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# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

**February 2023**

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# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

# **INTRODUCTION**



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AAC	Alternative and augmentative communication
CAJO	Caribbean Association of Judicial Officers
CCJ	Caribbean Court of Justice
GAC	Global Affairs Canada
IACPWD	Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities
JURIST	Judicial Reform and Institutional Strengthening Project
NGO	Non-governmental organisation
OECS	Organisation of Eastern Caribbean States
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
UNODC	United Nations Office on Drugs and Crime

**Access to justice:** a basic and fundamental principle of the rule of law. For persons with disabilities in particular, this means that judiciaries and all judicial actors take all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice. In the absence of access to justice, people are unable to have their voices heard and considered, exercise their rights, challenge discrimination or hold decision-makers accountable (adapted from the [United Nations and the Rule of Law](#)).

**Communication:** languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology (Art 2 of the UNCRPD).

**Disability:** a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from Art 1 of the IACPWD).

**Intersectionality:** the ways in which systems of inequality based on any number of characteristics (such as gender, race, disability, sexual orientation, gender identity, social class etc.) interact and intersect with each other to create unique and dynamic experiences of oppression, disempowerment, and exclusion, or privilege, advantage, and opportunity. These experiences are not static as they may be impacted by any change or shift in social, geographical, cultural, or other environments (adapted from the [Centre for Intersectional Justice](#)).

**Intermediaries** (also known as “facilitators”): persons who work, as required, with justice system personnel and persons with disabilities to ensure effective communication during legal proceedings. They support persons with disabilities to understand and make informed choices, making sure that things are explained and talked about in ways that they can understand, and that appropriate accommodations and support are provided.

Intermediaries are neutral and they do not speak for persons with disabilities or for the justice system, nor do they lead or influence decisions or outcomes (International Principles and Guidelines on Access to Justice for Persons with Disabilities 2020, p.9).

**Language:** spoken and signed languages and other forms of non-spoken languages (Art 2 of the UNCRPD).

**Legal capacity:** recognizes and affirms an individual’s right to make decisions for themselves, free from intervention from others. The concept is fundamental to asserting an individual’s personhood, autonomy, and agency. It is thus the capacity to be both a holder of rights and to exercise those rights - to be an actor under the law. As a holder of rights, it entitles persons to full protection of their fundamental and legal rights. As an actor under the law, it recognises individuals as autonomous agents with the power to engage in legal transactions and create, modify or end legal relationships (International Principles and Guidelines on Access to Justice for Persons with Disabilities 2020, p.9; International Bar Association: Access to Justice for Persons with Disabilities 2017, para. 2.2).

**Persons with disabilities:** persons with a physical, mental, or sensory impairment, whether permanent or temporary, that may limit the capacity to fully and effectively perform one or more essential activities of daily life, and effectively participate in society on an equal basis with others, and which can be caused or aggravated by the economic and social environment (adapted from Art 1 of the IACPWD).

**Procedural fairness:** also known as procedural justice, describes the kinds of behaviours and systems that inspire trust in, confer legitimacy on, and bestow authority upon court systems, judicial officers, court staff, and court administrators. It prescribes core non-negotiable values and standards that are necessary for the legitimate and trustworthy exercise of legal authority within a community and society. It therefore demands integrity of actions, behaviours, and systems in relation to its constitutive elements; an integrity that must be consistently experienced and perceived by all stakeholders in the court systems.

**Procedural accommodations:** all necessary and appropriate modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the meaningful participation of persons with disabilities on an equal basis with others. Unlike reasonable accommodations, procedural accommodations are not limited by the concept of ‘disproportionate or undue burden’ (International Principles and Guidelines on Access to Justice for Persons with Disabilities 2020, p.9).

**Reasonable accommodations:** necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms (Art 2 of the UNCRPD).

**Representative organisation of persons with disabilities:** organisations that are led, directed and governed by persons with disabilities. They are established predominantly with the aim of collectively acting, expressing, promoting, pursuing and/or defending the rights of persons with disabilities (International Principles and Guidelines on Access to Justice for Persons with Disabilities 2020, p.9).

**Substituted decision-making:** when legal capacity is removed from persons, even if this is in respect of a single decision; or substitute decision makers (i.e. guardians, guardians ad litem, attorneys or experts) are appointed by someone other than the persons concerned against their will; or decisions are made by substitute decision makers based on the “best interests” of the persons concerned, as opposed to being based on the will and preferences of such persons (International Principles and Guidelines on Access to Justice for Persons with Disabilities 2020, p.10).

**Supported decision making:** seeks to (i) maximise the individual’s responsibility for and involvement in decisions affecting their life; (ii) ensure that the individual’s wishes and preferences are respected; (iii) ensure legal recognition of decisions made with support or by the individual’s appointed agent; and (iv) have the most effective mechanisms for oversight and monitoring to ensure that the support relationship does not result in harm to the individual and protects against conflicts of interest, undue influence or coercion of the individual needing support.

Supported decision making advances therapeutic approaches and procedural fairness objectives.

**Therapeutic jurisprudence** explores how substantive law and legal procedures can be reshaped, to result in improvements to the psychological and emotional states of the parties involved. The problem-solving court approach would be the optimum route through which the essential principles of therapeutic jurisprudence can be effected, to support persons with disabilities who are the victims, the offenders, or other stakeholders in a matter such as witnesses or jurors. In addition, procedural fairness and restorative justice, essential arms of therapeutic jurisprudence, may be ‘mainstreamed’ to many court proceedings, in order to facilitate ‘TJ-friendly’ processes and outcomes for persons with disabilities. In essence, therapeutic jurisprudence provides the opportunity for persons with disabilities in the justice system, to be recognized as individuals with legal capacity, who have specific needs which should be reasonably accommodated. It enables persons with disabilities to have their voices heard and to exercise their legal rights.

**Universal design:** the design of products, environments, programmes, devices and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialised design (International Principles and Guidelines on Access to Justice for Persons with Disabilities 2020, p.10).



*Approximately one billion people, or 15 per cent of the global population, experience some form of disability. Persons with disabilities face disproportionate socio-economic marginalisation, resulting in poorer health and medical treatment, lower quality of education, limited employment prospects and generally broad-ranging restrictions on their community participation. These negative outcomes are exacerbated by barriers to access to justice specifically experienced by persons with disabilities.* – J Beqiraj, L McNamara, and V Wicks, ‘[Access to justice for persons with disabilities: From international principles to practice](#)’, International Bar Association, October 2017, page 5 (and see page 10)

Persons with disabilities in the Caribbean are a sub-set of their global populations and face similar challenges in relation to access to justice, equality of treatment, due process, and protection of the law, both objectively and comparatively in relation to persons without disabilities. These barriers are rooted in historical, systemic, cultural, and attitudinal discrimination and othering, conduct that legal systems all too often enable and perpetuate.

The process of othering typically follows two steps:

1. First, the categorization of a group of people according to perceived differences.
2. Second, deeming those particular groups as inferior to or ‘less than’ those considered and perceived as acceptable, or as a threat to the dominant groups.

Cultures, attitudes, language, and the law then apply an ‘us vs. them’ discriminatory mindset to marginalize, alienate, disenfranchise, and even persecute these othered groups. Othering is experienced in Caribbean spaces based on, among other things, perceived differences of ethnicity, religion, gender, geography, sexual orientation, and what is deemed to be ‘disability’. (see: [Us vs. Them: The process of othering](#), by Clint Curle, and [Us vs Them: Creating the Other 2019, Canadian Museum for Human Rights](#)).

The Caribbean Court of Justice (CCJ), in the case of *McEwan and others v Attorney General of Guyana* [2018] CCJ 30 (AJ), effectively deemed othering unconstitutional.

The CCJ held that the right to the protection of the law is available to all members of society, and that members of the LGBTI community were equally so entitled. Each and every person’s inherent dignity and fundamental human rights were not to be denied on account of perceived differences. Saunders PCCJ noted, at [1]:

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.

One assumes that in *McEwan*, the ‘duty to accommodate suitably’ is premised on a starting point of unambiguous equality in rights and freedom. And, therefore, ‘differences among human beings’ are not relative to any notions of what may be normative, but merely descriptive of an ontologically neutral reality. Indeed, the duty to accommodate is in service of deconstructing unlawful discriminatory othering in all forms, and reconstructing treatment of all persons on the bases of dignity and equality. Article 1 of the Universal Declaration of Human Rights, 1948 (UDHR) states unequivocally, ‘All human beings are born free and equal in dignity and rights.’ Persons with disabilities are no exception, and to the extent that they have been treated differently and in discriminating ways in Caribbean legal systems, these systems are flawed constitutionally, and in the eyes of international law – beyond what is constitutionally and internationally acceptable.

### Three Cases from Trinidad and Tobago

***Daniel v the Attorney General of Trinidad and Tobago* (TT 2009 HC 190; HCA 393 of 2005)**

***It is unacceptable that our physically impaired citizens, moreso those who are wheelchair bound, must suffer the inconvenience and indignity of being wheeled into the Hall of Justice in so roundabout a manner.*** – Bereaux J, at [26]

Daniel's case was a matter from the Trinidad and Tobago High Court. The July 2009 decision of Bereaux J was upheld in the Court of Appeal and Privy Council. It sets the tone for this discussion.

Mr Daniel was the President of the Trinidad and Tobago Chapter of Disabled Peoples International. He had lost both legs and used a wheelchair. The Hall of Justice in Trinidad was constructed in the 1980s and access for persons with disabilities was not considered. It could only be accessed by steps and there is no ramp or elevator for persons confined to wheelchairs, or persons such as the elderly, for whom climbing steps may be a challenge. The respondent, the Attorney General, readily conceded that the Hall of Justice did not provide suitable access or facilities for persons with disabilities.

Mr Daniel alleged that the failure to provide facilities for persons with disabilities, particularly those who required a wheelchair, was a breach of his fundamental rights under, among others, s 4(a) of the Constitution of the Republic of Trinidad and Tobago – the right of the individual to liberty. Bereaux, J gave a wide and embracing interpretation of the right to liberty, and held that in relation to s 4(a), physical access is an important part of the right of persons with disabilities to the protection of the law and due process. Liberty requires that persons with disabilities are not discouraged from the legitimate pursuit of their legal rights because of impeded access. At [27], Bereaux J notes:

Our Constitution mandates that they (persons with disabilities) be treated in a far more civil and dignified manner. It is in the Hall of Justice that our citizenry come to pursue and enforce their rights. Physical access to it is an important part of their right to the protection of the law and ultimately to due process. They must be able to pursue their remedies and to witness proceedings, the latter of which is an important part of the legal process. It allows the litigant and the public the opportunity to view and to assess the fairness of the legal process. Without actual physical access to witness the process, credibility of the legal system will be undermined. Such access must be readily available to all. It is not sufficient that one's attorney can access it. The physically impaired must themselves have easy and direct access to the Hall of Justice to personally pursue the upholding of their rights and to witness proceedings if they so choose.

“Liberty” requires that they have that option. A lack of unimpeded access can act as a disincentive to the legitimate pursuit of one's legal rights. Such access may be, to able bodied persons so routine as to seem trivial but for persons who are physically impaired such physical access is neither trivial nor routine. It can be a daily challenge. But such access is a right not an option and is indelibly part of due process of law.

In coming to this conclusion, the judge would note in relation to persons with disabilities, at [25]:

There exists today, the need for heightened scrutiny with respect to the rights of the physically impaired, this being necessary in light of the history of unfair and sometimes grotesque mistreatment meted out to them. Such a need was recognised as far back as 1975 (prior to the construction of the Hall of Justice) in the United Nations Declaration on the Rights of Disabled Persons proclaimed by General Assembly resolution 3447 (xxx) of 9th December, 1975, in which the rights of the physically impaired were recognised and proclaimed; among them was the declaration that:

**“Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow citizens of same age which applies first and foremost to the right to enjoy a decent life as normal and full as possible.”**

There is no doubt then that the rights of the physically impaired are to be recognised and enforced. ... The State has also chosen not to apply section 5(b) of the Jury Act, Chap. 6:53 which disqualifies persons who are blind or “*afflicted with any other permanent infirmity of body*” from being a juror. In my judgment such a position, however commendable, may not be sufficient absent an amendment of the Act itself.

Daniel’s case shows how constitutional values informed by international law principles, robustly support the rights of persons with disabilities to access to

justice, the protection of the law, and due process. The judge's comment about the Jury Act's discriminatory approach to persons with disabilities is apposite, and relevant to all such legislation.

***Mathews v The Transport Commissioner of Trinidad and Tobago and Another* (HCA 972 of 1999, unreported)**

In *Mathews*, Ventour J in January 2000, expressed a similar view in relation to the entitlement of persons with physical disabilities to be issued driver's permits. At 20-21 of the judgement, Ventour J notes:

Counsel for the Applicant invited this Court to take judicial notice of the United Nations Declaration on the Rights of Disabled persons proclaimed by General Assembly resolution 3447 (xxx) of 9th December, 1975. That resolution calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of those Rights.

...

This Court is of the view that every opportunity should be afforded to the physically challenged person to realise his/her fullest potential in the same way that opportunities are afforded to the ordinary citizen.

The judge's concern was to 'obviate the need to discriminate against the physically challenged person' (at 20). A purposive and ameliorative approach to interpreting the relevant statute was taken, so as to ensure equality of treatment for persons with disabilities. International law principles were used in this interpretative exercise.

***Veera Bhajan v Equal Opportunities Tribunal, and Her Honour Donna Prowell-Raphael, Chairman*, EOT (CV 2021-03138, unreported)**

Under the Equal Opportunity Act, Chapter 22:03, the Equal Opportunities Tribunal consists of a chairman and two lay assessors. While the Judicial and Legal Service Commission (JLSC) advises the President on the appointment of the chairman, the lay assessors are selected by the President of the Republic of Trinidad and Tobago.

The Tribunal is mandated to hear and determine discrimination complaints under the legislation, which are referred to it by the Equal Opportunity Commission.

In March 2017, Veera Bhajan, an attorney at law who was born without arms, was appointed a lay assessor of the Equal Opportunities Tribunal by the then President, Her Excellency Paula-Mae Weekes. Veera went on to challenge the Tribunal and its Chairman, Donna Prowell-Raphael, for failing to give effect to her presidential appointment and to allow her to take up her appointment. In November 2021, Justice Quinlan-Williams ruled that the Tribunal and Ms Prowell-Raphael acted illegally and unlawfully in blocking Bhajan from beginning work after she was appointed. The judge stated in relation to the treatment meted out to Ms Bhajan (citations extracted from the transcript of the High Court proceedings, 23<sup>rd</sup> November 2021):

There was no regard to the mandate of the Tribunal to prevent discrimination and to promote equal opportunities for people of unequal status. ... Thankfully the claimant is strong willed, has great fortitude and is dedicated to ensuring that there is fair treatment for persons who have to adjust to living in this world. That such persons have equal opportunities.

The judge would also make the following comment, that speaks volumes as to how persons with disabilities can experience life in Caribbean spaces:

What has been most disturbing to this court are the records of the communication penned by the second defendant to Her Excellency the President. The content and tenor of the communication is as if the claimant is not a real person. It is as if she does not exist and is invisible. There was so much off-putting about it; like the difficulties, the first defendant would have in the case of an emergency not having anyone to lift and carry the claimant out of the building. The claimant can walk. And, seeking out her last employer to enquire from them what special arrangements are needed for her. The claimant can speak. She has her own voice. I repeat she is a person, a whole person.

Indeed, commenting on the undisputed documentary evidence in the case, the judge noted:

Her Excellency, the President used her good office, within the narrow confines of her office, to resolve this. Going so far at one point to write to the second defendant on the 3 day of May 2021: “I conclude with the observation that it would be supreme irony if the EOT, of all institutions, should be accused of ableism, or worse”.

In fact, the judge in her orders, stated, in response to the Attorney General’s plea not to award vindictory damages, (submitting that declaratory relief was sufficient):

However, the award of damages under the heads already mentioned aren’t sufficient to vindicate the claimant for the infringement of her constitutional rights. There is or there ought to be a sense of public outrage about what has occurred ... it is important to deter the first and second defendants from engaging in any further breaches of the claimant’s constitutional rights. Given all the circumstances, the court makes an award in the sum of \$250,000.00.

Veera Bhajan’s case illustrates the barriers that persons with disabilities can face in Caribbean societies. Whatever final pronouncements on the law may eventually be determined, the undisputed facts are compelling in relation to the discriminatory treatment of persons with disabilities.

The three cases show how, over an extended period of about thirty years (from 2009 to 2021), the barriers to persons with disabilities remain a pressing social and legal concern in some Caribbean states, and why equal (and accommodated) access to justice for persons with disabilities is an absolute necessity.

## Caribbean Constitutional Underpinnings

All Caribbean constitutions, in alignment with Article 1 of the UDHR, assert in some form and fashion, whether in their preambles or otherwise, ‘All human beings are born free and equal in dignity and rights’. For persons with disabilities, this fundamental declaration of status is the foundation of their demands for access to justice, equality of treatment, due process, and the protection of the law (all of which are guaranteed in Caribbean constitutionalism).

In practical terms, and especially in relation to persons with disabilities, the values and principles that assert ‘equality in dignity and rights’, coalesce around two key jurisprudential approaches: **procedural justice** and **therapeutic justice**.

Access to justice is fundamental to the rule of law. It is a core constitutional principle in liberal democratic states, such as exist in the Caribbean. Simply put, access to justice encompasses all that facilitates persons having their voices heard and being able to exercise, enforce, and defend their legal rights. These rights embrace private and public law rights, including challenging state decisions and actions and holding public entities and agencies accountable, and to do so in the courts of law and before other tribunals, bodies, and adjudicatory entities. The absence of, or deficits in, access to justice, undermine one of the fundamental pillars of democracy and erode public trust and confidence in the legitimacy of the state, with consequential effects for peace, stability, order, good governance, and sustainable equitable development.

The rule of law in democratic states means that all persons, institutions, and entities, public and private, including the state itself, are subject to and accountable under the law, irrespective of status or position in society. It also includes a qualitative aspect, in that all laws and state actions and institutions, including the behaviours of public officials (and in certain instances private entities, actors, and actions as well) must meet, uphold, and enforce certain fundamental standards, including core constitutional principles and human rights values – and be held accountable for failures to do so (subject to lawfully justifiable derogations). Finally, the rule of law demands that laws must be equally applied and enforced by an independent and impartial judiciary and judicial officers, and according to constitutional standards of procedural fairness.

Former Chief Justice of Trinidad and Tobago, Michael de la Bastide, in *Boodram v Attorney General of Trinidad and Tobago* [1994] 47 WIR 459 CA, explained that legal systems in a democracy ‘must be even-handed with its citizens, treating the lowliest of them with the same dignity and fairness as the most upright’ (at 467). Further, Wit JCCJ, in *Attorney General v Joseph* [2006] CCJ 3 AJ, poignantly pointed out, at [20], that ‘law cannot rule if it cannot protect.’

Indeed, T Robinson, A Bulkan, and A Saunders explain, in *Fundamentals of Caribbean Constitutional Law* (2<sup>nd</sup> Edition, Sweet & Maxwell, 2021) at 6-019:



The courts have a special role under the rule of law to hear all justiciable claims ... The independence of the judiciary is essential to carrying out these functions and to upholding the rule of law. A citizen must be able ‘to get to the courtroom door’ (Matthews v Min. of Defence [2003] UKHL 4, at [29]) and once there, should not face undue impediments in having their case heard ...

For persons with disabilities, getting to the proverbial ‘courtroom door’ has been historically problematic. Even when they arrive there, they are faced with impediments not faced by the able-bodied, resulting in inequality of treatment, barriers to due process, obstacles to procedural fairness, and an undermining of the protection of the law – all guaranteed rights.

Caribbean constitutions disavow discriminatory and unequal treatment. All avow protection of the law, equality of treatment, and due process. Caribbean courts insist that the protection of the law includes ‘fundamental fairness’ for all persons, including those accused of, as well as those who are victims of, crimes (see *Hyles v Director of Public Prosecutions* [2018] CCJ 12 (AJ)). The CCJ has opined, at [39] of *Manzanero* [2020] CCJ 17 (AJ), that ‘Fairness is to justice, as heat is to baking. They bring both to completion, assimilating all constituent parts ideally into a single wholesome end. Fairness thus functions teleologically in relation to the notion of justice. It is essential.’

Most importantly, the constitutional guarantee of the protection of the law requires states to take positive steps ‘in order to secure and ensure the enjoyment of basic constitutional rights’ (see *The Maya Leaders Alliance v The Attorney General of Belize* [2015] CCJ 15 (AJ), at [47]). This responsibility creates a duty to act and provide what is required to enable the protection and enjoyment of fundamental constitutional values and rights.

In this regard, equality means substantive equality (and not merely formal equality). This approach to the interpretation and application of equality ‘recognizes that rights, entitlements, opportunities, and access are not equally enjoyed throughout society and is aimed towards equitably redressing these inequalities so as to affirm the equal and inherent dignity and value of all persons’ ([CCJ Code of Judicial Conduct, 2020](#)). It has been confirmed by the Privy Council in *Annisia Webster and others v The Attorney General of Trinidad and Tobago* [2015] UKPC 10, at [18], where in approving the approach taken by the European Court of Human Rights, the Board stated: ‘... very early on the European Court of Human Rights realised that a test of “sameness” is inadequate to secure real equality of treatment.

It is almost always possible to find *some* difference between people who have been treated differently.

In *McEwan*, at [64], the CCJ stated:

At the heart of the right to equality and non-discrimination lies a recognition that a fundamental goal of any constitutional democracy is to develop a society in which all citizens are respected and regarded as equal. Article 149 gives effect to this goal. The Article signifies a commitment to recognising each person's dignity and equal worth as a human being despite individual differences.

Caribbean states are therefore required, as a matter of constitutional imperative, to ensure that all persons with disabilities enjoy the fullness of access to justice and the protection of the law in equal measure with all other persons, and, as well, according to objective constitutional standards of fundamental fairness. The constitutional guarantee of a right to a fair trial, which exists throughout the Caribbean, reaches beyond the limited parameters of a trial itself, and begins with all aspects that enable access to justice. Indeed, it also does not end with the completion of a trial itself, but continues through enforcement and satisfaction of relief and remedy. Further, the fair trial guarantee includes the requirements of an independent and impartial and competent court (adjudicatory body) (see *Cuffy v Skerrit* [2022] CCJ 12 (AJ) DM at [49], [51], and [69]).

Professional competence in relation to persons with disabilities includes having awareness, knowledge, understanding, and skills to ensure that all persons with disabilities have equal access to justice and the benefits of their constitutional entitlements. In addition to the imperative for procedural fairness (procedural justice) and overarching it, is the constitutional responsibility and duty to uphold the dignity of all persons through therapeutic approaches throughout court proceedings (therapeutic jurisprudence). In *Ramcharran v DPP* [2022] CCJ 4 (AJ) GY, at [96], the CCJ explained this as follows:

In this context therapeutic justice and the therapeutic potential of a law are informed by and aimed at enhancing an ethic of care and regard for all persons and the greater good of the society. Its jurisprudential basis lies in the core international and constitutional value of the inherent dignity of all persons. As such, all persons are to be treated equally

and with appropriate regard and respect for their inherent personhood and rights throughout the entire court proceedings and in relation to all aspects of a matter. Hence regard, respect, and dignity, and as well as procedural fairness, are integral.

Judiciaries, judicial officers, court administrators, and staff are all under a constitutional duty to uphold the inherent dignity of all persons, and, therefore, to ensure that therapeutic approaches permeate all aspects and stages of legal proceedings.

In the case of *Daniel*, the right to individual liberty was held as an underpinning for access to justice for persons with disabilities. All Caribbean constitutions guarantee the right, and most do so using variations of the formular “life, liberty, security of the person ... and the protection of the law”. Noteworthy is the relationship between life and liberty and protection of the law; hence a reasonable inference that life and liberty are inextricably intertwined, as in fact they are. Bereaux J, in *Daniel*, would explain the ambit of constitutional liberty, which presumes this relationship between life and liberty, as follows (citing with approval jurisprudence from the United States of America):

The liberty provision of section 4(a) encompasses a wide and all embracing concept ... liberty under the law extends to the full range of conduct which an individual is free to pursue, and extends to the basic values implicit in the concept of ordered liberty and to basic civil rights and that it includes liberty of the mind as well as liberty of action.

Thus, in Caribbean constitutionalism, the idea of individual freedom, liberty, is not limited to freedom from restraints, physical or otherwise, but embraces a right of all persons to be free to use and enjoy all faculties and inclinations, and to use and pursue them in all lawful ways. And in the case of persons with disabilities, to do so equally with all others, and as well, objectively, according to constitutional standards. Indeed, this is one way in which equality in ‘dignity and rights’ (Art. 1 UDHR) is guaranteed and realized. This right to liberty, to freedom, especially for former enslaved and indentured populations as exist in the Caribbean, includes as an essential aspect, the right to access to justice – after all, where else but in the courts of law, and quintessentially so, are the disputes about life and liberty to be finally resolved!

## Ethical Underpinnings

Caribbean judiciaries and judicial officers operate under ethical guidelines. In some jurisdictions there are written codes of conduct for judicial officers. However, for all judicial officers, the way they conduct themselves (in and out of court), court proceedings, and the administration of justice generally, must conform to ethical principles grounded in constitutional and democratic principles.

In 2003, the UNODC Judicial Integrity Group, promulgated [The Bangalore Principles of Judicial Conduct](#) and, in 2007, a [Commentary](#) to accompany it was agreed. Most Caribbean states look to the Bangalore Principles for guidance on questions of judicial conduct. There are six principles: independence, impartiality, integrity, propriety, equality, and competence and diligence. The Commentary makes the point that judicial officers are collectively responsible for ensuring that these principles are upheld: ‘A judge must consider it his or her duty not only to observe high standards of conduct, but also to participate in collectively establishing, maintaining and upholding those standards’ (see the Commentary at 19).

In relation to persons with disabilities, it is therefore the collective responsibility of all judicial officers and of the Judiciary as a whole, to organize themselves and itself (systemically and infrastructurally) and act (attitudinally, behaviourally, and culturally) in ways that ensure equal access to justice for all persons with disabilities. All of the above six principles are apposite, but based on Caribbean research, special note must be paid to the principles of independence, impartiality, equality, and competence and diligence.

Independence includes the fair hearing standard. The Commentary notes, at 40, that among other requirements, this standard recognizes:

For example, a judge must recognize that a party has the right to: (a) Adequate notice of the nature and purpose of the proceedings; (b) Adequate opportunity to prepare a case; (c) Present arguments and evidence and meet opposing arguments and evidence, either in writing or orally, or both; (d) Consult and be represented by counsel or other qualified persons of his or her choice during all stages of the proceedings; (e) Consult an interpreter at all stages of the proceedings,

if he or she cannot understand or speak the language used in the court...

How these, and other fair hearing safeguards, are adapted and applied to accommodate the needs and requirements of all persons with disabilities are therefore ethical obligations.

Impartiality ‘must exist both as a matter of fact and as a matter of reasonable perception’ (see the Commentary at 44). The Commentary, at 46, notes that bias can be unconscious and can manifest ‘verbally or physically ... in body language, appearance or behaviour, in or out of court... physical demeanour ... facial expression ... (and) may be directed against a party, witness or advocate.’ The Caribbean research indicates that persons with disabilities experience bias, manifesting in all of the above forms. It also indicates that persons with disabilities expect judicial officers to take the lead in ensuring that all discrimination against persons with disabilities is eliminated.

Equality of treatment applies to all who appear before the courts or access its services. The Commentary, at 97, recommends that ‘A judge should be familiar with the international and regional instruments that prohibit discrimination against vulnerable groups in the community ...’.

It notes in particular Art 14(1) of the [International Covenant on Civil and Political Rights](#), which guarantees that, ‘All persons are equal before the courts’, and Art 2(1) of the Covenant, which, read with Art 14(1), recognizes the right of every individual to a fair trial without any distinction whatsoever regarding race, colour, sex, language, religion, status or other circumstances. The Commentary makes it clear that, ‘The phrase “other circumstances” (or “other status”) has been interpreted to include, for example, illegitimacy, sexual orientation, economic status, disability ...’. Persons with disabilities are therefore specifically recognised as having the right to demand and receive equality of treatment.

The Commentary is also quite specific on the avoidance of stereotyping, which is a particular bias that persons with disabilities face. Linking fairness and equality, it states, at 98:

Fairness and equality of treatment have long been regarded as essential attributes of justice. According to the law, equality is not only

fundamental to justice, but is a feature of judicial performance strongly linked to judicial impartiality. ... A judge should not be influenced by attitudes based on stereotype, myth or prejudice. The judge should, therefore, make every effort to recognize, demonstrate sensitivity to and correct such attitudes.

This responsibility for and duty of equality is both institutional and individual. Indeed, referencing the principle of dignity, the Commentary, at 100, explains, ‘Unequal or differential treatment of people in court, whether real or perceived, is unacceptable. All who appear in court—be they legal practitioners, litigants or witnesses—are entitled to be treated in a way that respects their human dignity and fundamental human rights.’

Moreover, and consistent with what Caribbean persons with disabilities stated as an expectation, judicial officers have a leadership role in ensuring that constitutional standards are met and upheld in relation to all court users. The Commentary, at 101, notes:

The first contact that a member of the public has with the judicial system is often with court staff. It is therefore especially important that the judge ensure, to the fullest extent within his or her power, that the conduct of court personnel subject to the judge’s direction and control is consistent with the foregoing standards of conduct.

Judicial officers are required to be diligent and competent. As the Commentary notes at 103, ‘professional competence should be evident in the discharge of his or her duties.’ Diligence is relevant to the treatment of persons with disabilities, because it ‘also includes striving for the impartial and even-handed application of the law ...’ (see the Commentary, at 103). In this regard, continuous judicial education and training are ethical requirements. As the Commentary points out at 107:

Training is, in short, essential for the objective, impartial and competent performance of judicial functions and to protect judges from inappropriate influences. Thus, a judge today will usually receive training ... in such courses as sensitivity to issues of gender, race, indigenous cultures, religious diversity, sexual orientation, HIV/AIDS status, disability and so forth.

Note the specific recognition of the need for training in relation to persons with disabilities. As the Commentary explains at 107, ‘experience has taught ... the value of training— especially the value of allowing members of such groups and minorities to speak directly to judges ... to help them handle such issues when they arise in practice.’ This resonates with the request of Caribbean persons with disabilities to be included and involved in all judicial education programmes, and in the development, roll-out, and monitoring of court policies, processes, and procedures.

## International Underpinnings

There are a few international instruments that specifically address the rights of persons with disabilities. Several Caribbean states have subscribed to these. They are therefore a legitimate source for legal interpretation in many regional states. Caribbean courts accept that, certainly in instances of ambiguity and uncertainty, recourse may be had to relevant international instruments as aids to interpretation, in which instances, domestic laws are to be interpreted and applied as closely aligned to international counterparts as is permissible (see *Marin [2021] CCJ 6 (AJ) BZ*, at [36]).

### A. United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

Art 1 outlines the purpose of the Convention: ‘The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.’ Art 1 also defines disability: ‘Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.’

Art 3 sets out the general principles underlying this Convention, as follows:

The principles of the present Convention shall be:

1. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;

2. Non-discrimination;
3. Full and effective participation and inclusion in society;
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
5. Equality of opportunity;
6. Accessibility;
7. Equality between men and women;
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Some of the central provisions for the purposes of these guidelines are in Arts 12 and 13 which deal with equal recognition before the law and access to justice.

For example, Art 13 states, among other things, and in relation to access to justice:

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.



Art 12 states, among other things, and in relation to legal capacity:

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law.

The following Anglo-Caribbean states have signed and ratified the UNCRPD ([United Nations Human Rights Treaty Bodies, ‘Treaty Body Database’](#)):

Country	Signed	Ratified
Antigua and Barbuda	30 March 2007	7 January 2016
The Bahamas	24 September 2013	28 September 2015
Barbados	19 July 2007	27 February 2013
Belize	9 May 2011	2 June 2011
Dominica	30 March 2007	1 October 2012
Grenada	12 July 2010	27 August 2014
Guyana	11 April 2007	10 September 2014
Jamaica	30 March 2007	30 March 2007
St Kitts and Nevis	27 September 2019	17 October 2019
St Lucia	22 September 2011	11 June 2020
St Vincent and the Grenadines	N/A	29 October 2010
Trinidad and Tobago	27 September 2007	25 June 2015

## **B. United Nations' International Principles and Guidelines on Access to Justice for Persons with Disabilities**

The guidelines are premised on ten principles, which have significantly influenced the guidelines prepared for Caribbean states. The ten principles are:

1. All persons with disabilities have legal capacity and, therefore, no one shall be denied access to justice on the basis of disability.
2. Facilities and services must be universally accessible to ensure equal access to justice without discrimination of persons with disabilities.
3. Persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.
4. Persons with disabilities have the right to access legal notices and information in a timely and accessible manner on an equal basis with others.
5. Persons with disabilities are entitled to all substantive and procedural safeguards recognized in international law on an equal basis with others, and States must provide the necessary accommodations to guarantee due process.
6. Persons with disabilities have the right to free or affordable legal assistance.
7. Persons with disabilities have the right to participate in the administration of justice on an equal basis with others.
8. Persons with disabilities have the rights to report complaints and initiate legal proceedings concerning human rights violations and crimes, have their complaints investigated and be afforded effective remedies.
9. Effective and robust monitoring mechanisms play a critical role in supporting access to justice for persons with disabilities.
10. All those working in the justice system must be provided with awareness-raising and training programmes addressing the rights of persons with disabilities, in particular in the context of access to justice.

### C. Convention on the Rights of a Child

Art 23 of the Convention addresses children with disabilities, among other ways, as follows:

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.
3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

The following Anglo-Caribbean states have signed and ratified the Convention on the Rights of a Child ([United Nations Human Rights Office of the High Commissioner, 'Status of Ratification'](#)):

Country	Signed	Ratified
Antigua and Barbuda	1991	1993
The Bahamas	1990	1991
Barbados	1990	1990

Belize	1990	1990
Dominica	1990	1991
Grenada	1990	1990
Guyana	1990	1991
Jamaica	1990	1991
St Kitts and Nevis	N/A	1990
St Lucia	N/A	1993
St Vincent and the Grenadines	N/A	1993
Trinidad and Tobago	1990	1991

#### **D. Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities**

This convention has been signed by only Dominica and Jamaica among the Caribbean states. It is however salient contextually, as it is a hemispheric instrument. Arts I and II outline the broad parameters, as follows:

For the purposes of this Convention, the following terms are defined:

##### 1. Disability

The term "disability" means a physical, mental, or sensory impairment, whether permanent or temporary, that limits the capacity to perform one or more essential activities of daily life, and which can be caused or aggravated by the economic and social environment.

##### 2. Discrimination against persons with disabilities

a) The term "discrimination against persons with disabilities" means any distinction, exclusion, or restriction based on a disability, record of disability, condition resulting from a previous disability, or perception of disability, whether present or past, which has the effect or objective of impairing or nullifying the recognition, enjoyment, or exercise by a person with a disability of his or her human rights and fundamental freedoms.

b) A distinction or preference adopted by a state party to promote the social integration or personal development of persons with disabilities does not constitute discrimination provided that the distinction or preference does not in itself limit the right of persons with disabilities to equality and that individuals with disabilities are not forced to accept such distinction or preference. If, under a state's internal law, a person can be declared legally incompetent, when necessary and appropriate for his or her well-being, such declaration does not constitute discrimination.

...

The objectives of this Convention are to prevent and eliminate all forms of discrimination against persons with disabilities and to promote their full integration into society.

Noteworthy is the definition of disability, which includes permanent or temporary impairments that limit capacity. It can be compared with Art 1 of the UNCRPD, which states: ‘Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.’

Our preference is to include both permanent and temporary impairments in capacity, as defining disability in the context of access to justice. This is because the material consideration is access at the moment in time when it is needed. Any disability that hinders equal access (whether temporary or permanent) is an actual impediment to access to justice.

## Procedural Fairness

Procedural fairness, also known as procedural justice, describes the kinds of behaviours and systems that inspire trust in, confer legitimacy on, and bestow authority upon court systems, judicial officers, court staff, and court administrators. It prescribes core non-negotiable values and standards that are necessary for the legitimate and trustworthy exercise of legal authority within a community and society. It therefore demands integrity of actions, behaviours, and systems in relation to its constitutive elements; an integrity that must be consistently experienced and perceived by all stakeholders in the court systems. In 2018, the Judicial Education Institute of Trinidad and Tobago published its [years-long research into procedural fairness](#) in the Judiciary of the Republic of Trinidad and Tobago. The research concluded that there were nine elements of procedural fairness that ought to operate together to facilitate court users' experience of the court system as fair, just, and, ultimately, as facilitating their access to justice without impediment. These nine elements are:

**Voice:** The ability to meaningfully participate in court proceedings throughout the entire process, by expressing concerns and opinions and by asking questions, and by having them valued and duly considered ('heard') before decisions are made.

**Understanding:** The need to have explained clearly, carefully, and in plain language, court protocols, procedures, directions given, and actions taken by decision makers and court personnel, ensuring that there is full understanding and comprehension.

**Respectful Treatment:** The treatment of all persons with dignity and respect, with full protection for the plenitude of their rights, ensuring that they experience their concerns and problems as being considered seriously and sincerely, and having due regard for the value of their time and commitments.

**Neutrality:** The independent, fair, and consistent application of procedural and substantive legal principles, administered by impartial and unbiased decision makers and judicial personnel, without discrimination.

**Trustworthy Authorities:** Decision makers, judicial personnel, and court systems that have earned legitimacy by demonstrating that they are competent and capable of duly fulfilling their functions, responsibilities and duties in an

efficient, effective, timely, fair, and transparent manner; and by demonstrating to all court users, compassion, caring, and a willingness to sincerely attend to their justifiable needs and to assist them throughout the court process.

**Accountability:** The need for decision makers and judicial personnel to fulfil their duties, to reasonably justify and explain their actions and inaction, decisions, and judgments and to be held responsible and accountable for them, particularly in relation to decisions, delays, and poor service.

**Availability of Amenities:** The need for all court buildings to be equipped with the necessary infrastructure (both structural and systemic) to enable court users full and free access to court buildings, efficient information systems, relevant operational systems, and the enjoyment of functionally and culturally adequate amenities.

**Access to Information:** The timely availability of all relevant and accurate information, adequately and effectively communicated in clear, coherent language, through open, receptive, courteous, and easily accessible decision makers, judicial personnel and systems, particularly in relation to each stage of court proceedings.

**Inclusivity:** The need for court users to feel that they are, and experience themselves as, an important part of the entire court process, rather than outside of or peripheral to it; non-alienation, by being made to feel welcomed and included in court proceedings and to actively, easily, and effectively participate throughout the process.

For persons with disabilities, the meaningful and tangible presence and operating of all these elements of procedural fairness is paramount. These guidelines elaborate and insist on the development of, promulgation of, and adherence to practices and behaviours that promote procedural fairness. But more importantly, the practice of procedural fairness operates to construct heuristic approaches to the provision of justice, i.e. if deep consciousness and awareness of the demands of procedural fairness are appreciated and routinely engaged, a judiciary's and judicial officer's delivery of justice will be improved. In this way, the systemic barriers that operate to impede persons with disabilities' access to justice will begin to be dissolved, and public trust and confidence in the judicial system is fortified.

## Therapeutic Jurisprudence

Therapeutic jurisprudence focusses on the “law in action”. It explores how substantive law and legal procedures can be reshaped, to result in improvements to the psychological, emotional, and relational states of the parties and communities involved in the legal processes.

In other words, the aim of therapeutic jurisprudence is to reveal how reform across the entire legal spectrum, including criminal law, health law, juvenile law and family law, can result in an increase in therapeutic/healing effects and a decrease in anti-therapeutic effects, without the compromise of due process and other essential safeguards for justice. This goal is sought to be achieved through the three main arms of therapeutic jurisprudence: procedural fairness, restorative justice, and problem-solving courts.

Procedural fairness facilitates the court participant having a voice, through the opportunity to tell their story and explain their concerns; feeling validated, through being paid attention to, being taken seriously and having arguments considered even if eventually rejected; and being respected, through being listened to with dignity and courtesy. The effect is an increase in the perception by the court user that the legal authority’s processes are fair and its motives, legitimate. This procedural justice results in increased trust and confidence in the legal procedures and a willingness to comply with decisions, as well as an overall positive assessment and experience, psychologically, emotionally, and relationally.

Restorative justice operates mainly within the criminal justice realm. It seeks to bring together the victims of the crime, the offenders responsible for the crime and the community affected, to facilitate communication and collective resolution on how to repair the effects of the harm done and advance positively into the future. Its main aims are to: a) resolve conflict; b) facilitate healing for the victims by giving them a voice; c) facilitate rehabilitation for the offenders through their acceptance of responsibility and offering of apology to victims; d) strengthen communities by restoring trust between parties and through reparation/restitution – financial or otherwise; and e) prevent future damage – no recidivism through remediation of offenders.



Problem-solving courts are courts in the criminal arena, which therapeutic jurisprudence lends a solution focussed or problem-solving characteristic, through the use of lenses which see the offender's behaviour as capable of rehabilitation and the ultimate justice process outcome as possibly transformative. The judges in these courts would require problem-solving skills. These include communicating directly and effectively with the participants through empathy, active listening, respect, positive focus and non-coercion; clarity in the courtroom, so that the participants understand the legal documents and language involved in their case, as well as reasons for decisions made, which would more likely result in compliance; and a team approach, where judges vested in a problem-solving approach can achieve great progress, through the cooperation and input of an experienced team which includes lawyers for all parties, police officers, social workers, mental health professionals, mediation professionals, victims' services professionals, addiction treatment centres and community outreach representatives.

The court staff can also be included, guided by the judge to create a therapeutic courtroom tone and environment, by treating offenders with respect and facilitating court participants' understanding of the process. Finally, the offenders themselves and other court participants can be included to provide input from their respective perspectives. This multi-disciplinary, team-based approach can only enhance the potential for problem-solving.

Therapeutic jurisprudence is significant for persons with disabilities, who experience definite barriers to access to justice - a right in itself and a safeguard for the enjoyment of all other rights. The problem-solving court approach would be the optimum route through which the essential principles of therapeutic jurisprudence can be effected, to support persons with disabilities who are the victims, the offenders, or other stakeholders in a matter such as witnesses or jurors. Indeed, dedicated, trained staff would be able to make the necessary procedural and age-appropriate accommodations to increase the direct and genuine inclusion and participation of persons with disabilities in the courtroom, through a more collaborative and less adversarial process.

It is important to note that the court involved, with its legal rules and processes, does not have to be a designated 'problem-solving court'.

[David Wexler](#) provided insight into the co-relation between the legal landscape of governing legal rules and procedures and the professional practices and techniques of therapeutic jurisprudence, by referring to the former as ‘bottles’ and the latter as ‘wine’. He stated:

Bottles vary, too, according to whether they are “clear” or “cloudy”—whether they are straightforward and simple to understand or whether they are ambiguous. From a TJ perspective, some of the most interesting bottles are cloudy in the sense that, on initial reading, they may appear to be rather “TJ unfriendly,” but, on closer analysis, they may be susceptible to a practical interpretation consistent with desirable TJ practice. What is especially interesting with this type of bottle is the importance of filling the bottle in practice with high-quality TJ liquid ...

This phenomenon is enhanced by the fact that procedural fairness and restorative justice, referred to by Wexler as the ‘vineyards’ of therapeutic jurisprudence, may be ‘mainstreamed’ to many court proceedings, in order to facilitate ‘TJ-friendly’ processes and outcomes for persons with disabilities. In essence, therapeutic jurisprudence provides the opportunity for persons with disabilities in the justice system to be recognized as individuals with legal capacity, who have specific needs which should be reasonably accommodated, for instance, through supported decision-making or Universal design. It enables persons with disabilities to have their voices heard and to exercise their legal rights. This could only result in persons with disabilities feeling empowered and experiencing human dignity on an equal level with others.

# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

### **How to Use the Guidelines**



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The Disability and Inclusion Awareness Guidelines are intended to provide Caribbean judiciaries and judicial officers with a practical tool for further developing and implementing key practices and procedures that promote and secure the rights of persons with disabilities, particularly in the administration of justice.

These Guidelines are fashioned in three parts:

1. The Introduction which provides an in-depth look at constitutional, ethical, and international underpinnings of the rights of persons with disabilities;
2. The Guidelines themselves which are across ten (10) key areas of disability inclusion and awareness; and
3. A Background to the development of these Guidelines, along with additional resources.

It is strongly recommended that these Guidelines be studied and revised for contextual adaptation by regional judiciaries and judicial officers. While many of the Guidelines may be readily implementable across judiciaries, the needs and realities of persons with disabilities vary across the Caribbean and, as such, the Guidelines in each jurisdiction ought to be informed by and reflect such needs.

To this end, **it is important that judiciaries meaningfully work with persons with disabilities and disability representative organisations when adapting these Guidelines** for local use and implementation. Further, and to aid in this process, these Guidelines can be opened in Microsoft Word or Adobe Acrobat and edited as needed.

# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

### **Guideline 1**

### **Equal Recognition of Legal Capacity**



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**“The system as a whole need to deal with us disabled people better because we are human beings. We need more respect...” – a person with a disability.**

**“I couldn’t see, and I am just hearing what is going on. I know it is because I cannot see [blind] and because of your disability they believe you should not be there [in court] and you should stay home...They not taking me seriously...I find it very unfair; I find it very hurt that when you go up there to speak to the magistrate, they listen to us, but they don’t take us seriously. The person without disability is intend to get more rights than the person with disability...I heard di giggling across di room... is like they want to say I don’t know what I am saying” – a person with a disability.**

Most research participants (persons with disabilities) felt that the court system treated them with **indifference and disregard, as though they were not fully human and deserving of the same rights and recognised legal capacity as non-disabled persons**. The research thus underscores the need to recognise and enable the constitutional and human rights and dignity of persons with disabilities, by engaging them as equals in national policies and laws (substantive and procedural), and in court policies, processes and guidelines for persons with visible, less visible or invisible disabilities, like neurological and cognitive disabilities.

**Judiciaries shall promulgate, implement, and monitor judicial policies, protocols, guidelines, and procedures that recognise the legal capacity of persons with disabilities, that ensure and enable access to justice on an equal basis with others (in opportunity, treatment, and outcome) and, where required, that provide substantive and procedural accommodations necessary for persons with disabilities to exercise legal capacity and that guarantee institutional and individual access to justice with full participation and representation at all stages in the legal process.** The goal is to facilitate equality of outcome and well-being for persons with disabilities based on a rights centric approach, that values the significance of the inherent dignity, autonomy, and agency of all persons (Art. 1, UDHR).

Policy guidelines, procedures, and accommodations ought to meaningfully consider the heterogeneity and intersectionality of disability.

This includes considerations of prevailing social and cultural power relations and imbalances, social and cultural group dynamics and categorical subordination, gender, impairment type, impairment severity, age, socioeconomic status or any other characteristics that conflate the lived experiences of persons with disabilities. Policy guidelines, procedures, and accommodations should be developed in consultation with persons with disabilities.

A Screening Assessment Protocol shall be developed to identify disability and any requirements for procedural accommodations. Disclosure shall be voluntary and data collection and storage process handled with confidentiality.

Important definitions for this Guideline:

**Legal capacity** recognizes and affirms an individual’s right to make decisions for themselves, free from intervention from others. The concept is fundamental to asserting an individual’s personhood, autonomy, and agency. It is thus the capacity to be both a holder of rights and to exercise those rights - to be an actor under the law. As a holder of rights, it entitles persons to full protection of their fundamental and legal rights. As an actor under the law, it recognises individuals as autonomous agents with the power to engage in legal transactions and create, modify or end legal relationships (International Principles and Guidelines on Access to Justice for Persons with Disabilities 2020, p.9; International Bar Association: Access to Justice for Persons with Disabilities 2017, para. 2.2).

**Supported decision making** seeks to (i) maximise the individual’s responsibility for and involvement in decisions affecting their life; (ii) ensure that the individual’s wishes and preferences are respected; (iii) ensure legal recognition of decisions made with support or by the individual’s appointed agent; and (iv) have the most effective mechanisms for oversight and monitoring to ensure that the support relationship does not result in harm to the individual and protects against conflicts of interest, undue influence or coercion of the individual needing support. Supported decision making advances therapeutic approaches and procedural fairness objectives.

## Checklist for Guideline 1:

- ▷ Create, promulgate, and implement judicial policies, guidelines, and procedures that support the legal capacity of persons with disabilities, thereby ensuring equal access to justice.
- ▷ Create, promulgate, and implement judicial policies, guidelines, and procedures that recognise and facilitate the right to receive institutional, infrastructural, and procedural accommodations, thereby ensuring equal access to justice.
- ▷ Make reasonable accommodations to allow parties and witnesses with disabilities to give evidence, testify, and meaningfully participate throughout court proceedings, e.g., take evidence in a different and accommodating location, or use support persons to assist with translations/explanations etc.
- ▷ Protect against authorising or otherwise empowering “medical professionals” to be the sole or preferred “experts” in determining or opining on a person’s capacity to make decisions, to testify or in any other regard beyond what is justifiable under the prevailing law.
- ▷ Encourage supported decision making, whereby persons with disabilities remain the primary decision makers, while simultaneously acknowledging that support from multiple sources can bolster the autonomy of persons with disabilities.
- ▷ Enable access to, and the benefits and enjoyment of, the full range of procedural fairness opportunities, systems, standards, and entitlements, equally with all others.
- ▷ Identify disabilities and support persons with disabilities understanding, accessing, initiating, and pursuing legal claims with information, access, and procedural accommodations e.g., by using an appropriately designed and voluntary Screening Assessment Protocol.
- ▷ Enable the right to receive individual procedural accommodations, including the support necessary to enable persons with disabilities to participate effectively and meaningfully throughout court proceedings.



- ▷ Provide independent intermediaries or facilitators, wherever and whenever needed, to enable clear and understandable communication among and between persons with disabilities, courts and law enforcement agencies to ensure safe, fair and effective engagement, as well as the opportunity to meaningfully participate throughout the legal process.
- ▷ Ensure that persons declared to be without capacity for any purpose, have a right to review or appeal or otherwise seek restoration of their legal capacity as may be available under the prevailing law and to have access to available legal assistance, where available, to pursue such claims.
- ▷ Establish and/or support alternative and ancillary justice routes, such as therapeutic jurisprudence, alternative dispute resolution, and cultural and social forms and forums of justice, suitably accommodated for persons with disabilities, equally with all others.
- ▷ Protect against unlawfully subjecting defendants with disabilities to detention in a prison, a mental health facility or other institution for a definite or indefinite term (sometimes referred to as ‘care-related hospitalisation,’ ‘security measures’ or ‘detainment at the governor’s pleasure’) based on perceived dangerousness or need for care.

# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

### **Guideline 2**

### **Universal Design of Court Facilities and Services**



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**"Inaccessibility was a nightmare" – a person with a disability.**

**"I want equal access to the [court] building; not because we have a disability, we don't have rights..." – a person with a disability.**

Research findings show that **environmental discrimination (physical, systemic, informational) is a primary barrier faced by persons with disabilities while navigating court and court services.** Findings from the judicial officer survey also corroborate this. Some 50% of respondent judicial officers noted that the **provision of ramps, lifts, elevators and/or handrails for wheelchair users and persons with mobility impairments was needed.** Such provisions require construction of built environment in keeping with the access needs of persons with disabilities. The need for these provisions was highlighted by an elite interviewee, who reported an example where, in the context of an inaccessible courthouse, accommodation of the access needs of persons with disabilities required the judge to go to the carpark to interact with them.

Courts, court rooms, offices, spaces, and facilities that provide court information and services, must be built or retrofitted, developed, and provided based on the principles of universal design. This will ensure equal environmental access to justice and non-discrimination. Where this is not immediately possible, reasonable accommodations must be provided for all persons with disabilities for all aspects of access to information, systems, and services.

Important definitions for this Guideline:

**Procedural accommodations:** all necessary and appropriate modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with disabilities on an equal basis with others. Unlike reasonable accommodations, procedural accommodations are not limited by the concept of 'disproportionate or undue burden' (International Principles and Guidelines on Access to Justice for Persons with Disabilities 2020, p.9).

**Reasonable accommodations:** necessary and appropriate modifications and adjustments, not imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with disabilities, the enjoyment or exercise on an equal basis with others, of all human rights and fundamental freedoms (United Nations Convention on the Rights of Persons with Disabilities, Art 2).

**Universal design:** the design of products, environments, programmes, devices, and services to be accessible, understandable, and usable by all people, to the greatest extent possible, regardless of age, ability, or disability, and without the need for adaptation or specialised design. An environment should be designed to meet the needs of all persons who wish to access and use it, and as such, must be easily and conveniently accessible and usable (International Principles and Guidelines on Access to Justice for Persons with Disabilities 2020, p.10).

## Checklist for Guideline 2:

- ▷ Create judicial policy guidelines and regulations that guarantee accessibility of physical, informational, and systemic facilities and services used throughout the justice system, based on the principles of universal design, including:
  - Courts, court rooms, registries, jury facilities, administrative offices, detention, holding facilities and other places, utilities, and conveniences such as toilets, offices, entrances, lifts, cafeterias, and recreational spaces in those places;
  - Information, communications, and other services, including information and communications technology and systems.
- ▷ Ensure that all access points, passageways, working spaces, public spaces, and means of transportation used in the justice system are easily and conveniently accessible for persons with disabilities.
- ▷ Ensure that emergency exits, muster points, and emergency procedures are designed to accommodate quick and easy access by persons with disabilities. This may also include the training of safety wardens or assigned staff.
- ▷ Ensure equitable access and use of court facilities and services, by providing the same means for all, identical wherever possible and equivalent when not.
- ▷ Avoid discriminating against or stigmatising any users.
- ▷ Provide infrastructure to reasonably accommodate the variety of needs of persons with disabilities (see Guideline 3).
- ▷ Provide informational and communications infrastructure to reasonably accommodate all persons with disabilities, such as:
  - eliminating unnecessary complexity;
  - avoiding technical language and legal jargon;

- accommodating a wide variety of literacy, language, and communication modalities suitable for all persons with disabilities, including the use of pictorial, verbal, and tactile modes;
  - compatibility with a variety of techniques, tools, and devices used by persons with disabilities;
  - appropriate warnings of hazards and emergencies.
- ▷ Provide alternative options and services for persons with disabilities, such as dedicated days, hours, staff, and spaces to reasonably accommodate their needs and facilitate their access to court information and services, where universal design is not readily attainable.
- ▷ Ensure allocation of adequate financial resources to make the justice system physically, informationally, and systemically accessible to persons with disabilities in accordance with the principles of universal design.
- ▷ Provide appropriate and reasonable accommodations for persons with disabilities when facilities, information, systems, and services fail to ensure equal, easy, and convenient access to existing environments, such as physical, informational, and communication accommodations (see Guideline 3).

# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

### **Guideline 3**

## **Procedural Accommodations**



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**“I, as a blind person, they does want you to sign or thumb print towards your statement. You ask them to read the statement, and they don’t want to read the statement. You don’t know what [content] to sign to...What is the sense of dat?” – a person with a disability.**

**“In the same way UWI has a special unit to assist students with disabilities, the court should have the same...” – a person with a disability.**

Research findings show that persons with disabilities encountered barriers while navigating court and court services, evident in attitudinal, institutional, systemic, and environmental discrimination. Among the main areas identified by qualitative research respondents (persons with disabilities) were **lack of sign language interpreters for persons who are deaf and hard-of-hearing, as well as the absence of other accommodations required according to other impairments, such as blindness and intellectual disability.**

This deficit in procedural accommodations experienced by persons with disabilities is corroborated by judicial officers who responded to the research survey informing these guidelines. The survey showed that **only 27% of judicial officers agreed that their “judiciary identifies and provides accommodations for persons with disabilities in relation to all seven of the access to justice for persons with disabilities requirements.”** Thirty percent (30%) agreed that their “judiciary ensures access to justice for persons with disabilities across the entire lifecycle of a case from filing through disposition to enforcement. Further, 43% agreed that “judicial officers can identify resources including primary personnel required to provide reasonable accommodations for persons with disabilities to access courtrooms, court houses and court services.” Judicial officers also specifically indicated the need for improved communication, including use of sign language interpretation, translation and use of Braille (63% of respondents who gave recommendations).

Throughout the provision of all services, judiciaries shall **provide impairment type, impairment severity, gendered, and age-appropriate individualised procedural accommodations for persons with one or more disabilities.** These encompass all the necessary and appropriate modifications and adjustments needed in a particular case, at no cost or other burden to the individual with disability.



Procedural accommodations should be identified, organised, and provided before the commencement of proceedings, which guarantee institutional access to justice and equality in relation to all judiciary-related services, including in relation to the courthouse and court room.

Providing procedural and other necessary accommodations helps satisfy procedural fairness standards which support therapeutic justice.

Important definitions for this Guideline:

**Procedural accommodations:** all necessary and appropriate modifications and adjustments in the context of access to justice, where needed in a particular case, to ensure the participation of persons with disabilities on an equal basis with others. Unlike reasonable accommodations, procedural accommodations are not limited by the concept of ‘disproportionate or undue burden’ (International Principles and Guidelines on Access to Justice for Persons with Disabilities 2020, p.9).

**Reasonable accommodations:** necessary and appropriate modifications and adjustments, not imposing a disproportionate or undue burden, where needed in a particular case, to ensure persons with disabilities, the enjoyment or exercise on an equal basis with others, of all human rights and fundamental freedoms (United Nations Convention on the Rights of Persons with Disabilities, Art 2).

## Checklist for Guideline 3:

- ▷ Provide intermediaries or facilitators who are trained (i) to give communication assistance to parties to proceedings and (ii) to determine which accommodations and support are necessary and appropriate throughout the course of the proceedings, based on impairment type, impairment severity, gender, and age of persons with disabilities. This may be done collaboratively, with support from other government ministries/departments/agencies or NGOs, where the services exist.
- ▷ Establish a department, unit, and/or officers responsible for coordinating the provision of procedural accommodations for persons with disabilities and for maintaining a roster of trained intermediaries or facilitators to support persons with disabilities throughout the course of the proceedings, based on impairment type, impairment severity, gender, and age of persons with disabilities. This may be done in concert with support from other government ministries/departments/agencies or NGOs, where the services exist.
- ▷ Conduct disability screening assessments and provide procedural adjustments, modifications, and orientation to the justice system. A Disability Screening Assessment Protocol shall be developed to identify any disability, whether physical, cognitive, psychological or otherwise, and whether visibly apparent or not. It is important to consult persons with disabilities and/or representative organisations to ensure the Protocol is contextually relevant and appropriate.
  - The Disability Screening Assessment Protocol should identify and provide: (i) requirements for procedural accommodations, as well as (ii) orientation services to educate persons with disabilities, their support personnel, and their advocates on how to use the justice system, and (iii) facilitate persons with disabilities indication of what their specific needs may be, in terms of reasonable accommodations to enjoy equal access to justice and the efficient and effective use of court services, court houses, and court rooms. The disclosure shall be voluntary by persons with disabilities and data collection and storage process handled with confidentiality. The screening can be done in keeping with nationally recognised and approved disability identification or diagnosis protocols.

- Promulgate, put in place and/or adapt court protocols, procedures, and settings for hearings to ensure fair and equal treatment and full meaningful participation of persons with disabilities, including children/minors with disabilities, during proceedings, as appropriate, such as:
  - Adaptation of court spaces to meet the varieties of specific disability needs;
  - Adaptation of waiting spaces to meet the varieties of specific disability needs;
  - Adaptation of court attire, where necessary, to ensure procedural fairness standards are adequately met;
  - Adjustments to the pace of proceedings to accommodate persons with disabilities and their support personnel, including interpreters, translators, and advocates, e.g., (i) when persons who are deaf or hard of hearing are present at the court or in the courtroom, and sign interpreters and translators are present and assisting, any instructions or proceedings ought to be delivered and conducted at a reduced pace to allow for proper interpretation, translation, and understanding, and (ii) allow ample time for dialogue between persons with disabilities and interpreters or translators as may be necessary for full understanding and meaningful participation;
  - Separate or dedicated building entrances or access points and waiting rooms or protective screens, to separate persons with disabilities from others, if necessary for physical, emotional, or psychological wellbeing, or to avoid disabling distress;
  - Modifications to the method of questioning in appropriate circumstances, such as allowing leading questions, avoiding compound questions, clarifying complex hypothetical and legalistic questions, providing extra time to answer, allowing dialogue to enable clarification and understanding, permitting breaks as needed, and using plain [simplified] language;

- Use of pre-trial video recording of evidence and testimony, if necessary, practical, and possible, in such a manner as not to contravene basic rights, such as the right to confront and cross-examine witnesses;
- Making use of technology that is readily available, accessible, and familiar to persons with disabilities;
- Allowing persons with disabilities, at all stages of the process if they so choose, to be accompanied by family, friends, advocates, or other support personnel to provide personal support, without displacing the role of an intermediary or facilitator.

▷ Communication support:

- Ensure that all processes in the justice system provide the human, technical and other support necessary for parties, witnesses, claimants, defendants and jurors to use forms of communication as may be necessary for their full participation before, throughout and following court proceedings, including:
  - Support communication, in addition to intermediaries or facilitators, through the use of third parties, including: note-takers; qualified sign language and oral interpreters;
  - Relay services;
  - Tactile interpreters;
  - Assistive listening approaches, systems and devices;
  - Open, closed and real-time captioning, and closed caption decoders and devices;
  - Voice, text and video-based telecommunications products;
  - Videotext displays;

- Computer-assisted real-time transcription;
  - Screen reader software, magnification software and optical readers;
  - Braille communications, for visually impaired;
  - Video description and secondary auditory programming devices that pick-up audio feeds for television programmes.
- Ensure that all interpreters are able to interpret effectively, accurately and impartially, both receptively (i.e. understanding what persons with disabilities are saying) and expressively (i.e. having the skill necessary to convey information back to those persons), especially while using any necessary specialised vocabulary (e.g. legal or medical) and respecting professional and ethical standards.
  - When engaging interpreters, judiciaries can consider:
    - Working with local organizations or specialists to develop an ongoing interpreter training programme. Judiciaries can also consider in-kind arrangements to provide local disability rights organisations with information sessions on court processes, procedures, rights, and freedoms;
    - Convening periodic interpreter workshops and meetings for exchange of experiences, ideas, and learnings;
    - Creating informational workshop sessions for interpreters to educate them on legal jargon, updated court processes, forms, and any other areas that may be relevant to persons with disabilities conducting court business;
    - Convening workshop sessions among interpreters, court staff, and judicial officers to facilitate knowledge creation through the sharing of learning, challenges, and experiences and for the identification of areas for improvement and development of best practices.

- ▷ Procedural accommodations for persons accused of crimes, prisoners, and detainees:
- Remove barriers that prevent, inhibit, or discourage prisoners and detainees with disabilities from challenging their imprisonment or detention, including facilitating immediate access to social, professional and legal support services, and providing all of the necessary procedural accommodations;
  - Establish judicial performance standards, policies, and protocols, explaining and simplifying court procedures, setting and monitoring performance standards for case disposition, and for delivery of decisions, and providing remedies and sentences that accommodate the needs of persons with disabilities.
- ▷ Requests for and offers of accommodations:
- Provide an accessible, monitored, responsive, and consistently evaluated feedback mechanism for court users, including persons with disabilities, to request procedural accommodations, including modifications of or support in legal processes, with appropriate protection of their privacy;
  - Ensure, throughout the course of legal proceedings, that all participants are advised of the availability of procedural accommodations if needed and desired because of disability.

# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

### **Guideline 4**

### **Providing Accessible Legal Notices and Information**



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**"They group disabilities into one group, if you have a disability, use the ramp!"— a person with a disability.**

Research findings about **barriers faced by persons with disabilities also apply to the provision of judicial policies, protocols, legal procedures and information.** Further, only 27% of judicial officers (survey respondents) agreed that their “judiciary provides general public information to accommodate the needs of persons with disabilities (e.g., judgments, notices, changes in services, etc.).”

It is therefore **important to ensure that persons with disabilities are able to receive timely, understandable, and accessible judicial policies, protocols, legal procedures, and information relating to court processes and proceedings.**

Notices and information shall comply with the need for reasonable procedural accommodations by considering the literacy levels and communication skills and needs of persons with disabilities to ensure equality of understanding and accessibility.



## Checklist for Guideline 4:

- ▷ Ensure that information about the justice systems, policies, protocols, and related court procedures and notices are comprehensible and accessible to all persons with disabilities through various methods, including but not limited to, as appropriate and needed:
  - Sign language;
  - Video and audio guides, including the use of quickly and easily accessible technology such as mobile phone audio and videography;
  - Telephone line advice and referral services;
  - Accessible websites;
  - Induction loop, radio or infrared systems;
  - Amplification devices and document magnifiers;
  - Closed captioning;
  - Braille;
  - Easy Read;
  - Facilitated communication.
- ▷ Ensure that all judiciary-related information, forms, directions, and notices are written and prepared using plain and simple language; and that simple, detailed explanations be included/provided in writing and audio formats by customer service/information agents and by judicial officers.
- ▷ Ensure that all legal notices and processes, under the power and control of the judiciary, that require a response or an action to be taken (e.g. summonses, subpoenas, writs, orders, and sentences) are available by accessible and comprehensible means and in readily accessible formats for all persons with disabilities, such as those listed above.

- ▷ Require a written declaration from parties commencing legal proceedings, whether or not persons to be served with legal notices or processes are, to the best of their knowledge, persons with disabilities.
- ▷ Take deliberate steps to make inquiries about and confirm service of all legal notices and processes directed to persons with disabilities in the appropriate formats, including the making of filed notations that the relevant measures were observed by serving officers/personnel.
- ▷ Ensure that notices and information include clear and understandable details about how a procedure works, what to expect during a process, what is expected of a person, where to get help with understanding the process and the person's rights in the process. The language used should be plain and understandable, that is, not merely a repetition of the statute, regulation, policy or guideline, but communicated in language appropriate for persons with intellectual and other cognitive disabilities;
- ▷ Ensure that support is easily and readily available for persons with disabilities and individuals who need assistance to understand legal notices, processes, and information. For example, provide accessible interpreters, guides, readers, intermediaries, and facilitators, and other forms of support. This support information should accompany all legal notices and processes served or delivered to persons with disabilities.
- ▷ Establish an easily accessible public domain information centre or hub, dedicated to persons with disabilities, for facilitating the information and court services associated with this guideline, which could be appropriately automated and/or staffed.

# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

### **Guideline 5**

## **Procedural Safeguards and Due Process**



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**“I couldn’t understand what they were [saying and] writing. They couldn’t understand me. They were pretty frustrated with me. I stayed in jail for a very long time, when pastor [interpreter] came by, we were able to communicate with the police.... When they called me to court, one of the prisoners had to let me know [because I could not hear]. When we went to court, I indicated that I was deaf” - a person with a disability.**

Research findings about barriers faced by persons with disabilities also apply to the provision of procedural safeguards and due process, in relation to the pre-court proceedings stage with first responders, e.g., police and law enforcement officers.

According to persons with disabilities, **some cases were not pursued because they were not convinced that they were taken seriously by the police, and their due process rights were not sufficiently recognised and regarded.** This was especially concerning for women with disabilities involved in domestic violence.

Judiciaries shall ensure that all substantive and procedural safeguards recognised in international and constitutional law, whether in criminal, civil, or administrative procedures, are afforded to persons with disabilities, who are complainants or defendants/charged persons, on an equal basis with others. These safeguards include the presumption of innocence, the right to a fair and timely hearing, the right to remain silent, and the entitlements to the protection of the law, due process, fundamental fairness, and access to legal advice and representation.

Procedural accommodations, when needed, must be available to all persons with disabilities, including suspects and accused persons, especially those who require assistance to participate effectively in investigations and judicial proceedings in the courts.

## Checklist for Guideline 5:

- ▷ Ensure that the relevant procedural accommodations described in Guideline 3 are accessible and made readily available to victim-survivors, suspects, and accused or charged persons with disabilities throughout the process of court related proceedings, from pre-proceeding stages to final determination and enforcement of remedies or penalties.
- ▷ Ensure that victims-survivors, suspects, and accused or charged persons with disabilities are informed of and afforded their constitutional and legal rights and entitlements, such as the presumption of innocence, access to legal advice and representation, and the right to remain silent.
- ▷ Ensure that police officers, prosecutors and others involved in investigations, arrests, and charging in criminal offences are knowledgeable about the rights of persons with disabilities, are alert to the possibility that a person may have a disability and, therefore, throughout the course of an arrest or investigation, adjust and adapt their responses accordingly so as to provide reasonable accommodations for persons with disabilities.
- ▷ Ensure that independent third persons, such as attorneys, support persons, or family, friends or others, are available to accompany persons with disabilities to police stations, investigators offices, or other related venues to assist them in the investigative process, including, for example, fingerprinting or giving biological samples. In addition, ensure that intermediaries or facilitators, or similar, are available to facilitate effective communication between persons with disabilities and law enforcement and court personnel.
- ▷ Ensure that suspects or accused persons with disabilities are provided with accessible and understandable information about their constitutional and legal rights.
- ▷ Promulgate and publish guidelines to be visibly displayed in all police stations, investigators' offices, and court houses and which notify and advise persons with disabilities of their basic rights and about the accommodations that are available and accessible to them, to guarantee procedural safeguards and due process.

- ▷ Ensure that procedural accommodations, including support, for effective and meaningful participation are available, so that all persons with disabilities have the right, on an equal basis with others, to make their own choices of how to defend themselves.
- ▷ Guide and direct persons with disabilities to available, free, or state-assisted legal assistance and support for persons with disabilities who have experienced violence, in particular women and girls with disabilities, including professional victim support, advice about legal rights, and assistance in reporting crimes and initiating legal proceedings.

### **Particularly Applicable to Law Enforcement Agencies:**

- ▷ Ensure that in all interactions with first responders, police, investigators, prosecutors, and others, persons with disabilities have the right to be free from discrimination and any use of force or coercion or undue influence, based on an exploitation of, or disregard for, disability; for example, perceived differences in behaviour or manner of communication.
- ▷ Ensure the provision of procedural accommodations to persons with disabilities at the time of their arrest, including procedural adjustments and communication support, and the use of de-escalation techniques, as appropriate, to safeguard all due process guarantees and prevent police violence and abuse. De-escalation techniques may include:
  - Using intentionally purposeful actions, verbal communications, and body language to calm potentially disruptive or harmful situations;
  - Use of private areas;
  - Empathetic and non-judgmental attitudes and communication;
  - Active listening;
  - Allowing for release of frustrations, fears and anxieties;
  - Seeking explanations and understanding;

- Respect for personal space;
- Use of neutral verbal tone and body language;
- Avoiding over-reacting;
- Focus on the thoughts and meaning behind emotions and feelings;
- Ignoring challenging attitudes, accusations, questions;
- Setting appropriate personal and professional boundaries.

# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

### **Guideline 6**

### **Disability Awareness Training**



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**“Everybody need to be trained – from the judge to the yard man inna di courthouse” – a person with a disability.**

**“Di people in di justice system need to be trained without how to speak with di disabled and they need to look out for deaf and blind people, especially” – a person with a disability.**

**“Nothing About Us, Without Us” – In 2004, the United Nations used the phrase as the theme of International Day of Persons with Disabilities.**

Although some persons with disabilities had favourable views of judicial officers, research participants indicated **overwhelming exposure to attitudinal discrimination when interacting with all levels of the justice system**. Most persons with disabilities insisted that the **court staff displayed negative attitudes towards persons with disabilities and they were experienced by persons with disabilities as mean, horrible, unkind, disrespectful and indifferent**. Persons with disabilities believed that court staff were uneducated about their needs, did not understand how to treat them, did not take them seriously, or even ridiculed persons with disabilities.

Though not as prevalent, persons with disabilities also experienced judicial officers as discriminatory, disrespectful, and unaware or not knowledgeable of their circumstances and needs. Such experiences also predated arrival to courthouses, as police officers, investigators, and prosecutors, who are all deemed an integral part of the justice system, were accused of inattentiveness, poor treatment, and abuse. **Attitudinal barriers undergird ignorance and unwillingness to facilitate the accommodation needs of persons with disabilities**.

Only 13% of judicial officers (survey respondents) previously accessed professional development training that addressed the access by persons with disabilities to, and their equality of treatment with/in courtrooms, courthouses, court proceedings, and court services. Comparatively, 24% of judicial officers agreed that professional development training programmes are available that address how to provide persons with disabilities access to courtrooms, courthouses, court proceedings, and court services. **The majority (87%) demonstrated strong interest in learning more about how disability in the Caribbean affects access to justice, due process, equality of treatment, and procedural fairness, including through direct engagement with persons with disabilities during training programmes.**

Judiciaries must actively work to remove barriers to justice for persons with disabilities by providing evidence-based education and training on the rights of and barriers to persons with disabilities, to all judicial and court officers and court staff dealing with court and court related proceedings (contentious and non-contentious). Persons with disabilities and related stakeholders should be consulted and involved in the development and delivery of awareness and training. This team approach aligns with therapeutic approaches to justice.

## Checklist for Guideline 6:

- ▷ Develop and provide sensitivity and behavioural change education and training on an ongoing basis to all those working in the administration of justice, and include in the process, national, regional, and international human rights groups, including NGOs, serving persons with disabilities.
- ▷ Judiciary judicial education and training on the rights of and barriers to persons with disabilities should be judicial officer led and developed, according to appropriate pedagogical approaches designed to increase awareness and bring about concrete and measurable behavioural change in participants.
- ▷ Judiciary judicial education and training on the rights of and barriers to persons with disabilities should also lead judicial reform initiatives in dealing with and responding to access to justice and equality of treatment for persons with disabilities, including the introduction and application of therapeutic approaches and meeting procedural fairness standards for all persons with disabilities throughout legal proceedings.
- ▷ Ensure that persons with disabilities and representative organisations are actively involved and participate in the development and facilitation of all education and training initiatives, consistent with the principle ‘nothing about us without us’.
- ▷ Monitor and evaluate education and training and include the participation of persons with disabilities and representative organisations in this process.
- ▷ Develop and deploy public awareness-raising strategies and programmes, including appropriate media campaigns, based on a human rights model of disability, for all stakeholders which may include judicial officers, court administrators and all court staff, lawyers, prosecutors, investigators, the police, health professionals, forensic experts, social workers, probation, prison and detention staff, disability advocates, arms of government, and related service providers. These strategies and programmes are aimed at eliminating prejudice and discrimination and promoting recognition and enjoyment of international, constitutional and legal rights of persons with disabilities.

- ▷ Develop evidence-based training and persons with disabilities-specific guidelines and manuals and make them widely available for all those engaged in the administration of justice, especially judicial officers, court administrators and staff, prosecutors, lawyers, police officers, health professionals, forensic experts, social workers, probation, prison and detention staff, disability advocates, and related service providers.
- ▷ Use training to familiarise judicial officers, court administrators and staff, prosecutors, lawyers, police officers, health professionals, forensic experts, social workers, probation, prison, and detention staff, disability advocates, and related service providers, with best practices in interactions with persons with disabilities, including response, behaviour and appropriate accommodations;
- ▷ Facilitate education and training for lawyers and law students on the rights of persons with disabilities and procedural accommodations.
- ▷ Make available to persons with disabilities and their families access to information on rights, remedies, claiming redress, and legal processes in ways that are easily understood and communicated to all persons with disabilities;
- ▷ Ensure that training programmes are research based, grounded in jurisdictional data, benefit from subject matter expertise, and address at least the following topics:
  - General and overarching social, historical, cultural, and economic contexts of Caribbean placed persons with disabilities;
  - General and overarching international, constitutional, legal, and regulatory contexts of Caribbean placed persons with disabilities;
  - Prevailing historical, cultural, and systemic discriminating factors, biases, stereotyping, othering, and marginalising factors and barriers, in relation to all persons with disabilities, including the effects of intersectionality on persons with disabilities;

- The general socioeconomic situations of and state provided resources available to persons with disabilities in the jurisdiction in which education and training initiatives are being delivered;
- The heterogeneity of disability (gender, disability type and severity etc);
- Equality as substantive equality;
- Intersectionality and its impacts on access to justice and equality of treatment for all persons with disabilities;
- Removal of barriers to access to justice and equality of treatment for persons with disabilities;
- The United Nations Convention on the Rights of Persons with Disabilities and the social and human rights model of disability, and other relevant international and hemispheric instruments;
- National constitutional human rights and other constitutional values and principles impacting persons with disabilities;
- Procedural fairness (justice) standards for persons with disabilities;
- Therapeutic justice approaches for persons with disabilities;
- National disability legislation and regulations, (where available) and all other relevant legislation;
- Acknowledgement that persons with disabilities have the right to recognition as persons before the law, including combating harmful gender and disability stereotypes and prejudices;
- The obligation to respect the legal capacity of persons with disabilities, including legal agency and standing;
- Communication skills, including identifying the need to engage experts for communication assistance;

- Procedural accommodations;
- Reasonable accommodations;
- Combating ableism and overcoming prejudice and discrimination against persons with disabilities;
- Sexual, reproductive, and family rights;
- Intersecting forms of discrimination on the basis of disability and other grounds, including sex, gender, indigenous status, race, sexual orientation, migration status, minorities and disadvantaged communities, and poverty;
- Awareness and understanding of the rights of persons with disabilities to have equal access to information;
- De-escalation of situations and prevention of the use of violence or force.

# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

### **Guideline 7 Legal Assistance**



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**“There is a need for legal education of persons with disabilities, their support persons because, generally, they did not know their legal rights, they did not know the available services such as legal aid, and how to navigate the court system” - a person with a disability.**

**“Some [persons with disabilities] have very little confidence in legal aids because they feel that because it is free, they won't be getting good representation” - a person with a disability.**

Research participants (persons with disabilities) **conveyed weak understanding of the justice system, its processes, their rights as persons with disabilities, and how to advocate for themselves in ways that meet the expectations of the court system.** Persons with disabilities relied primarily on informal networks of immediate family or relatives to navigate the justice system. The research shows that legal representation importantly enabled persons with disabilities to access the justice system. Some persons with disabilities expressed concerns that free legal aid services should not result in substandard service.

The provision of free or affordable and competent legal assistance, where appropriate, in a timely manner for persons with disabilities to participate equally, effectively, and meaningfully in legal proceedings, is a constitutional imperative, grounded in the rights to a fair trial, due process, and the protection of the law. This may include making a referral to another ministry/department/agency for available legal aid services, in keeping with legal provisions of jurisdictions.



## Checklist for Guideline 7:

- ▷ Facilitate as far as may be possible and within permissible legal parameters and according to available resources, required legal assistance to persons with disabilities on terms that are no less favourable than those for persons without disabilities and, at a minimum, whenever necessary, on an individualised basis, as a procedural accommodation. Where free legal assistance is requested, all efforts should be made to accommodate it.
- ▷ Provide special support to persons with disabilities who have experienced violence, in particular women and girls with disabilities. This includes professional victim support, advice about legal rights, and assistance in reporting crimes and initiating legal proceedings.
- ▷ Establish, as far as may be possible and within permissible legal parameters and according to available resources, an accessible information services hub which may direct persons with disabilities to information about legal advice, representation, and related services as may be required.
- ▷ Ensure and facilitate easy access to legal assistance, advice, and service, removing as far as may be possible, all administrative, communication and physical barriers to such access. Where state funded legal aid exists, persons with disabilities should be given priority processing and accommodation. Other creative ways of providing legal assistance, advice, and services to persons with disabilities should be prioritized, such as state and judiciary-provided administrative support for pro bono bar assistance, advice, and services.
- ▷ Ensure that specialised services for victims-survivors of crime, violence, exploitation, and abuse (e.g. gender-based violence units, trafficking in persons, child victims) are equally and easily accessible for all persons with disabilities.
- ▷ Make procedural accommodations, such as interpreters, assistive technology, and intermediaries and facilitators, or the resources necessary to obtain such accommodations, available to lawyers and legal advisors to support effective communication with clients, witnesses, and other persons with disabilities, in the discharge of their professional duties.

## Applicable to the Executive and Legislative branches of Government:

- ▷ Amend, when necessary, ethical and other relevant regulations applicable to lawyers to require them to respect and advocate for the will and preferences of their clients with disabilities and to follow their expressed instructions; any laws, regulations, policies, guidelines or practices to the contrary should be repealed or amended.
- ▷ Lobby and support repealing or amending any laws, regulations, policies, guidelines or practices that restrict the legal capacity of persons with disabilities to retain and instruct a lawyer.

# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

### **Guideline 8**

### **Handling Complaints**



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**“We not asking for sympathy, we just want to be treated fairly”— a person with a disability.**

**“There should be a commission headed by someone with a disability who is in a position of authority to provide support for persons with disabilities” – a person with a disability.**

Most research participants (persons with disabilities) felt the court system treated them with disregard and **did not “take seriously” their natural rights and legal capacity**. Persons with disabilities reported that the **court staff tend to listen and respond to non-disabled persons, while ignoring persons with disabilities present**. Persons with disabilities thus articulated the need for mechanisms to lodge complaints when they deem themselves treated unfairly, unjustly and discriminated against on the basis of their disability.

Persons with disabilities must have **available to them, accessible, easy-to-use, transparent, and effective mechanisms to report complaints about courts and court services in relation to court proceedings and services, human rights violations, and crimes**. This may include, among other things, judiciary-constituted and independent administrative units, committees, or officers with responsibilities to handle complaints and provide oversight for the promotion, protection and monitoring of the implementation of the rights of persons with disabilities and their equal treatment and access to justice. Such a unit or committee should include, in its composition, persons with disabilities and persons from disability representative organizations or NGOs.

Where such interventions require adequate resourcing, multisectoral partnerships with Government, NGOs, and persons with disabilities can be leveraged. Where they exist, ministerial departments and units, national commissions, disability advisory committees, and other such institutions may be onboarded to serve as catalysts for change and to supporting progress with the implementation and monitoring of these Guidelines.

This Guideline specifically deals with **complaints about courts and court services in relation to any and all court proceedings and services**.

## Checklist for Guideline 8:

### ▷ Provide complaint mechanisms:

- Establish judiciary-constituted and independent administrative units, committees, or officers, with responsibilities to handle complaints and provide oversight for the promotion, protection and monitoring of the implementation of the rights of persons with disabilities and their equal treatment and access to justice;
- Complaint mechanisms must provide accessible, easy-to-use, transparent, and effective processes and procedures to report complaints about courts and court services in relation to court proceedings and services, human rights violations, and crimes;
- Complaint units, committees, or officers should be vested with the power to hear complaints, including complaints about disability-based discrimination by courts and court services, from persons with disabilities and others and to recommend remedies;
- Where on a complaint there is evidence that may disclose the commission of a crime, guidance should be offered to facilitate persons with disabilities exercising their rights to file criminal complaints on an equal basis with others;
- Provide guidance on, and where available access to, voluntary alternative dispute resolution mechanisms, such as conciliation, mediation, and arbitration;
- Ensure that complaint mechanisms, inquiries, and investigations are disability and gender sensitive to guarantee that all victims, especially those of disability and gender-based violence, are able and willing to come forward safely;
- Ensure that complaint spaces, rooms, and offices (e.g. those dealing with gender-based violence, child abuse, and trafficking in persons) are accessible to and safe for all persons with disabilities and are accommodative of and responsive to their needs;

- Ensure that policies, protocols, and procedures, when appropriate and desired, provide for anonymity and confidentiality.
- ▷ Responding to complaints of human rights violations against persons with disabilities:
- Record and appropriately respond, in a timely manner, to human rights violations against persons with disabilities, occurring at any stage of court proceedings or on receiving court services, including those which may be systematic, group, and large-scale, following complaints, or on the initiative of the judiciary.
  - Promote and support the establishment of inter-governmental committees, or joint task forces with persons with disabilities representative groups and NGOs to highlight human rights violations against persons with disabilities, including those which may be systematic, group, and large-scale.
  - Promote and support public education programmes which highlight human rights violations against persons with disabilities, including those which may be systematic, group, and large-scale.
- ▷ Investigations:
- Facilitate training and education to go towards ensuring that all investigators are knowledgeable about the rights of persons with disabilities and are alert, throughout the course of investigations, to the potential need for procedural accommodations when investigations involve persons with disabilities.
  - Ensure that, when appropriate, an intermediary or facilitator or other appropriate third party is enlisted to assist in the complaint process.
  - Develop a risk assessment protocol for the conducting of investigations to ensure that persons with disabilities are not harmed or violated in the process and benefit from therapeutic approaches.

# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

### **Guideline 9**

### **Monitoring Mechanisms**



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**“They must treat us like a person, not as a person with a disability, but as a person”  
– a person with a disability.**

Given that the **general experience of persons with disabilities is that the courts treat them with indifference, disregard, and discriminatory actions**, monitoring mechanisms to continuously evaluate equal and equitable treatment and access to the justice system are fundamental.

Monitoring and evaluation mechanisms should be established to promote and protect the rights of persons with disabilities and their equal and equitable treatment and access to justice. The mechanisms should be adequately resourced. Multisectoral partnerships with Government, NGOs, and persons with disabilities, can be leveraged to facilitate monitoring, evaluation, and reform.

This Guideline specifically addresses the monitoring and evaluation of court services, procedures, policies, protocols, and accommodations as they relate to persons with disabilities.



## Checklist for Guideline 9:

- ▷ Establish or designate monitoring mechanisms for the promotion and protection of the rights of persons with disabilities and their equal and equitable treatment and access to justice.
- ▷ Ensure that monitoring mechanisms are adequately and appropriately designed and supervised.
- ▷ Promote the regular exchange of information among judicial officers, court administrators, court staff, and other relevant stakeholders, including disability representative organizations and NGOs, to identify challenges and implement strategies to address common issues.
- ▷ Ensure the meaningful participation of persons with disabilities and their representative organisations, including NGOs, in designing and implementing independent monitoring mechanisms.
- ▷ Establish and promote processes to actively monitor and identify violations of the rights of persons with disabilities, including those deprived of liberty and who are placed in institutional settings.
- ▷ Prepare and publish relevant reports on human rights violations against persons with disabilities, including information on barriers to access to justice.
- ▷ Identify and provide support for persons with disabilities in keeping with requests for and offers of accommodations under Guideline 3.

# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

### **Guideline 10**

### **Participation in the Administration of Justice**



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**“Is their roost, suh dem rule it [i.e. the court is run entirely by judges and court officers, without any meaningful input from persons with disabilities]” – a person with a disability.**

The research shows that **persons with disabilities consider themselves as outsiders in the administration of justice and especially so in relation to court proceedings, as poignantly captured by the above quote from a person with a disability.**

The experience and perception of absence of persons with disabilities, as co-contributors to the functioning of the justice system, is in keeping with the socio-economically and culturally marginal position persons with disabilities occupy in the Caribbean. For example, in Jamaica and Trinidad and Tobago, working age (15-64 years) persons with disabilities were five and ten times more likely to be without access to education, compared to counterparts without disabilities (Gayle-Geddes 2016). More recent research shows that this persists for children with disabilities in Jamaica (Gayle-Geddes 2020). Disability is also a contributor to poverty and persons with disabilities are among the most vulnerable in society (Caribbean Development Bank 2016; Gayle-Geddes 2015). The intersection of disability and gender-based violence, among other inequality barriers such as age, indigenous identity, and rurality, further conflates the marginality of persons with disabilities in Caribbean societies.

Representatives of NGOs for persons with disabilities consulted, could hardly identify any persons with disabilities serving as professionals in their local judiciary. Research respondents recommended that persons with disabilities be directly involved in the process of improving the accommodation policies of judiciaries by participating in decision-making, as well as pursuing professional roles in the field.

Persons with disabilities should have the opportunity to participate directly in adjudicative processes and be involved in various roles in the administration of justice on an equal basis with others. The educational, training, and legal systems throughout the Caribbean should ensure that persons with disabilities are able to serve as judges, court administrators, court officials and staff, lawyers, prosecutors, police, investigators, jurors, and experts, in the justice system, without discrimination or barriers, and with all reasonable accommodations provided.

This Guideline is general in application and directed largely to governmental state organs and agencies which have a constitutional responsibility to realize the principles and values of participatory democracy, equality of treatment and opportunity, and the rule of law. It also applies to educational, training, and certifying institutions in the areas of law and justice related fields.

## Checklist for Guideline 10:

- ▷ Promote the removal of barriers that prevent or discourage persons with disabilities from entering justice system-related professions by advocating for, for instance:
  - Reasonable accommodations throughout legal and justice-related education and training programmes;
  - Reasonable accommodations during certification and licensing examinations or processes;
  - The removal of questions about health and disability, which are unrelated and irrelevant to applications for admission to the legal profession and other related positions in the justice system;
  - Ensuring that all facilities and structures in the legal justice system are universally accessible to workers with disabilities.
- ▷ Promote the removal of all disability-related barriers, including any laws and recruitment policies, that prevent persons with disabilities from being judges, lawyers, or jurors, or serving in any other legal or justice-related positions.
- ▷ Promote and support the equal treatment and participation of persons with disabilities in the judicial, legal, and jury systems by providing all necessary support, reasonable accommodations, and procedural accommodations.

# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

### **Background**



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In June 2022, The JURIST Project along with IMPACT Justice, partnered to host a conference on Access to Justice for Persons with Disabilities. The objective of the conference was to gather disability advocates and activists, and decision-makers from the Caribbean region, to review the findings of research commissioned by [IMPACT Justice](#), and to chart possible next steps to create an environment where persons with disabilities are able to access justice, free from barriers.

Following the event, as part of the JURIST mandate to promote inclusive courts, the Project incorporated into its final year work plan, the development of guidelines to be used by judicial officers and non-judicial officers of the court.

As part of the development of these Guidelines, both quantitative and qualitative research was undertaken with Caribbean judicial officers and persons with disabilities respectively.

An online survey was fielded during the period of September 22, 2022 to September 29, 2022 to provide baseline understanding of the professional experiences of Caribbean judicial officers with persons with disabilities. The population surveyed consists of 900 judicial officers with a response rate of 12.9% (116 respondents). This fell within the range of 10% to 20% response rate for surveys conducted by the CAJO.

Further, three focus groups with persons with disabilities and three elite interviews were conducted with a representative of a national disability non-governmental organisation in 3 CARICOM countries to understand the experiences of persons with disabilities with the justice system. Trinidad and Tobago, Guyana, and Jamaica were selected to reflect country size, racial/indigenous (First Nations) profile and urban/rural distribution of the population of persons with disabilities. Focus group discussions represent the intersectional profile of persons with disabilities from urban and rural communities in Trinidad and Tobago, Guyana, and Jamaica. The research sessions were held during the period of September 14, 2022 to September 21, 2022. In Jamaica, the focus group was held on September 14, 2022 and the elite Interview on September 21, 2022. Focus groups and the elite Interviews were conducted on September 15, 2022 in Trinidad and Tobago, and September 16, 2022 for Guyana.

Arising out of the data, a first version of the Disability and Inclusion Awareness Guidelines was prepared by consultant to the JURIST Project, Dr Annicia Gayle-Geddes (Yipada Ltd). The CAJO was tasked with building on these guidelines to develop Caribbean judiciary and judicial officer focused guidelines. The development team comprised of Justice Peter Jamadar, Elron Elahie, and Shail Pooransingh. Coordination support was provided by Salima Bacchus-Hinds, Regional Project Coordinator and Gender Specialist of the JURIST Project.

The development of these Guidelines has also been further supported by the CCJ's Committee for Improving Access to Justice for Persons with Disabilities.

### Caribbean Evidence Underpinning the Guidelines

During the quantitative survey, three-quarters of **judicial officers reported** awareness of the relevant local, national and international legislative frameworks and provisions concerning persons with disabilities' rights. Some 70% of the judicial officers previously adjudicated cases involving persons with disabilities and over half of them indicated that persons with disabilities were not provided reasonable accommodations necessary to access courtrooms, court houses and court services in their jurisdictions. Indeed, **over half of survey respondents felt that judicial officers did not have sufficient access** to professional development training programmes that addressed how to provide persons with disabilities access to court and court services.

**Only 13% of judicial officers** reported having previous professional development training that addressed the access of persons with disabilities to courtrooms, courthouses and court services. Training is needed for a **range of topics**. Demand for *greater sensitisation and knowledge around persons with disabilities' needs, and how best to accommodate their needs in ways that preserve the dignity of persons with disabilities*, and increase the efficacy of their attempts at accessing justice were given highest priority by survey respondents. **The majority (87%) of respondents demonstrated strong interest in directly learning about disability needs** through direct/personal engagement with persons with disabilities during any training provided. In addition, respondents recommended that persons with disabilities be directly involved in the **process of improving the accommodation policies** of courts by participating in decision-making.



The qualitative focus groups and elite interviews revealed that **persons with disabilities possessed limited knowledge of the justice system**. Attitudinal, institutional, and environmental discrimination was the hallmark of their experiences. **Persons with disabilities felt the courts, court services and wider justice system treated them primarily with indifference and discrimination**—as though they were not fully human and deserving of the same rights as citizens without disabilities. Compared with judicial officers, persons with disabilities expressed greater difficulty in their dealings with **police officers, court staff and wider ecosystem**. Persons with disabilities considered **judicial officers** as the most senior public servants charged with the mandate of dispensing justice and **ensuring that police officers, court staff and all court service providers treat persons with disabilities with the equal rights and dignity due to them**.

The study showed that provision of **reasonable accommodation, legal representation and encouragement of a family member or friend are important supportive factors** that enable persons with disabilities to access the justice system. The primary **barriers induced by discrimination** unearthed from the study included: 1) lack of sign language interpreters for deaf and hard-of-hearing persons; 2) absence of other accommodations such as physical access to the built environment etc; 3) strained or mixed client/lawyer relations; 4) negative attitudes of police officers, and 5) negative attitudes of court staff.

In keeping with the barriers identified, the main recommendations from persons with disabilities were as follows:

- **Recognise the human rights and dignity of persons with disabilities** in national laws, public policies and court procedural guidelines;
- Identify and provide **reasonable accommodations** according to disability type and severity;
- **Provide disability awareness training for justice system service providers** such as judicial officers, court staff, police officers, paralegals, attorneys, sign language interpreters, disability advocates, and other personnel or aides of persons with disabilities;

- **Create or designate offices responsible** for providing: i.) reasonable accommodations for persons with disabilities across the entire lifecycle of a case - filing through disposition to enforcement; and ii.) establishment of an office for persons with disabilities to lodge complaints against court officials;
- Develop and deploy **holistic public awareness programmes about disability**, rights of persons with disabilities and the justice system’s commitment to upholding said rights, with the demonstrated involvement of persons with disabilities as co-creators in the overall process; and
- Investigate the **intersectionality of disability and gender-based violence, among other inequality barriers** such as age, indigenous identity, and rurality. Quantifying (via survey) the prevalence of the qualitative findings gleaned from persons with disabilities is also a fundamental area for further research.

Notably, the main recommendations from **Caribbean judicial officers** included:

- provision of communication tools, including sign language interpretation, translation services and the use of Braille;
- provision of sufficient ramps, lifts, elevators and/or handrails for wheelchair users and persons with mobility impairments;
- provision of training to the judiciary and to wider court staff about disability.

Research findings provided baseline insights beneficial for development of training interventions and this document for courts, with utility for the overall justice system. This thrust is imperative to support courts’ evaluation of current systems and aid the development of plans for improvements that are consistent with Articles 12 and 13, of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which state:

- Recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life;

- Take appropriate measures to provide access to persons with disabilities to the support they may require in exercising their legal capacity;
- Ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse, including by ensuring that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person;
- Ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

The full research report can be accessed by clicking [here](#).

## About the Partner Institutions

**[The Judicial Reform and Institutional Strengthening \(JURIST\) Project](#)** is a multi-year (2014-2023) regional Caribbean judicial reform initiative funded under an arrangement with the Government of Canada. The Project is being implemented on behalf of Global Affairs Canada (GAC) and the Conference of Heads of Judiciary of CARICOM (the Conference), by the Caribbean Court of Justice (CCJ), which was appointed by the Conference as its Regional Executing Agency (REA). The Project is working with judiciaries in the region to support their own efforts to improve court administration and strengthen the ability of the courts and the judiciary to resolve cases efficiently and fairly. The Project is being implemented in at least six countries and will be expanded to include other territories in the region. The JURIST Project employs a participatory planning process and firmly believes that an inclusive approach will result in judicial reform initiatives that are more efficient and effective. By consulting stakeholders, the JURIST Project gives voice to their concerns and needs. The resulting actions are more likely to be relevant and appropriate to their environments.

**The Caribbean Association of Judicial Officers (CAJO)** brings together the region’s Chancellors, Chief Justices, Judges, Masters, Registrars, Magistrates, Tribunal Members, Executive Court Administrators, and other judicial staff. The CAJO is a Non-Profit Organisation registered in Trinidad and Tobago. The first meeting of judicial officers across the region took place in June 2009 in Port of Spain, Trinidad and Tobago and this marked the birth of the CAJO. With its own Constitution and membership, the CAJO was ably headed by Hon Mr Justice Adrian Saunders, President of the Caribbean Court of Justice (CCJ), who served as Chair from 2009 – 2019. The CAJO is led by a Management Committee which comprises judicial officers elected at the Association’s Business Meeting held biennially. The Management Committee comprises 16 members from almost all countries in the region. The CAJO provides a host of judicial education engagements for judicial officers across the region including its Biennial Conference, training programmes and workshops on various topics and areas of law and practice, and a biannual Newsletter, CAJO News.

# **Disability and Inclusion Awareness Guidelines**

## **for Judiciaries and Judicial Officers**

### **Additional Resources**



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Outlined below is a list of resources, additional to those that have been mentioned across the Guidelines, which may be helpful in the use and adaptation of these guidelines:

A Report On Access To Justice For Persons With Disabilities In Caricom Countries, IMPACT Justice (2022) ([Part I](#) and [Part II](#))

[Access to justice for persons with disabilities: From international principles to practice](#), International Bar Association (2017)

[Checklist for promoting the quality of justice and the courts](#), European Commission for Efficiency of Justice (2008)

[Disability-Inclusive Language Guidelines](#), UN Geneva

[International Principles and Guidelines on Access to Justice for Persons with Disabilities](#), United Nations Human Rights Special Procedures (2020)

[Procedural Fairness A Manual](#), Peter Jamadar, Kamla Jo Braithwaite, Trisha Dassrath, and Elron Elahie, Judicial Education Institute of Trinidad and Tobago (2018)

[Proceeding Fairly: Report on the Extent to which Elements of Procedural Fairness Exist in the Court systems of Judiciary of the Republic of Trinidad and Tobago](#), Peter Jamadar and Elron Elahie, Judicial Education Institute of Trinidad and Tobago (2018)

[Study on Socio-Economic Impact of Disability on Children and Access to Safety Nets in Jamaica](#), UNICEF (2022)

[When people with disabilities come to court, Checklist 5 for Chief Justice, Judge, Magistrate and Court Staff](#), Pacific Judicial Strengthening Initiative (2020)

[Working with Persons with Disabilities in the Eastern Caribbean Justice System, No 3: Protocols for Judicial Officers: International Standards and Best Practices](#), IMPACT Justice (2018)



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