribbean cultures of classism, status, patriarchy, and institutional hierarchy, operate in your judicial workspaces



Using the same scale as the previous question, respondents were then asked to revisit their assessment of how staff are regarded, respected, and appreciated given their assessment in the context of the operation of the above Caribbean cultures. 13.5% of respondents stated that staff are very much (5) regarded, respected, and appreciated, with 34.6% saying there were regarded, respected, and appreciate a fair amount (4). 46.2% said that staff are somewhat (3) regarded, and 5.8% stated that staff are regarded a little. None of the respondents said staff are not at all regarded in relation to the above cultures. Fig 8 shows this data.

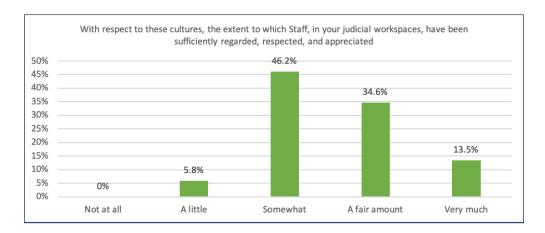


Fig 8: Graph showing assessment of the extent to which Staff in jurisdictions have been sufficiently regarded, respected, and appreciated in the context of the Cultures mentioned

Respondents next had to answer both whether they think they are sufficiently aware of Caribbean cultures of classism, status, patriarchy, and institutional hierarchy and the effects of these cultures within their jurisdiction. Fig 9 shows that 81% of respondents said that they are aware of the cultures in their jurisdiction but, as shown in Fig 10, only 69% state that they are aware of the effects.



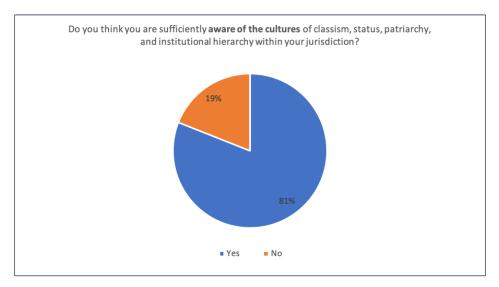


Fig 9: Graph showing if respondents think that they are sufficiently aware of the cultures of classism, status, patriarchy, and institutional hierarchy within their jurisdiction

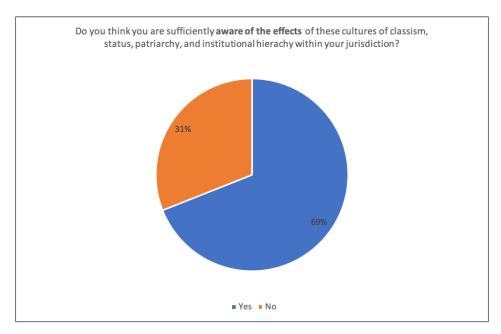


Fig 10: Graph showing if respondents think that they are sufficiently aware of the effects of the cultures of classism, status, patriarchy, and institutional hierarchy within their jurisdiction

Thus, whereas 44.2% of respondents consider that Caribbean cultures of status, patriarchy, and institutional hierarchy operate within their judicial workspace a fair amount to very much (90.4%) accept that these operate at least 'somewhat', and 81% of respondents said that they are aware of these cultures in their jurisdiction, only 69% (presumably of that 81%) claim to be aware of how the effects of these cultures operate in and impact their work environments. This raises the salient issues of the impact of these cultures on judiciary staff, the levels of awareness around this, and whether ameliorating measures are in place (or need to put in place).

Engaging more Knowledge

When asked whether they could benefit from more information on how these Caribbean cultures, mentioned above, impact the experiences and treatment of judiciary staff, 96% of respondents said yes (Fig II). 85% of respondents said they would recommend that in the context of Caribbean cultures of classism, status, patriarchy, and institutional hierarchy more should be done to achieve greater regard, respect, and appreciation for judiciary staff in their jurisdiction (Fig I2).

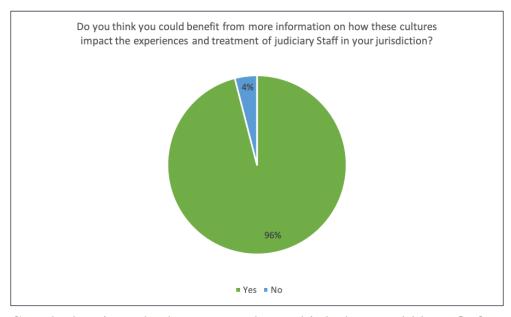


Fig 11: Graph showing whether respondents think they could benefit from more information on how these cultures impact the experiences and treatment of judiciary Staff in their jurisdiction



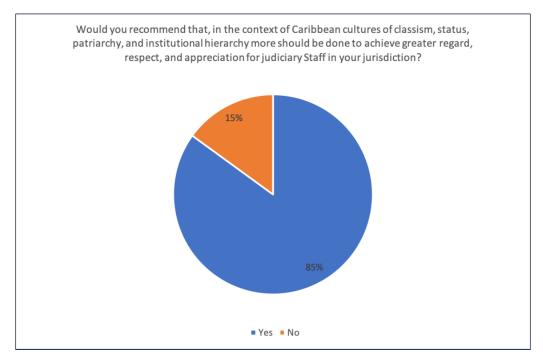


Fig 12: Graph showing whether respondents recommend that, in the context of the referenced Caribbean cultures, more should be done to achieve greater regard, respect, and appreciation for judiciary Staff in their jurisdiction

Respondents were asked, pursuant to answering 'Yes' to whether more should be done, to offer their recommendations. These responses, as shared by each of the respondents who submitted an answer, are captured verbatim in the following section.



Recommendations Offered by Respondents

- Informed comprehensive reviews of both institutional and individual work relations and systems, including of current remuneration and recognition in relation to all judiciary Staff, be undertaken, to discover inequities and to ameliorate and appropriately remedy same, so as to achieve substantive equality of treatment. Educational initiatives be developed and rolled-out to inform and transform (existing cultures), in relation to what are and how Caribbean cultures of classism, status, patriarchy and institutional hierarchy discriminate against and unfairly impact judiciary Staff in Caribbean Judiciaries.
- Sensitivity training for Judicial officers.
- One recommendation is for the sensitization of the judiciary, by shared experiences of all levels of staff, as to their experience and perception of treatment of all persons including themselves in the creation, direction and implementation of the various Covid-19 measures and protocols.
- Awareness of the cultures and their impact on our societies. Efforts to achieve evidencebased solutions to address impact. Sensitisation of the value of being respectful of independent views / professional advice regardless of status, class, patriarchy or institutional hierarchy.
- Build greater awareness and sensitization of these issues among the perpetrators (who are very often higher in the hierarchy). Having done this, then the process can begin to socially deconstruct the source of these breaches and find solutions which will promote and foster a more nurturing and appreciative environment.
- Similarly, to all the experts we have brought to the court in the past for the uplifting of both the staff members and the organization we can do same in this regard as well.
- Training for specific Staff groups, e.g. Court Administrators, Case managers, Clerks of court. Increase communication and exchange, between High court staff and District court staff. Recognition of the significant contribution the Magistrates' courts make to our system of Justice. Public awareness campaigns to clarify our Court system particularly with respect to Staff. For example, they often complain that they are "targeted" or in some way "blamed" for court orders, warrants etc.
- Increased communication.
- Existing by example. Everyone should be an exemplar.
- Sensitization to the important role that support staff play.



Recommendations Cont'd

- Sensitization coupled with open forum discussion.
- Equal pay for equal positions.
- The issue can be brought to the fore at respective retreats/meetings of national judiciaries. Open and frank discussions among judicial officers from throughout the region, with engagement from professionals in the area.
- More information would be beneficial as it would assist in the formulation of training responses to address these issues both as to staff perception and actualities and in influencing their responses to the publics we serve.
- Although I said no, for much has been done over the last 3 years and is being done to achieve greater regard, respect and appreciation for staff, there is always room for improvement and other ideas and suggestions.
- Introducing these concepts (cultures) in the training agenda for judicial officers. Raising awareness of these cultures amongst judicial officers possibly distributing structured literature, conducting webinar/interactive presentations, talks. Discussion on how it affects judicial disposition at a subconscious level.
- Some formal assessment and sensitisation programmes.
- Awareness programmes and training should be done.
- The right persons to do the job (qualifications) and an oversight body to review decisions for fairness and transparency.
- Reach out to local media e.g. institutional station it would be helpful if we have our own website to communicate and share ideas.
- Maybe educational programmes for the public to educate them about the important role that the Judicial staff play and why they should be respected.
- Employees should be appraised regularly. They should be asked what we could do to assist them to better perform and execute their roles and responsibilities. And we should be able to tell them if they are meeting our expectations and if they are not what they can do to improve themselves. Employees should be continuously assessed and rewarded or given some sort of incentive to encourage better performance.



Recommendations Cont'd

- Increase in pay, recognize and reward long and distinguished service, and recognize the ideas, talents, and contributions of staff.
- In some jurisdictions these cultures are linked to ethnicity especially as it relates to the two main races and it would be beneficial to staff if programmes that promote social cohesion in the work place so staff can be more professional and not consider these cultures when making decisions and or serving members of the public and colleagues.
- Addressing concerns and sharing information, pertinent to the above noted areas, in a timely manner.
- It is recommended that there should be a higher hierarchical approach to the contract of employment and relations of the judiciary staff having regard to the sensitive and specialized nature of their respective role in the efficient administration of justice. There should be a reclassification of personal work contracts of the judiciary staff from the other less hierarchical employees of the government service. Also Judicial staff should be sensitized and provided with support to avoid both blatant and subtle forms of male/female sexual harassment in the workplace.
- I would recommend that there is a neutral party who does a research on what the staff does daily and what the job description says about the tasks of a specific staff member, because a lot of people do more/less than what the job description requires them to do.
- That especially politicians have more respect for judges.
- More interaction with the judiciary of states in the region.
- I do not have any recommendations; however, I feel we should be more demonstrative in our appreciation for our general staff (not judicial officers who are at the top of the food chain).
- All players being made aware of how these actions/decisions are bias, discriminatory and hurtful.
- Training on sensitivity to the issue of nepotism and cronyism and how best to combat it whilst avoiding backlash.
- A committee should be put in place to examine the day to day activities, transactions, policies, transparency, accountability and the make recommendations if necessary.



Recommendations Cont'd

- There is a need for more training, sensitivity and otherwise. Additionally, better placement of resources to rectify some imbalances.
- There ought to be greater awareness via articles, social media, discussion and debates on the issues mentioned above to allow for informed decisions to be taken to ensure that these issues are treated with greater regard and respect.

Three Priorities

From these responses, the following three (3) general and common themes emerge as the most important (arranged in priority based on frequency):

- I. Training and sensitisation around existing cultures and workplace hierarchies and relations.
- 2. Better reward and recognition (including revision of salaries and benefits and frequency of appraisals).
- 3. Enhanced communication between and among stakeholders to allow for greater transparency and accountability.



Discussion

The context for this discussion includes international and constitutional norms around the inherent dignity and value of all humans⁸, and the constitutional principle and value of equality.⁹ Equality (as substantive equality) arises out of the equal and inherent dignity and value of all persons. Equality in this context refers to the right of every individual to an equal opportunity to make the most of their lives, talents and ambitions, and not to be unfairly disadvantaged or discriminated against in relation thereto. It includes the protection and enjoyment of the fullness of the fundamental rights of all persons. It recognises that rights, entitlements, opportunities and access are not always equally distributed throughout society and is aimed towards equitably redressing social inequities and to broadening social inclusion, participation and voice. It values difference and therefore demands redressing both individual and systemic disadvantage and inequality, and addressing all forms of stigma, stereotyping, bias and prejudice, whether individual, systemic, or structural.

The data presented shows generally very favourable levels of appreciation and satisfaction with the performance of judiciary staff across the region in the face of the COVID-19 stay-at-home and social distancing policies, verified by respondents' direct experiences of such. However, it is worth noting that the responses also show that there is still room for improvement. There is also clear evidence that interventions and continued education regarding information about and sensitivity on how cultures of classism, status, patriarchy, and institutional hierarchy impact on judicial workspaces, are desired by the vast majority of participants.

Judicial officers, administrators, and judiciary staff expressed that they valued the effort and commitment of staff amid the uncertainty and risks brought on by the COVID-19 pandemic and subsequent restrictions. Each of these groups also generally held the belief that effort and commitment were valued. However, there is a significant (10-15%) group of respondents that believed that staff are only somewhat valued and that perceive their effort and commitment as only somewhat valued.

Interestingly, however, over 85% of respondents acknowledged the operation of cultures of classism, status, patriarchy, and institutional hierarchy at play within their judicial workspaces. Further, respondents' assessment of institutional regard, respect, and appreciation of staff show a shift in the context of these cultures.



⁸ Article 1, Universal Declaration of Human Rights (1948)

⁹ As contained in all Caribbean Constitutions' Preambles and human rights provisions

Discussion

That is to say, whereas 71.2% of respondents initially rated judicial officer and administrator appreciation of staff effort and commitment at 4 or 5, when asked to rate how staff are regarded, respected, and appreciated, in the context of these cultures, only 13.5% believed that they were very much regarded, respected, and appreciated. Thus, even though effort and commitment were shown appreciation in the face of uncertainty and risk brought on by COVID-19, significantly less respondents (judicial officers, administrators, and staff) believe that staff are duly regarded and respected in the overall context of these cultures.

Further, even though 81% of respondents purport to be sufficiently aware of these cultures, less (69%) purport to be aware of their effects. There may be two possible explanations based on the data and existing research – (I) either the effects of such cultures are less present, or (2) they operate in pervasive and covert ways. This limited research may allude to the latter, as respondents felt that staff were less regarded, respected, and appreciated subsequent to considering the operation of these cultures, than when they were asked to assess appreciation without such prompting and signaling. The respondents' almost unanimous (96%) agreement that they can benefit from more information on how these cultures impact experiences and treatment of staff is apposite, and their support (85%) for more to be done to achieve greater regard, respect, and appreciation of staff consolidates this.

The qualitative data (the recommendations offered by respondents) provide critical insights that support the above. Beyond recommending more sensitization, training, and awareness, some recommendations alluded to an imbalance in the distribution of work, unfairness in recruitment processes, and preferential treatment and behaviour. It would appear, therefore, that even thought not all respondents have stated that the cultures of classism, status, patriarchy, and institutional hierarchy exist or have effect in their workplace, the experiential accounts point to, at the very least, a poignant existence and operation of these cultures in the judicial workspace and wider jurisdiction. This is something certainly worthy of further investigation and interrogation.

Arising out of the qualitative data (respondents' recommendations) there is a clear realisation that staff are inequitably and inadequately recognised and rewarded for their efforts, commitment, and performance. The importance of and need for this recognition and reward is increased in the context of cultures of classism, status, patriarchy, and institutional hierarchy. Indeed, the imperatives of substantive equality demand no less.



Recommendations

Based on the data and discussion, the following recommendations have been derived towards addressing the issues highlighted:

- I. Fair and appropriate recognition and reward for staffs effort and commitment;
- 2. Continuous education and sensitisation that are thorough, balanced, and responsive;
- 3. Thorough and focused staff appraisals and performance assessments,
- 4. Increased and more sensitive communication with staff, and
- 5. Thorough review of policies, practices, and procedures that may adversely affect some staff.



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