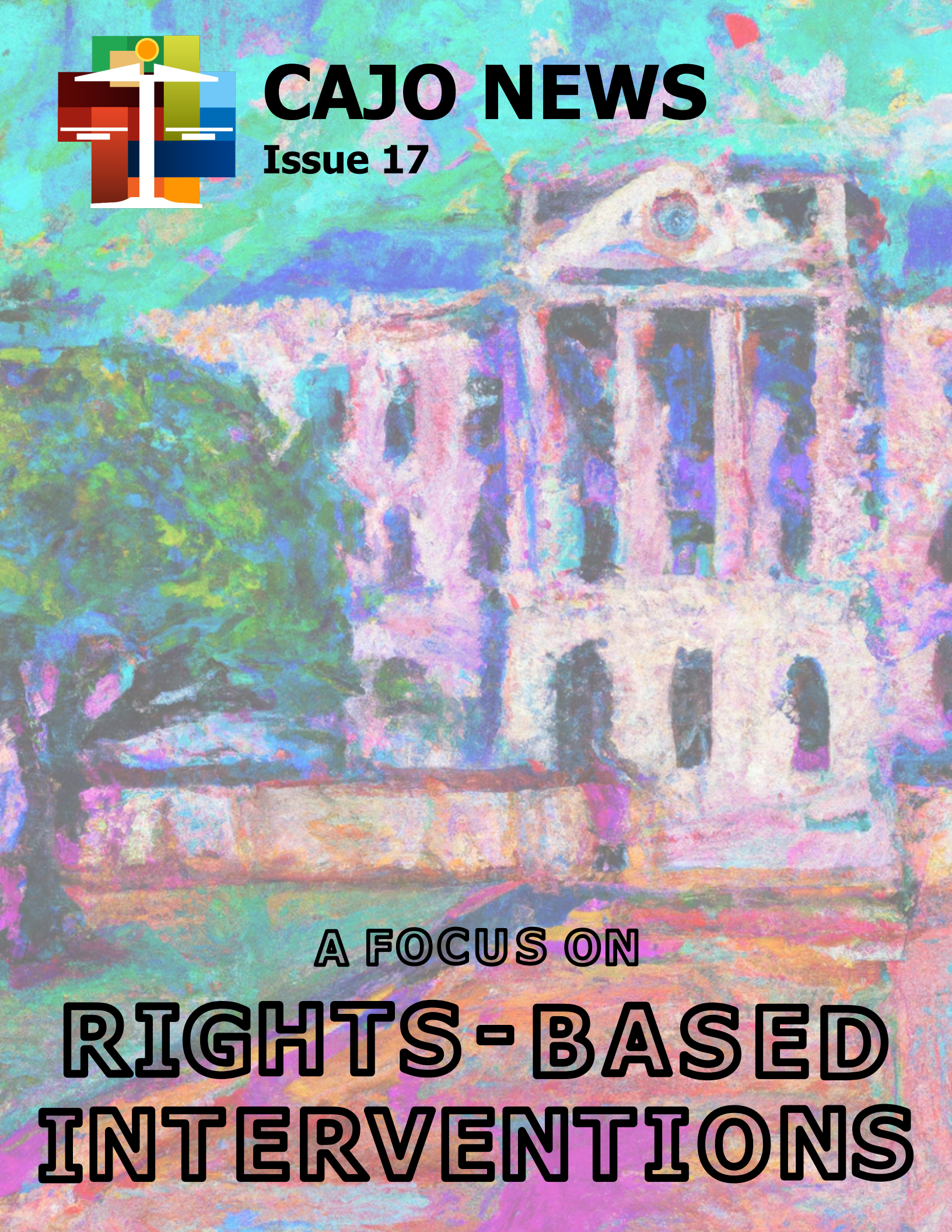
CAJO NEWS

Issue 17



A FOCUS ON

RIGHTS-BASED INTERVENTIONS

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Message from the Management Committee










It is always with great satisfaction that we share the CAJO News with our members and stakeholders. This Issue is no exception, though it is of special importance, focussing as it does mainly on regional Rights-Based Interventions.

Throughout the Caribbean region and elsewhere, post-colonial written constitutions have placed at their centre the declaration and protection of fundamental human rights for all persons. Central among these are the rights of non-discrimination and equality, rooted in Article 1 of the 1948 Universal Declaration of Human Rights – that all persons are born free and equal in dignity and rights. Seventy-five plus years later finds us in this region still woefully in deficit in certain areas.

CAJO News Issue 17 concentrates on a few such areas of historical deficit in which the CAJO has been working to advance rights, and correlated responsibilities, so that the aspirational statements in our Caribbean constitutions may be experienced by all our peoples in their day to day lives – especially as they engage the legal systems. Thus, the focus on the rights of persons with disabilities, indigenous and tribal persons, procedural and therapeutic justice, human trafficking, forced labour and modern forms of slavery, and environmental justice (with a spotlight on the recently agreed 2023 High Seas treaty).

As is customary, and in fulfilment of the CAJOs objective to facilitate the sharing of regional news, we have published updates from across the region that we have received. We encourage regional judiciaries to send us their updates (through your representatives on the Management Committee or directly to info@thecajo.org).

We are also pleased to report that our membership drive, launched in March, has so far yielded sixty-one registered members, who have already benefited from their exclusive training opportunities – most of them participating in our 'Members Only' virtual session on 'Appeal-proofing Decision Making'. We hope that more of you will join as registered members of the CAJO. Membership affords unique opportunities and also helps support the work of the CAJO, which is an entirely voluntary organisation.

Finally, this issue also draws attention to Criminal Justice in the region, which is in dire need of sustainable reform. We share on five areas more fully explored in our Criminal Bench book for Barbados, Belize, and Guyana. These 'novel' areas have the potential to make the delivery of criminal justice more efficient, effective, and increasingly fair and just for all persons. Unique to what the Bench Book offers are chapters on Criminal Case Management (which includes a case management checklist template that can be used in Magistrate's and Parish Courts as well as in the high courts), and on Judge Alone Trials (which are being incorporated more and more throughout the region in the High Courts – having always been in existence in the Magistrate's and Parish Courts, and for a long time in the Gun Court in Jamaica).

Enjoy and share with us your thoughts.

Protecting the Rights of Persons with Disabilities

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, unique to the Caribbean, which legal systems all too often enable and perpetuate.

The process of othering typically follows two steps:

1. First, the categorisation 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 marginalise, 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 note, 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 that, '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.

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, that '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** (2nd 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.

Click the image to view a short video on a court user's experience with the lack of physical accommodation at court

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 **Annissa 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.

The Disability and Inclusion Awareness Guidelines are intended to provide regional 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

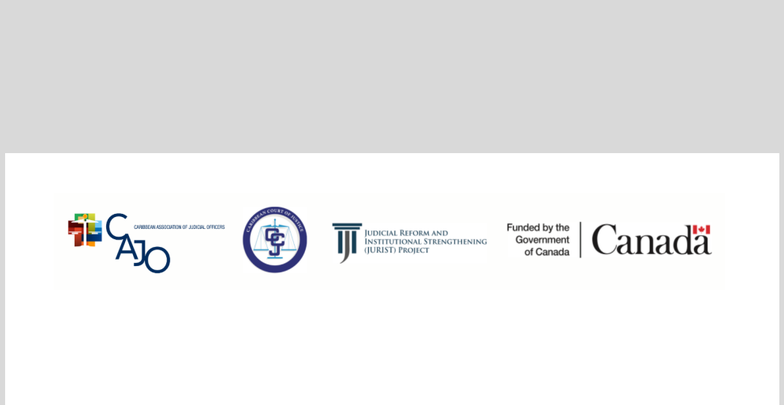
3. A Background to the development of these Guidelines, along with additional resources.

It is strongly recommended that the 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.

Disability and Inclusion Awareness Guidelines

for Judiciaries and Judicial Officers

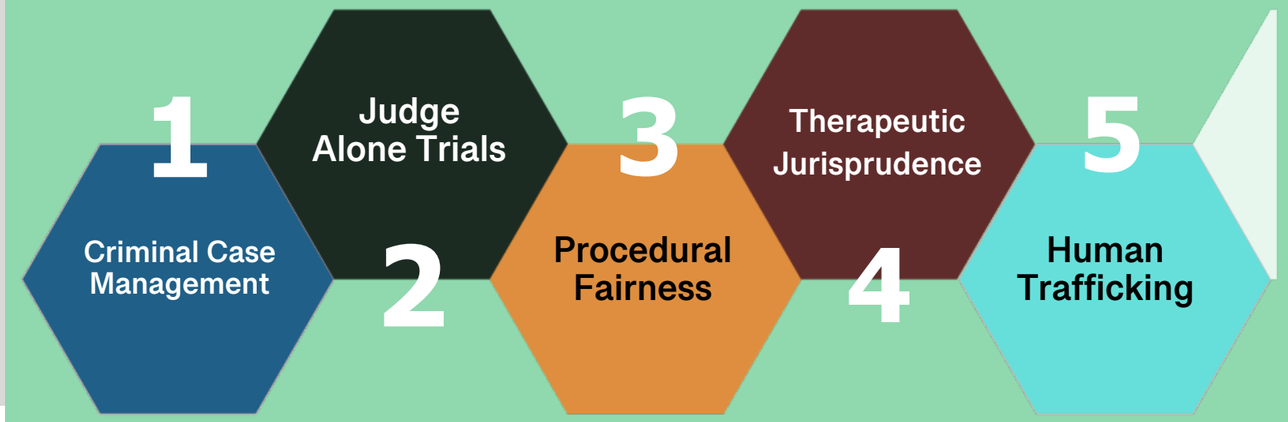


Click here to access the Disability and Inclusion Awareness Guidelines for Judiciaries and Judicial Officers

Criminal Justice in the Caribbean: Five Novel Areas

On Friday 31st March 2023, the CAJO launched the **Criminal Bench Book for Barbados, Belize, and Guyana**; a twenty-eight-chapter publication designed to offer practical assistance to judicial officers, practitioners, and researchers across various areas in the criminal jurisdiction. The first twenty-three chapters explore areas of law that are common in the practice of criminal law which the remaining five chapters focus on emerging areas, though no less significant. These areas are: **Criminal Case Management** (Chapter 24), **Judge Alone Trials** (Chapter 25), **Procedural Fairness** (Chapter 26), **Therapeutic Jurisprudence** (Chapter 27), and **Human Trafficking, Forced Labour, and Modern Slavery** (Chapter 28).

These five areas are of particular significance as they are becoming increasingly relevant to the administration and delivery of justice, not just in the three regions of the Bench Book's focus, but across the Caribbean. Moreover, they provide judicial officers and practitioners with necessary underpinning values and practical considerations towards bettering the delivery of justice which can be broadly applied across other areas of law and practice.



Criminal Case Management

Embedded in constitutions across the Caribbean are the values 'protection of the law' and 'fair hearing' principles (for example, see ss 11 and 18 of the Constitution of Barbados 1966; ss 3(a), 6(1) and 6(2) of the Belize Constitution Act 1981; and Arts 40 and 144 of the Constitution of the Co-operative Republic of Guyana, 1980). These principles demand that judiciaries and courts in relation to each case, and therefore court administrators and judicial officers, as well as all other state agencies that support court systems and the criminal justice system must, as a constitutional imperative, ensure both: (i) timeliness, and (ii) fairness throughout the criminal processes, from inception to final disposition.

These two constitutional standards impose (i) quantitative, and (ii) qualitative performance standards on judiciaries, courts, court administrators, and judicial officers. In relation to the qualitative performance standards, these speak to matters such as procedural fairness, therapeutic justice principles, and competence. Competence is assured and sustained through continuing judicial education that is well funded, supported as essential to the core functions of judicial work, understood as integral to sustainable judicial reform and continuing improvement, and judge led. It is not limited to substantive legal competence, and includes the full range of judicial, inter-personal, administrative, and management skills competencies that are needed by judicial officers to meet constitutional standards of fairness and timeliness.

Quantitative performance standards are quintessentially the province of case and caseflow management, though qualitative standards are also essential. These quantitative standards are constitutional, non-negotiable performance standards, for which judiciaries as state institutions, and judicial officers as public officers, are to be held accountable. Indeed, at a secondary level, these are internationally recognised minimum ethical standards for judicial officers, that are also reflected in territorial judicial codes of conduct. See the United Nations Office on Drugs and Crime's **Bangalore Principles on Judicial Conduct** (2002).

Some Best Practices

These practices are built on and adapted from the National Centre for State Courts' Models for Court Caseflow Management and Effective Criminal Case Management Project (ECCM).

Management Principles

- **Judicial offices control the judicial process and are required to responsibly demonstrate leadership in doing so (from filing to final disposition).**
- **All cases are equally deserving of individual attention from beginning to end (sufficient to enable a fair and just outcome).**
- **For each case, attention and resource allocation are determined proportionately on the bases of need and capacity (caseloads, time, resources).**
- **All court users, parties, witnesses, attorneys etc are to be equally treated according to the norms and standards of procedural fairness (to maximize institutional and individual judicial legitimacy and systemic public trust and confidence).**
- **Performance standards must be set, known, and met consistently.**
- **Both qualitative and quantitative performance standards must be established.**
- **Timeliness is a constitutional standard and essential for courts of excellence (which satisfies both protection of the law and due process rights).**
- **Judicial officers and court officials are responsible and accountable for meeting the performance standards set.**
- **Regular reviews of and shared feedback on judicial and court performance, based on predictable and measurable standards, must be implemented and consistently conducted and distributed.**
- **Continuous judicial education is critical to effective and efficient case and caseflow management.**

As an aid to facilitating the effective and efficient management and timely delivery of judgments in criminal matters, the CAJO has offered a checklist template for consideration. It was developed by the Caribbean Association of Judicial Officers, after consultation with select regional judicial officers who are subject matter experts, and after reflecting on and incorporating feedback from a regional workshop that explained and demonstrated its intent and use. To go deeper into Criminal Case Management and to explore the checklist, access the Criminal Bench Book for Barbados, Belize, and Guyana.

CHAPTER 24 - CRIMINAL CASE MANAGEMENT

SECTION A: CASE MANAGEMENT DETAILS

	PARTICULARS	NOTES
Case Number		
Name of Defendant		
Offence/Charge		
Special Circumstances of the Defendant		Examples: Disabilities, vulnerabilities, age, interpretation needed etc. Considerations of whether the defendant may be a victim-survivor of sexual exploitation, forced labour, domestic servitude, human trafficking, other forms of modern slavery.
Special Trial Needs		Examples: Open court, in-camera, screens, victim support
Format of Trial		Examples: In-person, Virtual, Hybrid/ Blended
Visit to the locus in quo		
Interlocutory Applications or Motions		Examples: Motion to Quash, Amendment to the Information
Voir dire		

A sample of the Case Management Checklist

Judge Alone Trials

The introduction of judge alone trials for criminal matters in the High Courts of the Common Law Caribbean jurisdictions has been incremental, both in terms of jurisdictions which have done so, and as well as within jurisdictions in relation to the types of matters for which they are available, either as an option or compulsorily. The following Caribbean states have all introduced judge alone trials in some form: Jamaica; Belize; Trinidad and Tobago; Cayman Islands; Turks and Caicos Islands; Antigua and Barbuda. Among Barbados, Belize, and Guyana, as of 30 June 2022, only Belize has introduced judge alone trials. Their status in Barbados and Guyana is as set in the Bench Book. However, all indications are that both Barbados and Guyana will sooner or later, and to varying extents, move towards introducing judge alone trials.

Many Commonwealth countries have introduced trials without juries. There are several states in the civil law that do not have any form of jury trial. Other states use a collaborative court model of lay adjudicators, a jury, sitting alongside professional judges in criminal matters. At this time in our region, six Commonwealth Caribbean countries have to a certain extent introduced judge alone trials. St Lucia is in the process of drafting legislation to introduce judge alone trials. However, the approaches to judge alone trials in the Caribbean vary. In Belize, for example, judge alone trials are mandatory with regard to certain offences and discretionary in relation to some others, whereas in other countries such as Trinidad and Tobago, it is available for all indictable offences provided that the defendant elects to choose a judge alone trial.

The shift to judge alone trials is prompted by many factors, including challenges faced in jury trials. In 2020, Saunders PCCJ highlighted some of these challenges in the Belizean case of Flowers [2020] CCJ 16 (AJ) (BZ) at [58], where he opined:

> **Jury trials have actually become somewhat fraught. Many Commonwealth countries have abolished this mode of trial. That jurors are absolved from giving reasons for their verdicts does not sit well with society's increasing emphasis on transparency. Today, all manner of information is easily and readily available to jurors. It is impossible to ensure that at least some of them will not be improperly influenced by material they access, whether inadvertently or otherwise, that is pertinent to the trial or the accused. Jury management is expensive and onerous. And jury tampering and juror intimidation have been a problem in some States.**

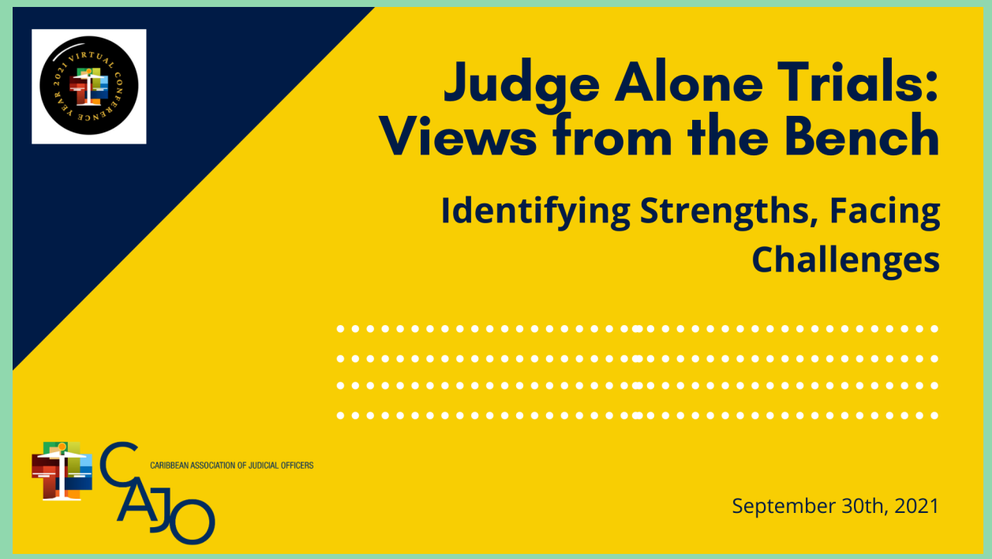
In fact, some forty years ago in 1980, a High Court judge in Bermuda, in a bold and courageous innovation, attempted to hear a criminal matter without a jury because of the difficulty in assembling an impartial jury in a small island state.

However, the Court of Appeal in **Re: Palmer, Ernest Sinclair BM 1980 CA 21** discussed in Ramesh Deosaran's, Trial by jury **in a post-colonial multi-racial society** (1981) The Lawyer 5, at 9, was unequivocal in denouncing this initiative: 'There has been, and there is now, only one method of trying persons committed for trial at the Supreme Court and that is by a judge sitting with a jury.'

Yet the concerns of the Bermudian judge were clearly prescient. As long ago as 1937, the American jurist, Oppenheimer, in **Trial by Jury (1937) 11 U Cin L Rev 119**, at 142, had this to say:

> We commonly strive to assemble 12 persons colossally ignorant of all practical matters, fill their vacuous heads with law which they cannot comprehend, obfuscate their seldom intellects with testimony which they are incompetent to analyse or unable to remember, permit partisan lawyers to bewilder them with their meaningless sophistry, then lock them up until the most obstinate of their numbers coerce the others into submission or drive them into open revolt.

To explore the considerations, guidelines, and best practices as they relate to judge alone trials, see **Chapter 25** of the [Criminal Bench Book for Barbados, Belize, and Guyana].



View the CAJO's 2021 webinar on Judge Alone Trials by clicking HERE

Procedural Fairness

Procedural fairness, also referred to as procedural justice, encompasses attitudinal, behavioural, and systemic/structural approaches by judicial officers, court officials and court offices, that have shown significant evidence of enhancing public trust and confidence in the administration of justice, as well as legitimising legal authority, improving compliance with court orders and directions, and reducing recidivism. There has been a lot of international research establishing this, and regionally, at least one research project that confirms it.

Simply put, people's responses to legal authorities, which include court systems and judicial officers, are directly linked to their experiences, assessments, and perceptions of the fairness of the processes by which these legal authorities both make decisions and, in the case of court systems and judicial officers, treat court users. Thus, people are more willing to accept court decisions and comply with court orders and directions if they regard and/or perceive them to be made fairly and if they are fairly treated in the process. This pragmatic reality places a responsibility on legal authorities, including judicial officers, as to the manner in which legal decision-making power is exercised, not only in relation to final decisions, but throughout the entire legal process. Indeed, it places an onus on legal authorities to ensure that the processes and systems and personnel that exist and the way in which these are operated and behave, are objectively fair and experienced as such.

All these insights have been confirmed regionally, through research done in Trinidad and Tobago in 2018, in relation to court systems (see P Jamadar and E Elahie, **Proceeding Fairly: Report on the Extent to which Elements of Procedural Fairness Exist in the Court Systems of the Judiciary of the Republic of Trinidad and Tobago** (2018, Judiciary of the Republic of Trinidad and Tobago)). This research discovered and articulated nine core elements of procedural fairness, building on internationally established elements, that constitute court users' experiences and perceptions of fairness. 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.**

The CCJ, in 2022, in **Ramcharran v DPP [2022] CCJ 4 (AJ) GY** at [80] – [81], and writing in the context of the desirability of separate sentencing hearings in criminal proceedings, opined:

> Judges must ensure procedural fairness in all aspects of the sentencing process. Procedural fairness, or procedural justice, is a necessity. In Caribbean judicial spheres facilitating the nine elements of procedural justice is apposite in a sentencing hearing. That is, facilitating: (i) voice, (ii) understanding, (iii) respectful treatment, (iv) neutrality, (v) trust, (vi) accountability, (vii) access to information, (viii) inclusivity, and (ix) access to necessary amenities. In Caribbean judicial spheres these elements can help mitigate against the still present and inherited colonial anti-therapeutic ethos that all too often prevails in the criminal justice systems. The research is clear that when court processes are imbued with procedural fairness throughout, there is an increase in overall public trust and confidence in the administration of justice, and increased compliance with court orders and directives. As well, the research indicates that there is reduced recidivism.

And earlier, in 2015, the Court of Appeal of Trinidad and Tobago in **Her Worship Magistrate Ayers-Caesar v BS (Trinidad and Tobago CA, Civ App No 252 of 2015)** (a judicial review appeal involving young persons), opined at [37]:

> It is important to also point out, that …consistent with the constitutional values of equality, fairness, respect and dignity, the new role of the judge …includes keen attention to procedural fairness. Thus, respect, equality of treatment and fairness must now colour all aspects of judicial behaviour both in court and throughout the management and hearing of all aspects of a matter. In concrete terms, there are four cardinal principles to be adhered to: (i) judges must be fair and experienced as such in all aspects of interaction with litigants and their attorneys; (ii) judges must treat all litigants and their witnesses (including attorneys and court staff) with utmost respect, having regard to their inviolable human dignity; (iii) judges are obliged to take care to ensure that parties clearly understand both what is to be expected, as well as what is actually happening in court proceedings, and all orders, directions and decisions must be carefully explained so that parties fully understand them and appreciate their consequences; and (iv) judges must permit parties to have a voice, that is to say, a meaningful chance to actually participate in their matter at all stages of the proceedings.

For more practical guidance on the implementation of procedural fairness in judiciaries and courtrooms, see **Chapter 26** of the Criminal Bench Book for Barbados, Belize, and Guyana.

Therapeutic Jurisprudence

Therapeutic jurisprudence is a study of the “law in action” and focuses on how substantive law and legal procedures can be reshaped, in order to result in improvements to the psychological, emotional and relational well-being of participating parties; in other words, how law reform can result in an increase in therapeutic/healing effects without the compromise of due process and other significant justice principles.

This therapeutic jurisprudence perspective should apply across the entire legal spectrum, including health law, criminal law, juvenile law and family law. It does involve consideration of all participants in the judicial process, which particularly implies parties to litigation (as well as their families), victims, offenders, witnesses and jurors. **It especially extends to lawyers and judges and how their application of therapeutic jurisprudence, through models of practice which are more relationally engaged and less adversarial, can effect progressive social change which would not only benefit the judicial system, but ultimately the society at large**.

In fact, the underlying philosophy and objectives of therapeutic jurisprudence have been embraced by judges in the Caribbean, as reflected through **Ramcharran v DPP [2022] CCJ 4 (AJ) GY** at [88], where in the context of sentencing in criminal law it was stated:

> 88. ...sentencing is no longer to be viewed in a silo, as an adjudication limited to the interests of the State and the convicted person. Such a view is hopelessly myopic and divorced from lived realities. Arguably the persons most directly affected by a crime are its victims-survivors. Then their families, friends, and communities. And as well the larger society of persons who live in various degrees of relationships with each other. Thus, while the traditional and inherited approach has been to place the convicted person at the centre of the sentencing process, and they are object of sentencing, they alone are not affected by the process and outcomes. A therapeutic approach to sentencing that is fully aligned with all five sentencing objectives requires a more encompassing approach to a sentencing hearing. An approach that includes all relevant evidence to enable the making of informed assessments and decisions, and that at the same time unlocks the law’s capacity to be a source of healing and relevance for all persons, institutions, and communities that are affected by it. Indeed, for the entire society.

In the justice system, therapeutic jurisprudence can emanate through the realms of procedural fairness, restorative justice and problem-solving courts.

Further, in **A.B. v DPP [2023] CCJ 8 (AJ) GY,** the CCJ stated at [7]: 'Therapeutic approaches to sentencing should be adopted wherever viable.'; commending the usefulness of specialised courts.

Behavioural sciences studies have revealed that in the context of a court or other legal setting, people are more likely to accept and comply with the legal authority’s decision if they are treated with respect when they present their case, and if the authority’s processes are fair, and its motives legitimate. Such procedural fairness can only impact positively on psychological, emotional and relational well-being, the result of which would be the court user’s increased trust and confidence in the procedures, their willingness to comply with decisions even when not in their favour, and ultimately, their general positive assessment and experience of the court system. Procedural fairness rests on core elements such as voice, understanding, respectful treatment, trustworthy authorities, accountability, availability of amenities, access to information and inclusivity. Once these factors are involved in the overall court process, there can be healing and satisfaction for the court user and the ability to move forward, which is the focus and spirit of therapeutic jurisprudence.

Restorative justice is most applicable in the criminal justice arena as an enhancement to, and not as a substitute of, constitutional rights and procedural due processes. It seeks to bring together those harmed by the crime (victims), those responsible for the harm (offenders), and the community affected, into communication with each other. The aim of this collective, ‘restorative’, balancing process would be to resolve the conflict; facilitate healing for the victim through voice; rehabilitation of the offender through acceptance of responsibility; strengthening of the community through reparation/restitution; and prevention of future damage through remediation, so that all parties involved may advance positively into the future. Circumstances may be ‘restored’ to their status prior to the offence. Furthermore, the processes of reconciliation, reparation and remediation can lead to holistic healing, which is the hallmark of therapeutic jurisprudence.

The therapeutic jurisprudence perspective which views the justice process outcome as possibly transformative - the offender will never again appear in court - can lend the court a problem-solving characteristic. In such situations, approaches taken by the judge in the courtroom can promote the potential therapeutic effect of the law, without compromising due process and procedure.

To learn more about this emerging area and its relevance to Caribbean jurisprudence, see **Chapter 27** of the Criminal Bench Book for Barbados, Belize, and Guyana.

Human Trafficking, Forced Labour, and Modern Slavery

In Caribbean spaces, historical practices of slavery, overt 'chattel' slavery, Indian indentureship, human trafficking and forced labour, are woven into the fabric, cultures, and psyches of regional peoples. The trauma, injustice, and inhumanity of these experiences, and their consequences, persist. Forced sexual exploitation, commercial sexual exploitation of children, and the exploitation of migrant and undocumented workers, remain major concerns in the American region, including Commonwealth countries. The Caribbean, with open unsecured borders and economies heavily reliant on tourism, provides opportunities for undocumented migrants seeking employment, as well as a destination for sex tourism, including the commercial sexual exploitation of children. Indeed, child sex tourism in the Caribbean results in the exploitation of numerous children each year: Commonwealth Human Rights Initiative and Walk Free, **Eradicating Modern Slavery. An assessment of Commonwealth governments' progress on achieving SDG Target 8.7** (2020); P Jamadar and L Pena, **Human Trafficking, Forced Labour, and Modern Forms of Slavery: Commonwealth Caribbean Perspectives** (March 2022).

In fact, these practices are globally rampant, and increasingly so. As of 2020, 1 in 150 persons in the Commonwealth is living in contemporary forms of slavery, such as forced labour, trafficking, or other exploitative conditions; an estimated 40% of the 40.3 million people living in modern slavery reside in Commonwealth countries. This represents about 15.7 million men, women, and children in forced labour, forced marriage, and human trafficking; and 1 in every 130 women and girls globally is currently trapped in modern slavery. An estimated 29 million women and girls are victims of modern slavery: **Eradicating Modern Slavery**.

This evidence describes a global phenomenon of enormity, tragedy, and criminality. It is unavoidably an issue for judicial systems, and all who are interested in human rights and justice. The exposure and eradication of human exploitation and cruelty, that is manifesting in our times as modern-day slavery, must be made a high priority – it is both urgent and imperative.

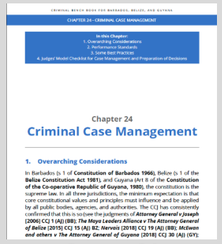
Statistics show that women and girls are the most vulnerable. According to **Global Report on Human Trafficking in Persons** (United Nations Office on Drugs and Crime, 2020) at 4, 9:

> Migrants account for a significant share of the detected victims in most regions. Traffickers prey upon the marginalized and impoverished. Cases examined by UNODC found that at least half of the victims were targeted because of economic need.
>
> ....
>
> ...In 2018 for every 10 victims detected globally, about five were adult women and two were girls. About one third of the overall detected victims were children, both girls (19 per cent) and boys (15 per cent), while 20 per cent were adult men.
>
> Traffickers target victims who are marginalized or in difficult circumstances. Undocumented migrants and people who are in desperate need of employment are also vulnerable, particularly to trafficking for forced labour.

Children living in extremely poor households are especially vulnerable. Countries in West Africa, South Asia, Central America, and the Caribbean, report much higher shares of detected child victims. Globally, one in every three victims detected is a child, but in low-income countries, children account for half of the victims detected, most of them trafficked for forced labour.

Finally, considering the percentages of detected trafficking victims, classified according to the categories of exploitation, what is striking is that 50% of victims are trafficked for the purpose of sexual exploitation, and 38% are trafficked for the purpose of forced labour. The research data also shows that where forced labour revolves around domestic servitude, women and girls predominate. **Human Trafficking, Forced Labour, and Modern Forms of Slavery**.

To explore this developing area of law in the Caribbean, see **Chapter 28** of the [Criminal Bench Book for Barbados, Belize, and Guyana](#).



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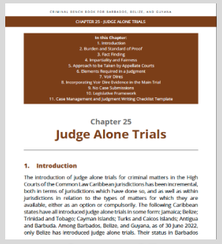

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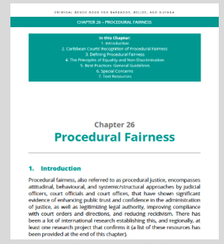

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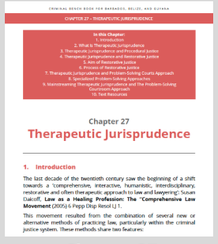

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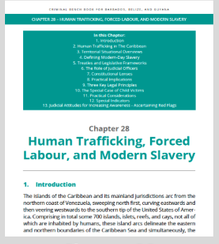

Chapter 28

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Indigenous and Tribal Peoples' Rights and Access to Justice in Six Caribbean Countries

The below is an adaptation of the synthesis report commissioned by the JURIST Project.

While they feature somewhat in intergovernmental standards and policy processes within the CARICOM (e.g., reparations discourse and the Charter of Civil Society), indigenous and tribal peoples ("ITPs") have largely been excluded from the official history of the Caribbean and the (colonial and post-colonial) processes of state-building in the region. They also were largely left out of the process of setting national constitutional and other standards and their rights have not been adequately secured in law or practice across the region. **For this reason, the CARICOM Reparations Commission described ITPs as "... the most marginalized social group within the region**." Human rights law provides the parameters and a set of transparent norms and legal obligations to begin to repair this situation. This does not rest solely on – and nor should the focus only be – the sins of the past by colonial others, but, instead, provides the means, nationally and regionally, for sustained dialogue between Caribbean states and ITPs and, more importantly, action to address their rights and concerns within the context of contemporary norms and common aspirations.

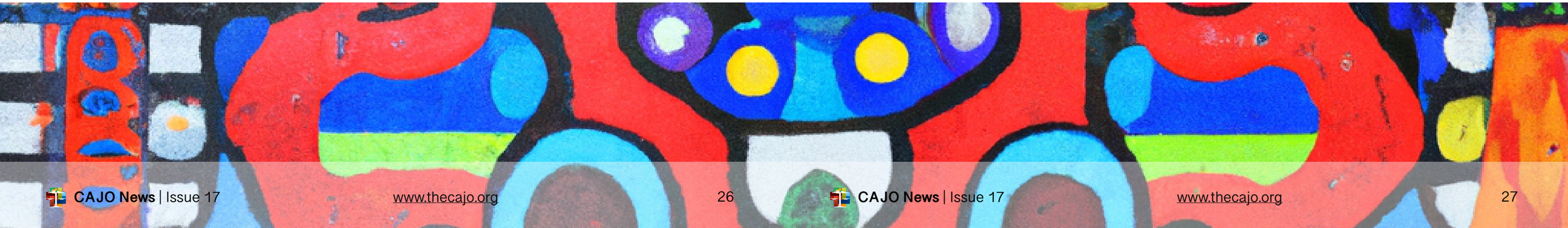
The Judicial Reform and Institutional Strengthening (JURIST) Project sought to remedy the lack of information about ITPs in the Caribbean, inter alia, by collating baseline data on ITPs' rights and priorities in the six above-mentioned countries, all member states of the CARICOM. It commissioned six-in-country studies to start this process, each written by an expert in consultation with ITPs' organizations and communities. **Focused on ITPs' rights and access to justice, the 'synthesis paper' seeks to: 1) summarize the relevant international normative framework and its requirements and implications; 2) synthesize the information presented in the six 'in-country baseline studies' commissioned under the project, identifying common or divergent themes and issues; and 3) articulate conclusions and recommend possible ways forward, including as related to ITPs' priorities**.

The normative framework is drawn from both regional or domestic standards and from international and regional human rights law. In these standards, access to justice generically includes the following elements: a normative legal framework; legal awareness; access to appropriate fora; and the effective administration of justice. The jurisprudence of the inter-American human rights system is highlighted in this regard, especially the 2015 judgment of the Inter-American Court of Human Rights in **Kaliña and Lokono Peoples v Suriname**, as are various provisions of the UN Declaration on the Rights of Indigenous Peoples and various UN and other studies on ITPs and access to justice.

At a bare minimum, states are obligated to recognize and secure ITPs' rights in law and the remedies provided should offer "a real possibility ... to be able to defend their rights and exercise effective control over their territory." **The UN Expert Mechanism on the Rights of Indigenous Peoples adds that ITPs "must have access to justice externally, from States, and internally, through indigenous customary and traditional systems.**" As with other standards, this is consistent with ITPs right to self-determination, which requires that they can continue to use their legal and juridical systems internally as well as to have equal access to those of the state.

These standards include key reference points, such as basic recognition as ITPs; recognition of collective legal personality and standing; whether rights have been recognized in law, beyond the mere possibility of recognition of (inchoate) rights through a judicial process; the existence of colonial era or other doctrines that negate or impair rights; whether remedies are accessible, prompt, appropriate and effective; if human rights law related to ITPs is applied by the judiciary; whether the judiciary adequately upholds ITPs' rights; if ITPs' internal justice systems are recognized; if ITPs-specific land titling and/or other administrative mechanisms or processes exist and are effective; and the extent to which the rights of ITPs women and girls are recognized beyond the general individual rights framework. These are discussed in relation to the situation in each of the six countries under review.

The in-country studies and secondary materials illustrate, albeit to differing degrees, that none of the six countries comply with most, if not almost all, of the relevant standards .



For instance, only one country (Dominica) recognizes the collective legal personality of ITPs, and this is largely coincidental, whereas the only other to do so (Guyana), at least to some extent, has confined recognition to institutions of the state's design and legal personality is unjustifiably restricted only to individual villages. Likewise, Guyana and Dominica have dedicated laws and institutions, albeit strongly criticized by human rights bodies, whereas Belize and Suriname are in the process of drafting or enacting legislation that could represent a large step forward if enacted and implemented. Guyana and Belize also have some form of constitutional protection. SVG and T&T, while occasionally referring to ITPs, have yet to formally recognize their legal status and rights beyond rare ad hoc and discretionary statements or, more infrequently, limited action.

The synthesis paper concludes with a set of recommendations, listed immediately below as well, mostly generated in specific discussions with ITPs in the six countries. One recommendation not discussed at the country level is that, in the short-term, a baseline study like those synthesized here should be commissioned on the legal status and rights of Maroons in Jamaica. In terms of follow up on these recommendations, members of the JURIST project ITPs Steering Committee should be contacted, individual or collectively, to discuss specific in-country or regional initiatives. The recommendations are as follows:

Capacity building: Most of the in-country studies prioritize and recommend education and training on ITPs' rights, both for ITPs and their institutions and for public authorities, including police, judicial officers, and lawyers/bar associations. This also includes capacity building measures specifically directed at strengthening ITPs' juridical systems and institutions, including on the role of customary law. While this can be done on an ongoing basis, particularly if attached to a Continuing Legal Education or other certification programme, some can also be done in the short-term, e.g., support for specific trainings organized by ITPs alone or in conjunction with others (e.g., exchanges with ITPs in other countries, developing courses or programmes with university departments (UWI would seem to be a logical partner in this respect)). These can be about general rights issues, issues of relevance locally (e.g., proposed legislative enactments in Suriname and Belize, agreeing on and proposing legislative amendments in Guyana and Dominica, seeking strategic advice on issues related to rights recognition, etc.).

Informational Materials and Documentation: Related to capacity building, other short-term priorities and initiatives include the development of capacity building and educational materials concerning access to justice for ITPs. This is both user friendly information for ITPs and information to explain critical issues to policy makers and the legal profession. For instance, developing written and visual materials that explain how the right to cultural heritage and way of life in Guyana's Constitution should be understood from an indigenous perspective and using specific examples may greatly assist in upholding this and other rights, both per se and in relation to other areas, such as the land titling process.

- **The South Rupununi District Council in Guyana has already collected a great deal of relevant information and supporting it to both write up this information and to develop specific visual materials would be the most efficient means of starting such an initiative, one that can be easily scaled up to other regions of Guyana (and beyond given the ongoing development of cultural heritage rights in international law).**

- **Similarly, in the case of T&T, support could be provided to collate anthropological and other materials that substantiate traditional ownership of lands and to frame these in legal terms that may allow for a sustained dialogue with the state aimed at securing an adequate area of land in which indigenous people determine what initiatives may be executed.**

- **More broadly, specific materials could be developed on the rights and roles of ITPs women in relation to access to justice, both for policy makers and the judiciary and for ITPs internally (e.g., in relation to the issues identified in Dominica set out below). This could include specific explanatory materials on the soon to be finalized CEDAW General Comment on the Rights of Indigenous Women and Girls as well as how to understand women's rights in relation to the UNDRIP and in the light of intersecting forms of discrimination.**

Alternative Dispute Resolution, Paralegals and Legal Aid Centres: In the mid-term, recommendations identify the need for specific ITPs' alternative dispute resolution mechanisms that support ITPs and whose decisions are respected by state bodies and procedures. There are models, both traditional and statutory, that could assist in developing such mechanisms. Longer-term priorities and recommendations include training of paralegals to support ITPs and the establishment of legal aid centres that are accessible and responsive to ITPs. In the author's experience, paralegal training programmes work best when anchored to ITPs' organizations that have a strong relationship with their constituent communities and that have some degree of long-term, secure funding.

FPIC Protocols and Legislation: Several studies highlight the need for the development and implementation of FPIC Protocols. These would be developed by communities, sets of communities or territories as a means of informing external actors about the way consultation, participation and FPIC shall take place for activities that may affect the lands and lives of the people in question. Other than specific activities related to new enactments (Belize and Suriname) or proposed amendments (Dominica and Guyana), such as capacity building, support for gatherings, and technical support, initiatives related to legislation are likely longer-term advocacy initiatives (SVG and T&T), although they need not be if there a specific aperture that may allow for more immediate action (e.g., simply drafting a bill and then seeking political support for the same). In the case of Suriname, a series of subsidiary laws will also be drafted to give effect to the Framework Law should be enacted in its current form.

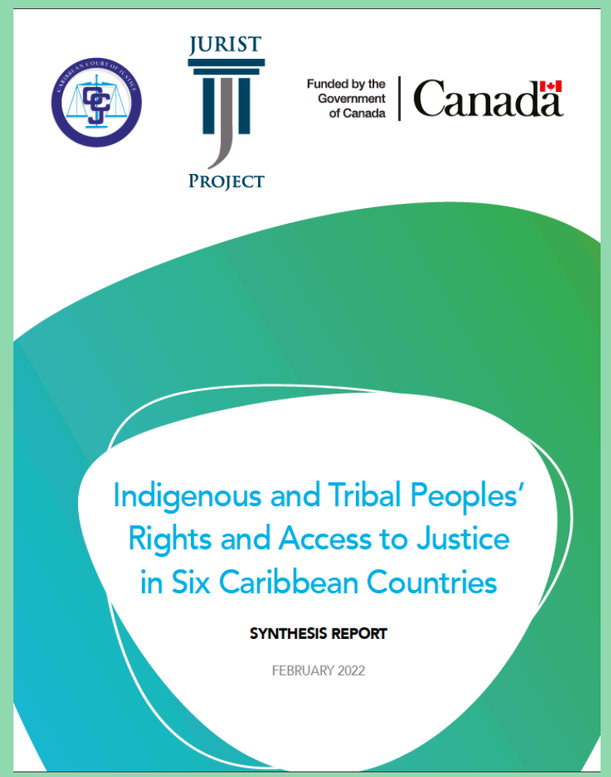
Traditional Knowledge and Intellectual Property Rights: Some of the studies highlight the need to develop legislative and other measures to address the lack of protection for ITPs traditional knowledge and intellectual property rights as well as initiatives aimed at correcting perceived violations of associated rights in some instances. This also crosses over to some extent with cultural heritage and other rights. In some of the countries under review some of the issues may also be addressed in by-laws or rules adopted by ITPs or, at least initially, by policy instruments where this is not possible. It makes sense that this could be one area of follow up in the light of Article 66(c) of the Revised Treaty of Chaguaramas (concerning "the legal protection of the expressions of folklore, other traditional knowledge and national heritage, particularly of indigenous population in the Community") and, while only applicable to Dominica, Article 23 of Revised Treaty of Basseterre (2011). The Convention on Biological Diversity is also relevant in context. This provides a regional level opening to develop specific measures within the confines of existing law and procedures as well as to ensure that ITPs are fully engaging any regional process or mechanisms and any resulting national processes. For example, a model law and/or regulations could be developed by ITPs and used to seek national-level action as well as regional actions to the extent necessary or desirable, even more so given that this is part of the economic union of the CARICOM.

Caribbean Network of Indigenous and Tribal Peoples. Engaging at the Regional Level: While ITPs all have pressing concerns nationally, sharing and organizing at the regional level is also important. This may mean organizational meetings in the short-term and sustained institutional support in the mid- to longer-term. For instance, supporting a regional voice for ITPs may assist with promoting an ITPs perspective in relation to the CARICOM Reparations Commission and its activities or about regional action on traditional knowledge and intellectual property rights as proposed above or in the next section. The same may also be said in connection with the clarification and operationalization of the meaning, scope, and utility of Charter of Civil Society as it relates to ITPs, including the meaning of 'historical rights' and how the states should be undertaking to respect ITPs rights, both "historical" and in contemporary human rights law. It will also likely facilitate greater exchanges within the region as this at present is ad hoc and patchy. Assistance to ITPs to engage in direct dialogue with e.g., the Conference of Heads of Judiciary of CARICOM and the CCJ could also be important. The same is also the case with the UWI, particularly its law faculties, to promote additional course work, seminars, and support to ITPs.

Beyond the Caribbean region, it is also important for ITPs and Caribbean institutions to engage with the organs of the OAS that are concerned with ITPs issues and human rights more broadly (e.g., but not limited to, the IACHR, IACTHR, Inter-American Institute for Human Rights and the General Secretariat of the OAS via the Office of the Secretary General). This would be mutually beneficial as a greater understanding of issues in the Caribbean, explained by persons from the region, will enable OAS institutions to be more responsive to needs identified in the region (including a better understanding of the relative roles of the CCJ and the IACHR and the IACTHR).

Conversely, a greater understanding of OAS jurisprudence in the region and greater collaboration would facilitate increased attention to access to justice issues as they relate to ITPs. Likewise, the extensive experience of many OAS member states, in all regions, provides invaluable background, learning and potential models that may contribute to positive advances for Caribbean states and ITPs.

Jurisprudence Compilation: To assist ITPs in the region to engage with human rights bodies and the judiciary on human rights issues, a compilation of UN jurisprudence and recommendations concerning the countries under review would be helpful and an important resource. Such a compilation would not require much work and can be updated as new information comes in and is a short-term initiative beyond supporting the entity that would be responsible for updating and dissemination. This could include ensuring that constituents are informed of important jurisprudential developments from within and outside of the region.



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BBNJ High Seas Treaty: In the Negotiating Room with Jeremy Raguain

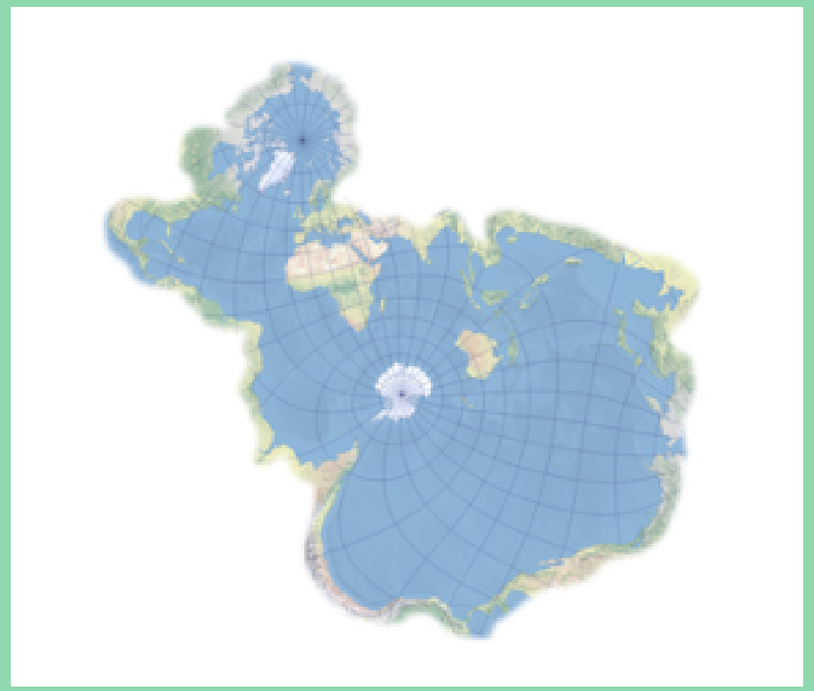
by Christie Borely and Chelsea Dookie

The climate conversation is getting heated. Chatter on the wind reckons the droughts, the floods, the food insecurity have all got something to do with our human impact on the environment. Even amid multiple geopolitical conflicts, nations are convening to discuss the same concerns—safeguarding the planetary future.

Half a century after the term “environmental justice” was coined, COP27 heralds a new era of accountability for loss and damage sustained by the most vulnerable. This has been closely followed by Vanuatu’s advance to the World Court seeking an opinion on climate change obligations.

In March 2023, the world convened again to negotiate the first international agreement on ocean protection since the 1982 UN Convention on the Law of the Sea (UNCLOS). The High Seas treaty, or the BBNJ (Beyond Boundaries of Natural Jurisdiction), is the culmination of decades-long negotiations to protect the currently unregulated use of the world’s oceans. **On 19 June 2023, the High Seas treaty was adopted by consensus.**

The CAJO Environmental Sub-committee has had the privilege of being transported into the negotiating room through the first-hand account of Alliance of Small Islands States (AOSIS) fellow and Seychelles’ Permanent Mission to the United Nations’ Climate Change and Ocean Advisor, Jeremy Raguain.



World map according to fish. Source: https://southernwoodenboatsailing.com/news/the-spilhaus-projection-a-world-map-according-to-fish

Meet Jeremy Raguain

Jeremy Raguain is a Seychellois environmentalist making pragmatic and sustained efforts toward terminating the climate threat. As an AOSIS fellow and Seychelles’ Permanent Mission Advisor, Jeremy has represented the interests of SIDS and the Global South at several global policy convenings.

He worked for several years with the Seychelles Islands Foundations which manages two UNESCO World Heritage Sites and another nature reserve. Here, Jeremy led communications and education and outreach programmes to promote environmental conservation.

He is a Global Shaper, Sustainable Ocean Alliance Young Ocean Leader and is currently pursuing a Master’s degree in Public Administration and Environmental Science and Policy at Columbia with the aim of deepening the scientific research and strong policy that accentuates his advocacy.

Like many small islanders, Jeremy has the sense of being raised by the ocean. Even with his depth of knowledge and experience within high-level dialogues, Jeremy's on-the-ground conservation work underscores his concern for local vulnerabilities to climate change. Jeremy sees the High Seas treaty as critical to the millions of people living within AOSIS. He considers the depletion of the wealth of this natural resource an existential crisis. Read more on Jeremy and his advocacy here.

High Seas and Small Island Developing States (SIDS)

The UN defines Small Island Developing States as a distinct group that face unique social, economic, and environmental vulnerabilities. The Caribbean is one of three major geographical locations in which SIDS are located.

SIDS have been recognized as having special circumstances since 1974. Jeremy highlighted some of these special circumstances and structural characteristics including remoteness, smallness in terms of land mass, and economic and cultural dependency on fisheries and tourism. The High Seas serves as the maritime border for most SIDS. These special circumstances and proximity to the High Seas make them particularly vulnerable to High Seas' issues like pollution and overfishing.

The negotiations for a BBNJ Agreement address the four topics agreed in 2011, broadly: (i) marine genetic resources; (ii) area-based management tools; (iii) environmental impact assessments; and (iv) capacity building and the transfer of marine technology.

Having worked with AOSIS in the negotiations, Jeremy was able to provide insight on how SIDS were represented. As a negotiating bloc, AOSIS came to a consensus on one of the four topics: capacity building and transfer of marine technology. CARICOM and the Pacific Small Island Developing States (PSIDS) represented SIDS' interests in terms of area-based management tools including very protected areas and environmental impact assessments, marine genetic resources, finance and governance.

From Jeremy's viewpoint, the representation of issues from these two regional groups was cogent and skilful resulting in several "wins" for SIDS. The treaty's General Principles and Approaches under Article 5(l) reads, '(l) Full recognition of the special circumstances of small island developing States and of least developed countries.' This provision makes express the unique positions, needs and vulnerabilities of SIDS in carrying out the Treaty's objectives.

He considers this to be a win because 40 years ago when the United Nations Convention on Law of the Sea (UNCLOS) was decided, most SIDS were not independent States but were colonies and were therefore not represented in UNCLOS. Recognition under Article 5(l) is novel and quite promising for SIDS.

The acrobatics of negotiations

Representing a small island developing state at the negotiations was bound to come with challenges. Jeremy emphasised that Seychelles, like many SIDS, has overlapping interests and obligations. The island nation is also part of the African continent and therefore is represented within the African SIDS negotiation bloc. While these different blocs may be seen as a strength in positioning, it also carries the weakness of resource and personnel limitations. Put simply, what is already a small delegation with limited funding must find itself in separate rooms with split focus on distinct issues of high complexity. Jeremy describes vividly the sizeable teams from the Global North with issue-specific expertise benefiting from the advantage of rest, accessibility and focus in the negotiating room. The disparity in resources also manifests in that global "big guns" have access to information, legal teams solely for the purpose of the High Seas negotiations, access to university research, renowned legal firms, resourcing for months of preparation, and general logistical advantages which the SIDS teams may not enjoy. Naturally, this puts larger, high-income States at an advantage even before stepping into the negotiating room. Jeremy also experienced the ferocity of non-stop negotiations and even participated in negotiations for thirty-six hours on one hour of sleep. He speculates that this is a strategy of larger teams to tire out smaller teams, forcing them to give in.

Jeremy cited the recurring plight of SIDS – limited resources. The negotiations are a completely different experience for those who are, as Jeremy describes it, "money-funded" versus those like him who are "passion-funded." Fortunately, Seychelles can boast legacy and expertise when it comes to marine protected areas. 32% of its exclusive economic zone (an area the size of Germany!) is already protected. This backing of science and local knowledge proved to be powerful factors of persuasion.

Finding a voice

Though it may be easy to label SIDS the "little guy", the value of standing their ground and speaking up was demonstrated throughout the negotiations. From Jeremy's perspective, CARICOM was well-represented, especially in the areas of marine protected areas and environmental impact assessments. One of Jeremy's takeaways was that when the Global South is united, there is mutual and complementary support between larger and smaller states e.g. Seychelles as a blue economy champion had the expertise to inform the positions of the African Group. In this way, bargaining power is augmented. Jeremy supports the opinion of Ambassador Michael Kanu, head of the African Group that this treaty is ambitious, especially because it seeks to protect 50% of the Earth's surface. He points out that this multilateralism is happening at a time when there are several geopolitical conflicts across the globe. Jeremy, ever passionate, states that 'Ambitious is also one of the words that I think we need to, as the Global South, own because we are dealing with powers that are beyond us,' speaking to the issue of inequity of resources.

Monitoring the vastness

The High Seas treaty seeks to address approximately 50% of the world's surface. This vastness naturally poses a great challenge in creating credible enforcement mechanisms. Jeremy envisions that monitoring the activity on the High Seas will present logistical challenges and could involve satellite data, boats, aircraft, research bases, and other infrastructure.

Jeremy emphasises that the existing international ocean governance framework is not being undermined by the High Seas treaty. Going forward, the attempt of the Treaty is to fill gaps and provide a system of effective collective action. This will require a spirit of cooperation and collaboration to achieve all internationally accepted aims.

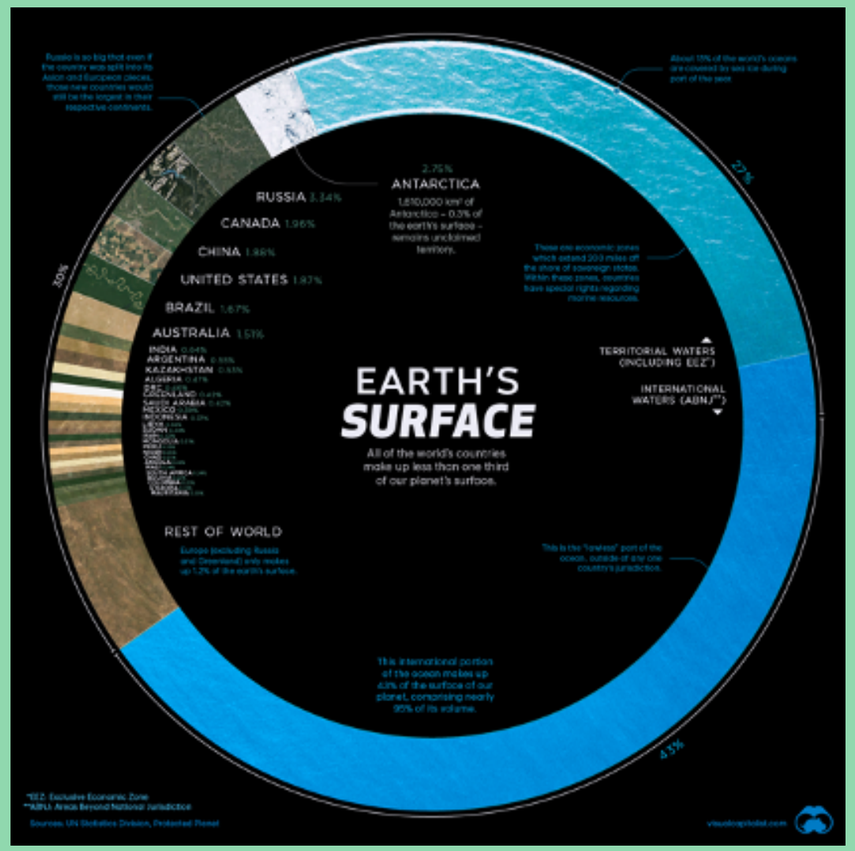


Image source: https://www.visualcapitalist.com/countries-by-share-of-earths-surface/

This vastness naturally poses a great challenge in creating credible enforcement mechanisms. Jeremy envisions that monitoring the activity on the High Seas will present logistical challenges and could involve satellite data, boats, aircraft, research bases, and other infrastructure.

Jeremy emphasises that the existing international ocean governance framework is not being undermined by the High Seas treaty. Going forward, the attempt of the Treaty is to fill gaps and provide a system of effective collective action. This will require a spirit of cooperation and collaboration to achieve all internationally accepted aims.

A call to action

There is much more to go – ratification, action and enforcement. Given the limits of resources of the small island negotiating groups, Jeremy shares his gratitude for the informal assistance of lawyers in the group's networks. In preparation for future negotiations the support of scientists and lawyers from the SIDS and the Global South will be critical. Scientists provide the evidentiary justifications for protection based on current and predicted environmental impacts. Lawyers ensure these protective provisions are formulated to take effect in law.

To support these aims, there is pressing need for a network of environmentally aware and experienced legal practitioners.

Inspired to contribute? Get together! Build your community! Stay informed! Follow these existing environmental networks making waves in the region:
https://twitter.com/AOSISChair
https://islandinnovation.co
https://climatetracker.org
https://cesarejournal.org

About the Authors

Christie Borely is a writer and attorney at law. Follow her work by clicking here.

Chelsea Dookie is an attorney at law and Judicial Counsel at the CCJ. Follow her work here.

Focusing on Climate Action: An Interview with Kamila Camilo

by Christie Borely and Chelsea Dookie

Kamila Camilo is a Brazilian activist and social entrepreneur building bridges between large organizations (such as Google, Alpargatas and Grupo Votorantim) and popular initiatives to develop open innovation projects, social responsibility strategies and ESG strategies and initiatives with a focus on climate action. After 5 years engaged with the communities of the Amazon Rainforest as a volunteer in social projects, the idea of the "Creators Academy" was born.

We sat down with her to hear the story of its creation and her plans for its future

Can you tell us about your project, Creator's Academy?

Youth has been the voice behind the global movement around climate.

So Creator's Academy is this immersive experience mostly for journalists, content creators, civil society leaders that are creating change on the ground, to get together and learn from people who are more affected by climate change.

The thing is, our brains register negative emotions which come from negative experience 2.5 times faster and stronger than the positive ones. So to change people's behaviours through experience we need to expose them with high frequency and really impactful good experience. Creators Academy is this thing. For one week over one hundred people get together living the best experience within a Brazilian biome. Since last year we were working in the Amazon region, because in Brazil it's a huge region and there are different communities there. And during the experience we provide them with lots and lots of moments to reflect, feel and share. First thing we try to promote something that the body can register then we go to the mind to understand what the body is feeling and we invite them to share their experience with their audiences in different content formats to reach as many people as possible. And now, we are every week receiving messages from digital influencers from all over the country saying "I want to do this.", "I want to be with you guys.", "I need to learn more about Amazon.", "I want to be involved in sustainability topics.", "How can I make something to help you guys?" And I think we are creating this movement.

Can you share a success story from last year's Creator's Academy?

We had some really powerful connections between the local communities and our participants. In the community there lived this boy. He was, I think seventeen at the time of the experience. And he was asking a lot of questions to the creators, like, how do you edit this video? Which is the best way to create something? How can I express myself on camera? And things like that. Long story short, he started an Instagram and a TikTok page to share the community's stories. So he is interviewing people in the community, making videos for the local tourism agency published on the internet. And he really is becoming a creator for his community. So I think this is the best story ever because the idea was that people from the Amazon having their voices raised and heard and helping them to step up and just share.

A snapshot of the Creator's Academy website

Click the image to view the interview with Kamila

What impact do you hope to have?

Best practices. What we should do as a society. What is the behaviour revolution that we need to put into our lives? I think the influencers and celebrities, they are a powerful tool to help people understand how we can tackle climate issues on a societal level

.

What do you think could be done to expand your initiative? Can the Caribbean play a role?

One thing that we are trying to develop is the methodology that can help other parts of the world, like other communities and countries to have their own Creators Academy to help mobilise society. So I think that as a brothers and sisters regions we can share our experiences and help our societies get more involved and mobilise. As a region with a lot of tourism and receiving so many people that are travelling all around the Americas, the Caribbean society has this power to educate people. So this is one way I think we can work together. And the other thing is that the climate view, if you look at the Caribbean region, and if we really had this methodology, where it was structured and ready to be replicated, we can raise awareness around climate issues on the Caribbean region from Caribbean communicators, you know influencers, content creators, to the Caribbean society.

What are your long-term goals for the initiative?

Mobilise as much communicators as possible because they are shaping minds around everything, especially consumption. The long term goal is to change how people behave relating to consumption. This for me comes from having awareness of the impact of your decisions. We want to help people hold themselves accountable for their consumption decisions and these decisions' impact on the environment.

Follow the Creators Academy journey 2023 here:

@creatorsacademybrasil

@kamila_camilo

The Usefulness of Mindful Judging

Judicial officers play a critical role in the administration of justice. In the dispensation of their multifaceted role, they are required, and certainly mandated by the principles of integrity and fairness, to engage all faculties. Thus, **a judicial officer's awareness must be a 360-degree one**, that is to say, they must be aware of what is going on internally and externally, in the contexts of both themselves and their courtrooms. In 2019, Justice Peter Jamadar and Elron Elahie conducted a small-scale exploratory research project on mindfulness, or intentional awarenessing; examining the impact of a 27-day practice on the awareness of judicial officers in Trinidad and Tobago. **The data shows that by practicing intentional awarenessing, which is premised on the principles of mindfulness, judicial officers become more aware of and attuned to what is going on within themselves and in relation to their behaviours, as well as what informs the court systems and processes and the reality of the unfolding dynamics in their courtrooms**. Indeed, in relation to the discharge of core judicial functions, and as well in relation to the elements that constitute procedural fairness, the data demonstrates compelling beneficial effects of the practice.

These results thus significantly call for immediate attention to and deeper interrogation into intentional awarenessing as a tool to enhance the administration of justice.

We are convinced by our research that mindfulness, as intentional awarenessing, can be an aid to enhancing the in-court performance of the judicial function, and likewise by extrapolation the effectiveness of any and all decision makers actively involved in the process of engaged decision making.

The research specifically explores the usefulness of Mindfulness, as Intentional Awarenessing (an alternative formulation can be Intentional Noticing, though we hold the view that 'noticing' does not quite capture the experiences and effects that Awarenessing does), as an aid to judicial officers in the discharge of their judicial function in Trinidad and Tobago, and specifically for the exercise of this function in the courtroom. Though the actual research was carried out with a relatively small number of judicial officers in Trinidad and Tobago, it has direct implications for all Anglo-Caribbean judiciaries and common law jurisdictions where judicial officers share similar contexts and responsibilities. As such, our research can contribute to the improvement of the judicial function across a wide variety of intra-judicial and inter-territorial jurisdictions, and it is offered with that intent.

Certainly, the data offers a convincing case for the impact of intentional awarenessing on the dispensation of judicial function to be further and more widely probed. Indeed, its scope may even include all those who exercise judicial or quasi-judicial functions whether within formal court systems or otherwise. Intentional Awarenessing is the term that we will use in this exploration and discussion for the process that was tested, though its historical and current underpinnings are in the practice of what is widely known as Mindfulness. Indeed, the term Mindfulness was used in the research project itself, and we acknowledge and uphold that value and the traditions from which it comes. We have chosen this descriptor, Intentional Awarenessing, because it identifies the two core aspects of the practice tested, intentionality and awarenessing. Both of these may be considered innate qualities and capacities of the human mind, i.e. to be able to pay attention and to be aware. Indeed, these are universal human characteristics. In our opinion, **the data strongly suggests that the regular practice of Intentional Awarenessing by judicial officers, can lead to improved and enhanced courtroom function and experience, with consequential constructive effects for judicial officers, court users, and the administration of justice**. In our research usage, intentionality refers to the positive and conscious intent that a judicial officer brings to bear on critical elements related to the discharge of their judicial functions. The value of 'intentional attention' has been recognised by the Caribbean Court of Justice in **Calvin Ramcharran v DPP of Guyana [2022] CCJ 4 (AJ) GY**: "Sentencing deserves and demands placing specific focus, attention, effort and care on the process and outcomes of sentencing, immediate and long term, and as well for the parties and the wider society. Intentional attention to sentencing is vital."

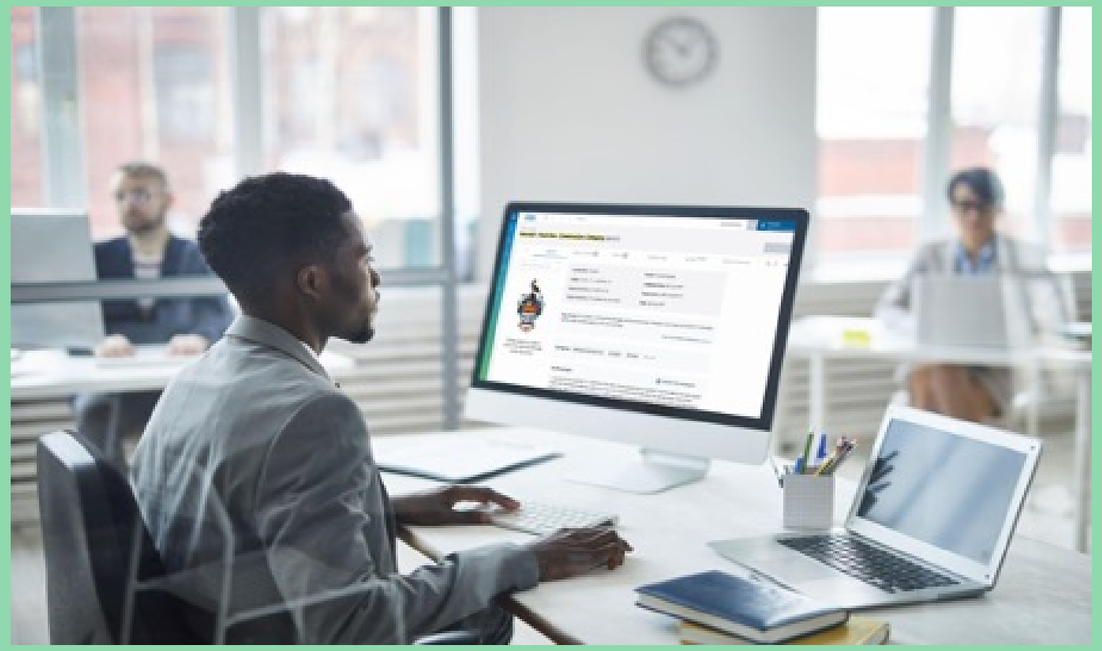
To read the full report and explore the data, visit: **https://betteringjustice.com/mindful-judging**

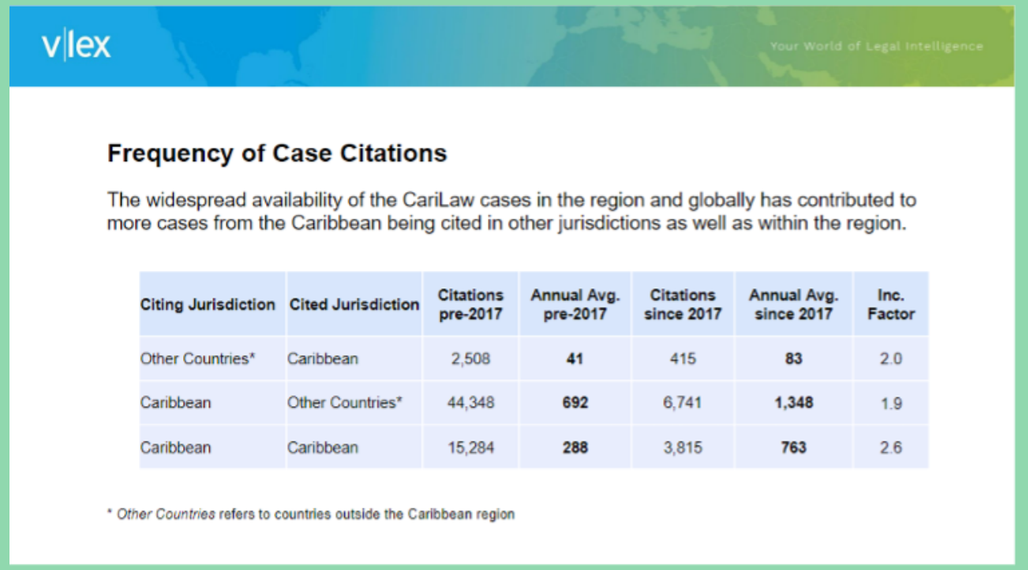
Enhancing Public Access to Caribbean Law

Masoud Gerami, Managing Director of vLex Global Markets

Since its inception in 1998, vLex has sought to enhance public access to the law through the development of its intelligent legal research platform, as well as its suite of AI-powered technology. Today, the vLex platform is home to the largest collection of legal and regulatory information in the world, and it is the leading platform for international and comparative research, which has proven to be beneficial for over 8,000 legal professionals in the Caribbean using vLex's services.

In 2017, vLex, formerly Justis Publishing, sought to expand its coverage and promote greater access to Caribbean law through a collaboration with the University of the West Indies (UWI). As a result of this partnership, vLex became the exclusive host of the complete CariLaw collection, which has since been combined with vLex's own historic coverage to create the largest collection of Caribbean law available anywhere online. This pivotal partnership had a significant impact on the usage of the CariLaw series. In the first three years, subscriptions to the CariLaw collection grew by 188%, with legal professionals in 28 countries - 10 outside of the Caribbean - accessing CariLaw for the first time.





Improving worldwide access to Caribbean case law

vLex's connected platform offers over 440 million citation links between documents to help researchers seamlessly navigate between related primary and secondary law. The CariLaw cases on vLex are similarly enriched, with links to relevant documents from around the world enhancing their visibility and promoting greater access to Caribbean law.

As the CariLaw collection has spread globally, this has positively influenced the frequency of case citations, as hundreds more cases from the Caribbean are now being cited within the region and globally. During the first few years of CariLaw being available on vLex alongside case law collections from other common law regions, the following changes occurred:

- The number of cases from Caribbean countries citing other Caribbean cases increased by 2.6 times.
- The number of cases from Caribbean countries citing cases from outside the region doubled in number.
- The number of cases from countries outside the Caribbean citing the Caribbean cases also doubled in number.

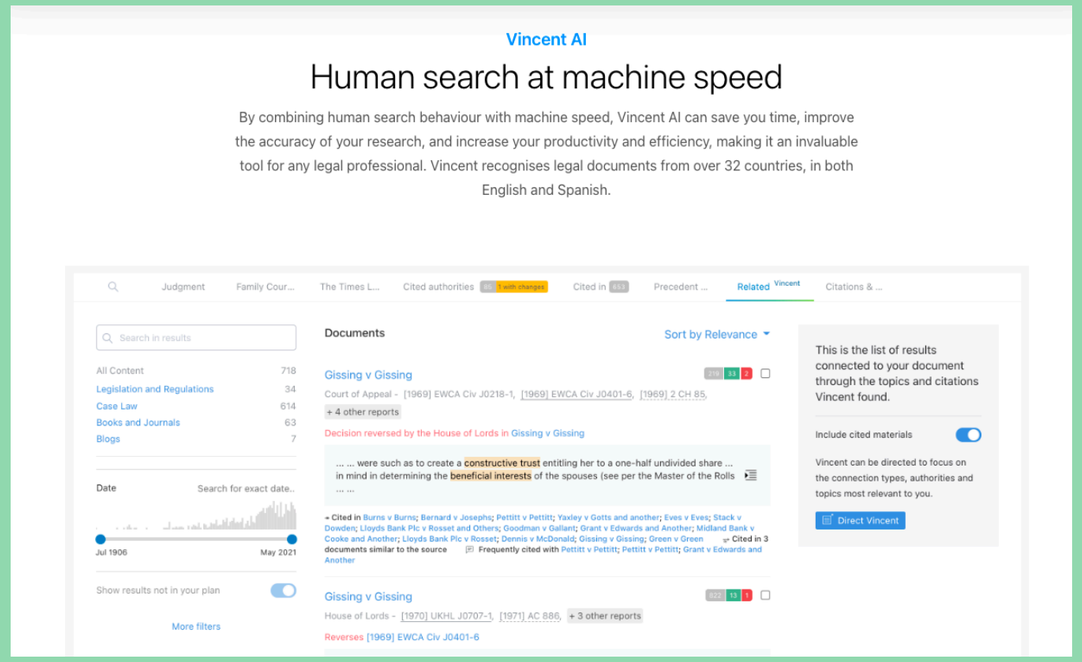
The ease of access and the connectivity between related materials on vLex have been the main influencing factors in the above changes - the most significant of which is the wider spread of the Caribbean jurisprudence globally.

Using AI-powered legal technology to enhance comparative research

On vLex, comparative research is assisted by innovations such as the award-winning legal research assistant, Vincent. Designed to mimic human search behaviour at machine speed, Vincent can analyse legal documents and return highly relevant research results in seconds. As well as finding all in-text references and citations, Vincent also finds documents that are semantically similar, and on the same points of law, to help researchers navigate an ever-growing corpus of global legal information and save time on research.

“Research that would normally take hours now takes minutes.” - Library Manager and Executive Director, Waterloo Region Law Association.

In 2020, vLex conducted research in partnership with Mishcon de Reya, a London-based law firm, and identified a clear trend of lawyers and courts looking to and relying on judgments from different jurisdictions as persuasive authority. As a result, Vincent’s capabilities were enhanced, enabling the intelligent assistant to recommend related documents across different jurisdictions, to help lawyers build better arguments using on-point cases and persuasive authorities.



Another recent update to Vincent included an unprecedented case analysis feature, which established powerful new standards for legal research. Large language model technology was used to enable Vincent to generate headnotes and summaries on cases, and also read and extract the key legal issues from a judgment. This significantly enhances the search capabilities of legal professionals, allowing them to interact with more documents from around the world, navigate to the right case without needing to read the full judgment, and conduct comparative research, quickly and efficiently.

Supporting the future of Caribbean research

vLex has invested decades in developing its legal technology and establishing partnerships with content providers worldwide to ensure its intelligent platform offers up-to-date and comprehensive global coverage. With over 100,000 legal documents added or edited on vLex each day, and millions more added to the platform each year, the unrivaled legal database is constantly evolving to meet the needs of its global audience.

Following the success of the CariLaw collection on vLex, and the continuation of the valued partnership with the University of the West Indies, vLex has made further investments in Caribbean content that will be coming to the platform soon to promote greater public access to Caribbean law. Visit vLex today to learn more.

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Reflections on Judicial Education

by Justice Peter Jamadar

Deep dives can produce expanded understandings, clarity, and insights. Being immersed for two weeks in June, in Halifax, at the Dalhousie University Law School, for the study leg of the Commonwealth Judicial Education Institute's, Intensive Study Programme 2023 (ISP), has prompted the following reflections on judicial education.

It was an inspiring and meaningful experience. We explored and interrogated cutting edge adult education theories and practices as well as legal topics, well supported by eminent Dalhousie faculty. Teaching and learning together in dynamic settings, and in a fully equipped IT learning classroom.

Co-creation of knowledge, teaching-learning through interactive engagement, and applying acquired knowledge in peer reviewed practicums, were well received and highly commended. A true educational treat and adventure. Importantly, this study leg was also combined with social events, both formal and informal.

More and more, and as we continue to emerge out of the pandemic mindsets and circumstances, I recognize the special teaching-learning value of in-person judicial education sessions. Throughout the pandemic the use of virtual programmes was the only viable option. We all benefitted. And virtual judicial education remains a viable and effective modality. However, returning to in-person teaching-learning sessions, especially for deep dive immersive programmes such as the ISP, has made the unparalleled and unrivalled advantages of in-person training poignantly apparent.

One such advantage is the cultivation and rewards of professional teacher-learner intimacy. **There is something that happens between facilitators and participants and among them all as a group, that is directly linked to inter-relational presence. This is not a flight of my imagination, as the research confirms that adults learn best when they are in positive emotional states and when they are happy**. Indeed, LaFever's recognition of the 'spiritual domain' and Fink's of 'caring' and 'human dimensions' as significant for enhanced learning, reveal the importance of paying attention to relationships, and a sense of belonging and connectedness, and individual and group awareness and knowledge about themselves and others and valued interests, in the design and delivery of judicial education. Indeed, paying attention to these factors facilitates deep learning, because participants are more likely to be engaged, made curious, make connection to real life situations, and discover meaning.

At the ISP we create a relaxed yet intensely focussed approach to teaching-learning, a positive, non-judgmental, welcoming ambiance, spaces for individuals and groups that are safe and confidential, and which I have found that in-person opportunities can meaningfully provide. In my experience the deep learning experiences are truly remarkable, and this is facilitated by what I have recognised and explained as and call the cultivation of professional teacher-learner intimacy.

A second insight that the ISP 2023 emerged for me, was the value, even necessity, of reflective learning pauses. By this I mean, **consciously designed opportunities that are created for participants to have spaces to pause and reflect on materials, ideas, and subject matter content. These pauses can be facilitated in multiple ways. I have found that too often judicial education programmes are designed to try and 'fill-up' all spaces with activities. In my experience, which the ISP confirmed (both in is deficits and accommodations), adult learners in the judicial education setting enjoy reflective learning pauses to mull over materials and information offered and insights that arise**.

A third insight is how effectively in-person group discussions, projects and assignments, and individual peer reviewed demonstrations of taught materials, facilitate active and applied learning in judicial education. Truly, adults demonstrably learn best through doing! In fact, as a facilitator, it never ceases to amaze me how this process enables the co-creation of knowledge through the teaching-learning process and participants applied and peer reviewed demonstrations. Insights emerge for everyone, including facilitators. And importantly, observable behavioural change begins to occur.

Fourthly, I was struck by the enduring aptness of the CJEI's model for holistic judicial education. Classically know as ICEE, the acronym refers to a template for core and overarching areas of judicial education, that ought to be addressed in an optimum judicial education agenda that intends to achieve judicial excellence in the delivery of justice by any Judiciary.

The acronym describes the areas of Impartiality (which includes independence and integrity), Competence, Efficiency, and Effectiveness. Judicial Wellness has been added as a fifth component. The idea is that the template serve a twofold purpose: (i) as an evaluative and analytical tool, and (ii) as an educational and instructional tool. In the first instance, it is used to determine gaps (using the five areas as lenses) between the reality in a Judiciary and the ideal that that Judiciary aspires to be (its ideal Judicial model). In the second instance, it is used to address the needs identified in the first exercise by education and instruction in any areas of deficit (in all of the five categories – ICEE + Judicial Wellness).

Two things have struck me about the template. First, it is both applicable to individual judicial officers and also to the institutional makeup of a Judiciary (its cultures, systems, policies, and practices). That is, in identifying gaps between reality and the ideal, the template must be applied to both the performance and behaviours of individual judicial officers and to the Judiciary as an institution. Second, the required evaluations and interventions will always be ongoing – continuous. This is because the ideal is never static and is always changing, as new norms and insights are recognised for what is ideal for and in the delivery of justice. In this regard, the template facilitates the support of judicial reforms, and as well can initiate leadership in these emerging areas of deficit and need.

Participants and Facilitators of the 2023 ISP

Finally, the use of innovative tools and techniques for the delivery of judicial education exponentially improves adult learning. And frankly this insight is reinforced for me each year that I facilitate the ISP, where we demonstrate the use of story, role play, art, literature, music, and popular movies in judicial education. When there is enjoyment in the learning process, adults seem to come alive and be increasingly engaged and motivated to learn. Yet all too often I have seen judicial education routinely offered using lectures (albeit increasingly supported by engaging PowerPoint presentations) as the staple means of teaching-learning. Lectures are the least effective method of teaching-learning based on understanding levels and retention rates over time. The most effective methods include those that facilitate learning through doing. This is unsurprising, as learning through doing is on the extreme end of active learning and includes all three of auditory, visual, and kinesthetic learning.

As an epilogue, it is important to acknowledge the value of IT and how it enhances the delivery of judicial education. PowerPoint is a well-known example, but other tools exist such a Prezi and polling apps. In addition, the usefulness of AI generative platforms in judicial education, such as ChatGPT, are worth exploring, but considerations of accuracy, integrity and public trust and confidence need to be considered.

In sharing these reflections, I claim no special insight of authority, but only hope to ignite your own reflections as together we continue to grow and develop as judicial educators. I do however believe that what I have experienced and shared is adaptable and transferrable to all forms of judicial education, whether a single session, or a one or multiple day programme.

Updates and News from across the Region

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The CCJ's Visit to the Co-operative Republic of Guyana

by Hilary Wyke, Judicial Counsel, CCJ

The Caribbean Court of Justice (CCJ) visited the Co-operative Republic of Guyana from June 21 – June 26, 2023, hosting its second itinerant sitting in the jurisdiction. The Court heard several matters over two days at the Arthur Chung Conference Centre: BBCV2022/002 **Apsara Restaurants (Barbados) Limited v Guardian General Insurance Limited**; GYCV2023/001 **Sasedai Kumarie Persaud v Sherene Mongroo & Ors**; BBCR2023/001 **James Ricardo Fields v The State** and DMOJ2022/001 **DCP Successors Limited v The State of Jamaica**. The Court also delivered judgment on a special leave application from Guyana in **AB v The Director of Public Prosecutions [2023] CCJ 8 (AJ) GY**.

The CCJ used the visit as an opportunity to carry out a number of public education and stakeholder engagement activities. As part of its Referral Workshop Series, which is being executed through funding provided under the 11th European Development Fund (EDF), the Court sought to raise awareness about the Referral obligation of national courts and tribunals under Article 214 of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market & Economy (RTC). Under this provision, national courts and tribunals must refer to the CCJ, in its Original Jurisdiction, any questions arising in local litigation that concern the Revised Treaty.

Workshops and sensitisation sessions, facilitated by the CCJ President and Judges, were held with the Judiciary of Guyana and the Bar Association of Guyana to educate judicial officers and attorneys on their respective roles in the Referral process. To date, the Court has received no referrals, so it is hoped that these workshops will assist in making judicial officers and attorneys within the Caribbean Community (CARICOM) more mindful about this very important mechanism under the RTC.

Additionally, the Court hosted stakeholder engagements with two prominent civil society organizations, namely, the Guyana Manufacturing & Services Association (GMSA) and the Georgetown Chamber of Commerce and Industry (GCCI). Facilitated by members of the Bench in conjunction with Dr. Chantal Ononaiwu, Director of External Trade at CARICOM, the seminars were focused on the Original Jurisdiction of the CCJ and the benefits of the CARICOM Single Market & Economy Regime to the private sector.

The Full Bench at the Itinerant Sitting

At the public lecture "Rethinking Criminal Justice", Justice Jacob Wit delivered the feature lecture in which he expressed concerns about the various issues plaguing the criminal justice system. Justice Wit, in his address, also made several recommendations on how to reduce delays and improve the efficiency and fairness in the administration of justice. He was later joined for a panel discussion by Justice Jo-Ann Barlow, Judge of the Supreme Court of Guyana, Mrs Shalimar Ali-Hack, Director of Public Prosecutions and Mr Darshan Ramdhani KC, Criminal Defence Attorney. The panellists also fielded questions from members of the public in attendance.

Various members of the CCJ Bench, engaged in several other activities that formed part of the extensive programme. Justice Wit visited the Supreme Court of Guyana for an interaction with the Chief Justice (Ag), Roxane George, and judges and staff of the Family Court and Sexual Offences Court. Justices Barrow and Jamadar facilitated a focused dialogue with Guyanese judicial officers on issues surrounding sentencing and case management.

Acknowledging the commemoration of CARICOM's 50th anniversary, members of the Bench visited the headquarters of the CARICOM Secretariat, where they met with Dr Armstrong Alexis, Deputy Secretary General; Mme. Justice Lisa Shoman, General Counsel; and Ms Radha Permanand, Deputy General Counsel. President Saunders and Justice Rajnauth-Lee delivered short lectures to faculty and students in the Department of Law of the University of Guyana (UG) on 'The CCJ and its Impact on Constitutional Law' and 'Combatting Gender-Based Violence: The CCJ's Role' respectively. After the presentations, audience members made use of the opportunity to engage with the judges on these topics. This activity was also noteworthy as UG is presently marking its 60th Anniversary.

The visit culminated with a cocktail reception which was hosted by Justice Yonette Cummings-Edwards, Chancellor of Guyana (Ag), who ensured that the rich culture and history of Guyana were on full display.

The CCJ's visit to Guyana was a resounding success. Overall, this was an eventful and meaningful visit for the Court, the final court of appeal for Guyana. It is hoped that the people of Guyana now have a better understanding of the Court, its processes, and the importance of Guyana's continued role in developing and advancing the CCJ's jurisprudence.

Opening Ceremony

Visit to the Sexual Offences Court

Cultural performance at the Reception

The Bahamas

Digital Court Recording in the Judiciary of the Bahamas

The Bahamas Judiciary has pioneered the way forward with standardized digital infrastructure in order to overcome unprecedented backlog of court cases due to unwarranted delays associated with timelines for manual transcripts.The re-introduction of a digital recording system using the For The Record (“FTR”) technology in particular the speech-to-text (“STT”) feature has propelled The Bahamas forward in company with advanced jurisdictions like Trinidad & Tobago.

It is expected that the speech to text feature of the digital court recording system will tremendously reduce trial delays by producing a rough draft transcript within minutes after the conclusion of a court hearing. Since adopting this feature, the audio conversion accuracy is estimated at 85%. Like all technologies, speech to text software is in a constant state of evolution and through the use of artificial intelligence, it is anticipated that the accuracy of the converted text will likely improve with continued use having regard to dictation and linguistics.

In 2022, with the help of Consultants from the National Center for State Courts (NCSC), The Bahamas formulated a Policy and Procedure manual as a set of practical guidelines necessary to regulate the transition of the Digital Court Recording system inclusive of user requirements and public requests for both audio and text transcripts. Around the region and throughout America the number of state certified Court Reporters have significantly reduced. It is unlikely that digital audio recordings will lead to the replacement of traditional court reporters. For this reason, the need to improvise and supplement this deficiency is imperative. The use of digital court reporting will undoubtedly improve productivity without affecting court procedures while providing ease of access to stored audio, including linking notes to specific points within relevant recordings and allows for the making of personal and private notes during trials and hearings.

As The Bahamas judiciary continues to improve its services, we will undoubtedly ensure that open dialogues and discussion with our regional counterparts occur so as to maintain best industry standards associated with the dispensation of justice.

New Civil Procedure Rules

The Supreme Court Civil Procedures Rules, 2022 (CPR) came into operation on 1 March, 2023. The CPR replaced the Rules of the Supreme Court, 1978 and marks a significant change to the litigation landscape of The Bahamas. The Judiciary engaged the expertise of Bahamian, regional and international jurists to conduct webinars to familiarize judicial officers, the Bahamian Bar members and court users with the various features of the CPR. The Supreme Court Civil Procedures Rules Practice Guide, 2023 was produced in collaboration with the Rules Committee, the members of the Bench and the Bar. The Judiciary also has dedicated email addresses administered by Assistant Registrars to respond to questions and queries related to the CPR.

Appointments and Retirements of Judicial Officers

Senior Justice Indra Charles was sworn in by Cynthia A. Pratt, Deputy to the Governor-General as Justice of the Court of Appeal, 1 May, 2023

Justice Simone Fitzcharles was sworn in by the Governor General, His Excellency the Most Hon. Sir Cornelius A. Smith as a Justice of the Supreme Court, 1 February, 2023

Justice Carla Card-Stubbs was sworn in by the Governor General, His Excellency the Most Hon. Sir Cornelius A. Smith as a Justice of the Supreme Court, 1 February, 2023

Justice Franklyn Williams was sworn in by the Governor General, His Excellency the Most Hon. Sir Cornelius A. Smith as a Justice of the Supreme Court, 1 February, 2023

Justice C.V. Hope Strachan was sworn in by Mrs. Cynthia A. Pratt, Deputy to the Governor General as a Justice of the Supreme Court, 1 May, 2023

Additionally: Ms. Roseanne Sweeting and Mrs. Indy Hunter were appointed as Acting Assistant Registrars of the Supreme Court, 1 May, 2023, Mr. Lennox Coleby was appointed as an Acting Stipendiary and Circuit Magistrate assigned to the Firearms Magistrate Court, 8 May, 2023, Justice Carolita Bethell retired as a Justice of the Court of Appeal, 29 April, 2023, and Justice G. Diane Stewart retired as a Justice of the Supreme Court, 30 April, 2023.

Curaçao

by Maartje Molenaar, Senior Legal Officer, joint Court of Justice

Children's Rights Within the Judicial Chain in Curaçao

In the end of May 2023, the Joint Court of Justice of Aruba, Curaçao and St. Martin and of Bonaire, Saba and St. Eustatius together with the Department of Justice of Curaçao organized an interactive morning on children's rights and the compliance therewith within the judicial chain in Curaçao. With about fifty participants from different organizations (guardianship council, family guardians, lawyers, 'fathers in need', psychologists, University of Curaçao, public prosecutor's office, Department of Justice of Curaçao and Aruba, Human Rights Defense Curaçao, Child Protection services and colleagues of the joint court of justice practicing family law), all dealing with children's rights in their professional practice, we discussed a few emerging issues in family law concerning children's rights. It was a successful morning. After two short presentations by child psychologist Mrs. Guanipa-Vermunt about 'the impact of a divorce on children' and dr. Van Brummen-Girigori about 'the effect of the absence of fathers', various topics were discussed at five tables with participants from different organizations. The discussions were guided by judges of the Joint Court of Justice, amongst others Ms. Kimberly Lasten and Mr. Mauritsz de Kort. Prof. dr. Goudappel from the University of Curacao was the moderator of the morning. She reviewed and summarized the input of each table on the discussed topics.

The conclusions and recommendations from these discussions can be summarized as follows:

- Educate people about important subjects of family law, e.g. 'the impact of behavior in a divorce on children' and 'custody/authority';
- Make mediation in family law disputes concerning children easy accessible by providing government financing and by educating professionals in the field;
- Create more facilities for easy-access guided visitation for parents and children
- Propose a change of law that ensures that upon recognition of parenthood of a child by a father, that father also gets custody/authority of that child;
- Schedule more time for hearings in family law cases at the Joint Court of Justice.

With regard to the last recommendation, the Joint Court of Justice will soon start a pilot in Curaçao where – shortly said – most family law cases will be looked into more closely before planned on a session, to determine the right amount of time that will be needed for an oral hearing. By doing this we hope that the rights of children are even more protected by the Joint Court of Justice.

Overall it was a very successful morning with a chance to have an open discussion with many relevant stakeholders, without the table and robe as an obstacle.

Photos from the joint session

Jamaica

Case Management and Backlog Improvements

From a performance standpoint, the Court of Appeal for first time, is disposing of more cases than appeals coming in which means that if this continues over next 5 years then backlog should be eliminated. The Court of Appeal had clearance rate of 112%. Due to the adoption of Differentiated Case Management (DCM) and multiple methods of disposing of cases, that is memorandum, oral judgments, written reasons., 7 of 13 Parish Courts are backlog-free on the Criminal side of the court; that is to say net backlog under 5% and gross backlog under 10%. So Parish Courts, overall, have achieved the target set out in the strategic plan of 2019. The Supreme Court had an overall clearance rate of 74.95%. While this is an improvement, more is to be done. The Civil Division had its highest ever clearance rate in 2022 of 78.90% - a 52.20% increase over 2021. Of the Superior Courts of Record, High Court Division of Gun Court and Revenue Court are backlog-free.

Information and Communications Technology

The judiciary has implemented and continued to implement and number of ICT measures to improve the work and function of the courts:

1. The judiciary has adopted the Office 365 suite of services which is transforming how the Judiciary engages and conducts business internally which will have benefits for transcripts and notes of evidence; disclosure, among others.

2. Client Services

    - Customer service certification throughout Heart NSTA Trust for Frontline officers and supervisors to improve service delivery for our clients.

    - Spirit Licence - application form now available online- part of a larger project to digitise court forms.

    - Finance and Accounts - the Government Financial Management System (GFMS) accounting software has been implemented in four courts and this is transforming the way we manage court accounting. Receipts are now electronic and the process electronic to minimize the risk of misappropriation of government funds.

    - Electronic Payments - Payments for Jury Duty, Payments for maintenance and also bail refunds are now done electronically, boosting efficiency in court accounting.

    - Retrofitted containers have been installed at Traffic Court and Westmoreland Parish Court to boost storage capacity and improve records and data management as a first step in the digitisation programme.

    - Justice Leighton Pusey is in charge of the digital recording project. The objective is to implement the project initially in case management courts, Gun Courts in Kingston, and sexual offences courts. Then, throughout the Supreme Court and eventually throughout entire court system, including the Court of Appeal.

Recently, the Chief Justice led a delegation to Guyana to learn from the Judiciary of Guyana about the implementation of digital recording to improve the accuracy and reliability of court proceedings and advance transcript production for the Court of Appeal. The trip was sponsored by the National Centre for State Courts (NCSC) and we were warmly received by Chancellor (Ag) Yonette Cummings-Edwards, Chief Justice (Ag) Roxanne George, and other staff. The party of 11 comprised Judiciary (all levels), the Jamaican Bar, the Office of the DPP, the Court Administrative Division, and ICT.

President of the Court of Appeal, Hon. Justice Patrick Brooks (left), addresses journalists at a 'Conversation with the Judiciary' forum, held at the Spanish Court Hotel in Kingston, on March 10. At right is Chief Court Statistician, Dr. Dernato Dennis.

Image source: https://jis.gov.jm/performance-of-court-of-appeal-bolstered-by-dcm/

Suriname

Within the scope of the EU Direct Grant-project “Strengthening the (criminal) Justice System in Suriname”, fifteen judicial officers with a master’s degree in law started their three-year education program as trainee-judges on December 1st, 2022. The full program officially started on April 1st, 2023.

On April 4th, 2023, sixteen students from the Chistianburg Wismar Secondary School of Guyana visited the Court of Justice of Suriname as part of their education exchange program. They visited all the court houses, where the Court system was explained to them. At the end they received a gift from the court.

In October 2022, the President of the Joint Court of Justice of Aruba, Curacao, Sint-Maarten, Bonaire, Sint-Eustatius and Saba, justice Mauritz de Kort, visited the Court of Justice of Suriname to explore possible cooperation areas between the two Courts. At the end of this visit a MOU was signed by the two Court Presidents. This MOU resulted in the signing of a Letter of Intent on May 9th, 2023, on specific areas of cooperation between the two judiciaries.

CAJO NEWS

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