



BELIZE JUDICIARY

# **JUSTICE THROUGH A GENDER LENS**

## **Gender Equality Protocol for Judicial Officers**



Funded by the  
Government  
of Canada

Canada 

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**The Caribbean Court of Justice (CCJ)** is the Caribbean regional judicial tribunal. Its mission is to protect and promote the rule of law as a court of final appeal and as guardian of the Revised Treaty of Chaguaramas by guaranteeing accessibility, fairness, efficiency and transparency, delivering clear and just decisions in a timely manner.

**The Caribbean Association of Judicial Officers (CAJO)** is a voluntary association of Judges throughout the Caribbean region. CAJO was established in 2009 in part to promote and implement judicial education and reform measures throughout the CARICOM region.

**UN Women** is the United Nations organisation dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their needs worldwide. UN Women supports UN Member States as they set global standards for achieving gender equality, and works with governments and civil society to design laws, policies, programmes and services needed to implement these standards.

**The Judicial Reform and Institutional Strengthening (JURIST) Project** is a five year regional Caribbean judicial reform initiative funded under an arrangement with the Government of Canada. The Project is being implemented on behalf of Global Affairs Canada and the Conference of Heads of Judiciary of CARICOM (the Conference), by the Caribbean Court of Justice (CCJ). Further information on the Project is available at [www.juristproject.org](http://www.juristproject.org).



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# LIST OF ABBREVIATIONS

<b>ACHR</b>	American Convention on Human Rights
<b>BdP</b>	The Belém do Pará Convention (The Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women)
<b>CAJO</b>	Caribbean Association of Judicial Officers
<b>CARICOM</b>	Caribbean Community
<b>CCJ</b>	Caribbean Court of Justice
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women.
<b>CRC</b>	Convention on the Rights of the Child
<b>DVA</b>	Domestic Violence Act
<b>FCPPM</b>	Family Court Policies and Procedures Manual
<b>FIAP</b>	Feminist International Assistance Policy (Canada)
<b>IACHR</b>	Inter-American Court of Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ILO</b>	International Labour Organization
<b>JURIST</b>	Judicial Reform and Institutional Strengthening
<b>LGBTIQ</b>	Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning
<b>MCO</b>	Multi-country Office
<b>NGO</b>	Non-Governmental Organization
<b>NGP</b>	National Gender Policy
<b>PETAL</b>	Promoting Empowerment Through Awareness for Les/Bi Women
<b>TIP</b>	Trafficking in Persons
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UNCTOC</b>	United Nations Conventions against Transnational Organized Crime
<b>UNESCO</b>	United Nations Economic, Scientific and Cultural Organization
<b>UNIBAM</b>	United Belize Advocacy Movement





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- The Gender Protocol Review Committee:
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  - The Hon. Mme Justice Shona Griffith, Supreme Court of Belize
  - The Hon. Mme Justice Antoinette Moore, Supreme Court of Belize
  - Her Worship Mrs Patricia Arana, Judiciary of Belize
  - Mr Dale Cayetano, Director, Family Court of Belize
  - Mrs Margaret Nicholas, Executive Director, National Committee for Families and Children
  - Mrs Ester Ramirez, Deputy-Chair, National Women's Commission
  - Mrs Diana Shaw, Attorney-at-law and Director of the Child Development Foundation
- Ms Monica Santomartino, Intern, UN Women MCO Caribbean
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- Promoting Empowerment Through Awareness for Les/Bi Women (PETAL)
- United Belize Advocacy Movement (UNIBAM)
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# FOREWORD

The Belize Judiciary, in partnership with the Judicial Reform and Institutional Strengthening (JURIST) Project, UN Women and the Caribbean Association of Judicial Officers (CAJO), is pleased to present this ***Gender Equality Protocol for Judicial Officers in Belize***. The Gender Protocol is intended to promote awareness of the ways in which gender intersects with other social statuses to affect the justice system and its users, and to provide tools to help judicial officers achieve gender-sensitive adjudication.

An effective system of administration of justice is one of the fundamental pillars of a democratic society. A justice system can be lauded as effective only if all members of society enjoy full access and can avail themselves of the resources and services that exist to give effect to, or safeguard, their legal rights. These resources and services include all courts, court offices and other gateway services, such as the police and social services.

It is widely acknowledged that social statuses such as gender and, among others, socio-economic position create disparities in access to justice for women and other vulnerable groups. Further, it has been empirically determined that stereotypes and discriminatory norms based on gender continue to exist, and these are compounded by out-dated laws and insufficient awareness of gender inequalities among judicial officers and other actors within the justice system. The net result is that societal or institutional barriers may prevent people, and particularly women and other vulnerable groups, from accessing the justice system; even when they do, they may see outcomes that fail to take into account inequalities or harmful practices born out of gender norms.

This Gender Protocol would not have been possible without generous funding from the Government of Canada, which has had a long and productive partnership with Caribbean Community countries in the area of judicial and legal reform. The Gender Protocol is a great example

of the Government of Canada's Feminist International Assistance Policy (FIAP) in action. One of FIAP's goals is to strengthen legal systems and promote reforms that eliminate all forms of discrimination that prevent women, girls and other vulnerable groups from realizing their economic, political and social rights.

I must also express my deep appreciation to the Gender Protocol Review Committee, which worked assiduously over a period of four months to review and finalize the document.

The introduction of this Gender Protocol, and its robust implementation, will afford the administration of justice an ideal opportunity to enhance the experience of litigants and court users from all walks of life, especially women and the vulnerable. I am confident that this will have a positive impact on our judicial functions and will greatly enhance public trust and confidence in the justice system.

It is therefore with great honour that I commend this Gender Protocol to judicial officers and other justice sector stakeholders for use in their day-to-day work.

**The Hon. Mr Justice Kenneth A. Benjamin**  
Chief Justice of Belize



# **PART 1.** **INTRODUCTION**

**1.1. BACKGROUND**

**1.2. AIM OF THE PROTOCOL**

**1.3. METHODOLOGY**

**1.4. KEYS TO UNLOCK THE GENDER BOX**



# PART 1. INTRODUCTION

## 1.1. Background

Belize's Constitution,<sup>1</sup> together with the country's ratification of most international treaties and conventions on human rights, places a duty on all organs of the state to promote and protect the rights of all citizens to equality before the law and freedom from discrimination on certain specified grounds. The right of women and men to equal enjoyment of socially valued goods, opportunities, resources and rewards is a key component of the right to equality and freedom from discrimination.

Belize's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (the Convention of Belém do Pará, or BdP) signals its strong commitment to the promotion of gender equality in all spheres of government, including the justice sector. Moreover, in its National Gender Policy (NGP), the Government of Belize recognizes that "women's rights are human rights and that women, men, boys and girls have a right to live free of discrimination and violence". The NGP places importance on the right of women and men "to equality of opportunity, of access, and/or of outcomes". It also emphasizes that "the concept of equity recognizes that women and men have different needs and power, and that these differences should be identified and addressed in a manner that rectifies the imbalance between the sexes. This extends to men and women of all ages, geographic location and ethnicities."<sup>2</sup>

Both CEDAW and BdP require state parties not only to make legislative changes aimed at promoting gender equality but also to ensure judicial officers and courts are

applying such laws in a manner that creates equality of opportunity for both women and men. This is illustrated in BdP article 8(c), which compels member states to train "all those involved in the administration of justice" to effectively promote substantive equality between women and men. Article 2(c) of CEDAW obliges state parties to ensure justice sector institutions are giving effect to laws aimed at eradicating unequal treatment.

General Recommendation 33 of CEDAW, on Access to Justice, lists the six interrelated components of an equitable and accessible justice system as justiciability, accountability, good quality, effective remedies and availability (see Figure 1).

Belize has made great strides in achieving these objectives, as is evidenced by its implementation of legislative measures geared towards promoting women and men's access to justice. For example, amendments to the Married Persons Protection Act mean that husbands can now apply for and obtain maintenance on the same grounds as wives. Notwithstanding these positive changes, there remain significant barriers in the administration of justice that hinder both women's and men's ability to receive equitable outcomes from the justice system.

Gender inequalities in the court system are apparent in its treatment of family law cases, its handling of survivors of gender-based violence and its attitude towards sexual minorities and other vulnerable individuals. In custody and child support cases, the adversarial nature of the court process can sometimes militate against the satisfactory resolution of conflicts between parties. When dealing with sexual offence cases, many court officials are not sensitized to the need to treat complainants with special care, and court administrators often fail to design courtrooms to accommodate the special needs of the complainant. This

<sup>1</sup> Belize Constitution Preamble at (e) and sections 3, 6(1) and 16

<sup>2</sup> NGP 2013, p.9

FIGURE 1

Women's access to justice: What makes a justice system accessible



lack of sensitivity, coupled with inordinate delays in the court process, very often results in complainants being re-victimized by the very process of seeking justice.

Many court users, particularly those from sexual minority groups, rural communities, lower socio-economic brackets, persons living with disabilities and other vulnerable persons, have described their experiences with the court in negative terms. A common complaint from such court users is that the court (officials and the entire system) is either blind to or inconsiderate of the trauma they have endured.<sup>3</sup>

<sup>3</sup> Judicial Education Institute of Trinidad and Tobago (2018), 'Proceeding Fairly: Report on the Extent to which Elements of Procedural Fairness Exist in the Court Systems of the Judiciary of the Republic of Trinidad and Tobago'

## 1.2. Aim of the Protocol

In law and justice, as with any other aspect of life, a person's perspective (or lens) will determine what that person sees, motivate the decisions they make and influence their judgements about the world. The absence of a gendered perspective or lens in the administration of justice is a notable factor in the justice system's failure to adequately address the barriers to women's and men's access to justice. This Protocol is therefore intended to offer judicial officers (and other stakeholders) a lens through which they can better appreciate what gaps exist in the judicial system in relation to the gendered needs of women and men who appear before the courts. Judicial officers will hopefully then be able to make decisions that are responsive to those needs, and the court environment will reflect a similar responsiveness.



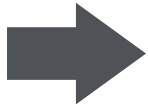
FIGURE 2

Principal barriers to achieving gender equality in the courts



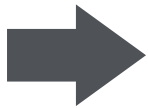
A recent Caribbean Association of Judicial Officers (CAJO)/ UN Women/Judicial Reform and Institutional Strengthening (JURIST) Project Survey on Gender and Judicial Decision-making in Belize revealed that judicial officers have a strong desire to apply a gendered perspective to their decision-making. Of judicial officers surveyed, 87 per cent agreed that it was either extremely or very important for them to identify their gender biases when adjudicating cases. An overwhelming 93 per cent agreed that it was important to have established protocols to combat gender discrimination in judicial decision-making.

The Protocol therefore aims to provide judicial officers with a tool they can use to:



1. Ensure both women and men have access to court regardless of sexual orientation, gender identity, spoken language, disability or membership in an indigenous group; and
2. Produce equitable outcomes in their judicial decision-making for women and men, lesbian, gay, bisexual, transgender, intersex and questioning (LGBTIQ) and indigenous people.

To achieve these goals, the Protocol is intended to:

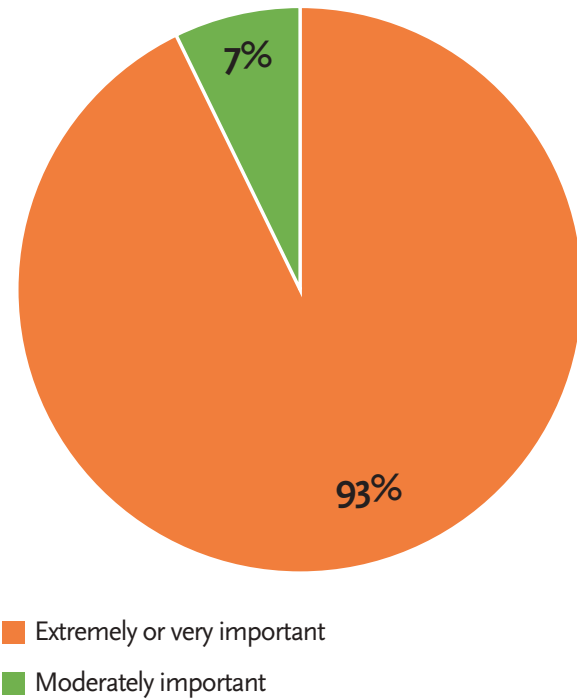


1. Increase judicial officers' awareness of Belize's international responsibilities as regards the achievement of gender equality within the justice system;
2. Increase the Belizean judiciary's capacity to effectively address the negative impact of stereotypes on adjudication and the specific challenges deriving from multiple and intersectional discrimination affecting individuals seeking justice from the courts;
3. Assist the judiciary in identifying and effectively dealing with unequal gender relations by providing concrete case examples and interpretive guides to international instruments on gender equality;
4. Provide a checklist for judicial officers that contributes towards the examination and resolution of cases in a manner that promotes substantive equality between women and men.

**FIGURE 3**

### Importance of a Gender Protocol, according to Belize judicial officers

100% of Belizean judicial officers agree it is important to have a Gender Protocol for judicial officers



Source: CAJO/UN Women/JURIST 2017 Survey on Gender and Judicial Decision-making in Belize

### 1.3. Methodology

The information provided in the Protocol was influenced primarily by the following:

#### The results of the Survey on Gender and Judicial Decision-making in Belize 2017

CAJO, UN Women and the JURIST Project developed this 10-minute online survey, which was distributed to judicial officers through the Office of the Chief Justice of Belize. The survey was intended to gauge the judiciary's perceptions of gender and determine the extent to which judicial officers might benefit from having gender protocols to provide guidance when engaged in judicial decision-making.

During June to July 2017, 15 judicial officers completed the survey. Of this number, 11 were women and 4 were men. Of the 15 judicial officers that responded, 9 were magistrates and 6 were Supreme Court judges.

#### Interviews conducted with judicial officers and other justice sector stakeholders

The gender specialist from UN Women and the JURIST Project interviewed several justice sector stakeholders over a two-week period in June–July 2017. These stakeholders included:

1. Judicial officers from the Supreme and Magistrate Courts
2. Court administrators, the director of the Family Court, the deputy-registrar and the clerk of courts;
3. Representative from the National Women's Commission;
4. Representatives from the police (Domestic Violence Unit);
5. Representative from the National Committee for Families and Children;
6. Representative from the United Nations Children's Fund;
7. Representatives from LGBTQI organizations (the United Belize Advocacy Movement [UNIBAM], and Promoting Empowerment Through Awareness for Les/Bi Women, [PETAL]);
8. Representative from the Child Development Foundation, a children's non-governmental organization (NGO).

#### Gender protocols for judicial officers from other jurisdictions

The Gender Protocol is modeled on the Mexican Supreme Court's *Judicial Decision-making with a Gender Perspective: A Protocol*, which was developed in 2014 to assist Mexican judicial officers to promote and respect the right to equality and non-discrimination.

## 1.4. Keys to Unlock the Gender Box<sup>4</sup>

The definitions in this Protocol are not static. They seek only to offer judicial officers a breakdown of the current understanding of how individuals perceive these terms. Like all socially constructed terms or categories, they are subject to change over time.

### Equality

Equality is about ensuring every individual has an equal opportunity to make the most of their lives and talents. It means no one should have poorer life chances because of where, what or whom they were born, what they believe or whether they have a disability.<sup>5</sup>

### Sex

This refers to the biological (genetic, hormonal, anatomical and physiological) characteristics that define humans as female or male. These sets of biological characteristics are not mutually exclusive as there are individuals who possess both (intersex). Intersex people are born with sex characteristics (including genitals, gonads and chromosome patterns) that do not fit typical binary notions of male or female bodies.

### Gender

Gender refers to the roles, behaviours, activities and attributes that a given society at a given time considers appropriate for women and men. It also denotes the social attributes and opportunities associated with being female and male as well as the relationships between and among women and men. These attributes and relationships are socially constructed and are learned through socialization. They are context- and time- specific as well as changeable.

*Gender refers to the roles, behaviours, activities and attributes that a given society at a given time considers appropriate for women and men.*

### Gender mainstreaming

Gender mainstreaming is "... the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetrated. The ultimate goal of this strategy is to achieve gender equality."<sup>6</sup>

### Gender equality

This refers to the equal rights, responsibilities and opportunities of women and men. Equality does not mean women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male, intersex or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration and that the diversity of different groups of women and men is recognized (UN/OSAGI n.d.).

*Equality does not mean women and men will become the same but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male, intersex or female.*

### Gender equity

Gender equity is the process of being fair to women and men. To ensure fairness, measures must often be put in place to compensate for the historical and social disadvantages that prevent women and men from operating on a level playing field. Equity is a means; equality is the result (UNESCO, 2003).

4 Except where otherwise indicated, all definitions are taken from the UN Women Training Centre's 'Gender Equality Glossary': [https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36 &mode=letter&hook=C&sortkey=&sortorder=](https://trainingcentre.unwomen.org/mod/glossary/view.php?id=36&mode=letter&hook=C&sortkey=&sortorder=)

5 Equality and Human Rights Commission, 'What Is Equality': <https://www.equalityhumanrights.com/en/secondary-education-resources/useful-information/understanding-equality>

6 ECOSOC AC 1997.2: <http://www.un.org/womenwatch/osagi/pdf/ECOSOCAC1997.2.PDF>

### **Gender analysis**

Gender analysis is a critical examination of how differences in gender roles, activities, needs, opportunities and rights/entitlements affect women, men, girls and boys in certain situation or contexts. Gender analysis examines the relationships between females and males and their access to and control of resources and the constraints they face relative to each other. A gender analysis should be integrated into all sector assessments or situational analyses to ensure interventions do not exacerbate gender-based injustices and inequalities, and that, where possible, greater equality and justice in gender relations are promoted (UNESCO, 2003).

### **Gender discrimination**

Gender discrimination is any distinction, exclusion or restriction made on the basis of sex or gender that has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women and men of fundamental rights and freedoms in the political, economic, social, cultural, civil or any other field. Discrimination can stem from both law (*de jure*) and practice (*de facto*).

### **Gender neutrality**

Generally, it is understood that gender neutrality in a law, policy or conduct means said law, policy or conduct applies to both women and men. There is an assumption that laws, policy or conduct that are gender-neutral do not have a discriminatory effect. This is incorrect. Women and men experience the world differently and, as such, laws, policies or conduct will invariably have different impacts on them. Sometimes, gender-neutral laws, policies or conduct will reinforce women and men's privileges and vulnerabilities.

### **Gender non-conforming**

This means not matching gender expectations, such as when a person's gender expression or identity is not consistent with expectations about the sex they were assigned at birth.

### **Gender-based violence**

"Gender-based violence" is a generic term used to describe any harmful act perpetrated against an individual

against his or her will based on his or her socially defined identity as female or male (UN, 2005). The United Nations General Assembly defined violence against women in the 1993 Declaration on the Elimination of Violence Against Women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private".<sup>7</sup> There are different kinds of violence, including (but not limited to) physical, verbal, sexual, psychological and socioeconomic violence.

### **Gender sensitivity**

Gender sensitivity means being aware of how gender can result in different privileges and opportunities for women and men.

### **Gender identity**

Gender identity refers to a person's innate, deeply felt, internal and individual experience of gender, which may or may not correspond to the person's physiology or designated sex at birth. It includes both 1) the personal sense of the body, which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means and 2) other expressions of gender, including dress, speech and mannerisms.

### **Gender roles**

Gender roles refer to social and behavioural norms that, within a specific culture, are widely considered to be socially appropriate for individuals of a specific sex. These often determine the traditional responsibilities and tasks assigned to women, men, girls and boys. Gender-specific roles are often conditioned by household structure, access to resources, specific impacts of the global economy, occurrence of conflict or disaster and other locally relevant factors such as ecological conditions. Like gender itself, gender roles can evolve over time, in particular through the empowerment of women and the transformation of masculinities.

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7 Article 1: <http://www.un.org/documents/ga/res/48/a48r04.htm>

### Gender stereotypes

Gender stereotypes are simplistic generalizations about the gender attributes, differences and roles of women and men. Stereotypical characteristics about men are that they are competitive, acquisitive, autonomous, independent, confrontational and concerned about private goods. Parallel stereotypes of women hold that they are cooperative, nurturing, caring, connecting, group-oriented and concerned about public goods. Stereotypes are often used to justify gender discrimination more broadly and can be reflected and reinforced by traditional and modern theories, laws and institutional practices. Messages reinforcing gender stereotypes and the idea that women are inferior come in a variety of “packages” – from songs and advertising to traditional proverbs.

*Gender stereotypes are simplistic generalizations about the gender attributes, differences and roles of women and men.*

### Gender responsiveness

This is a process of recognizing how gender can result in different privileges and opportunities (and disadvantages) for women and men and thereafter using policies and programmes to redress existing gender inequalities.

### Heteronormativity

Heteronormativity is an expression used to describe or identify a social norm relating to standardized heterosexual behavior, whereby this standard is considered the only socially valid form of behaviour and anyone who does not follow this social and cultural posture is placed at a disadvantage in relation to the rest of society. This concept is the basis of discriminatory and prejudiced arguments against LGBTIQ, principally those relating to the formation of families and public expression.

### Homophobia

Homophobia is fear, unreasonable anger, intolerance and/or hatred in relation to homosexuality.

### Intersectionality

The concept of intersectionality recognizes that social identities and oppressive institutions within a society,

such as racism, ageism, sexism and homophobia, do not exist independently, but are instead interrelated and continuously shaped by one another. For example, an individual's gender identity is constituted differently depending on things such as age, ethnicity, sexual orientation, social class or country of origin.<sup>8</sup>

*Intersectionality recognizes that social identities and oppressive institutions within a society, such as racism, ageism, sexism and homophobia, do not exist independently, but are instead interrelated and continuously shaped by one another.*

### Sexual orientation

Sexual orientation refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different sex/gender or the same sex/gender or more than one sex/gender. Basically, there are three predominant sexual orientations: towards the same sex/gender (homosexuality), towards the opposite sex/gender (heterosexuality) and towards both sexes/genders (bisexuality). This is different from gender identity since gender identity is not about whom one is attracted to but about the gender one identifies with: woman, man, etc. This means that being transgender (feeling like one's assigned sex is very different from the gender one identifies with) is not the same thing as being gay, lesbian or bisexual.<sup>9</sup>

*Sexual orientation refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different sex/gender or the same sex/gender or more than one sex/gender.*

### Transgender

This describes a person whose gender identity is different from the sex they were assigned at birth.

<sup>8</sup> <http://www.wikigender.org/wiki/intersectionality-of-gender-inequality-and-racial-discrimination/>

<sup>9</sup> Planned Parenthood, 'Sexual Orientation': [www.plannedparenthood.org/learn/sexual-orientation-gender/sexual-orientation](http://www.plannedparenthood.org/learn/sexual-orientation-gender/sexual-orientation)

### Transition

Transition is the process of changing one's life or body to bring it into harmony with one's gender identity.

### Transphobia

Transphobia is fear, dislike, bias, harassment or negligence based on the perception that a person transgresses gender norms.

### Vulnerable groups

Vulnerable groups refers to persons who have been relegated to the fringes of society owing to characteristics or social statuses that prevent them from having full access to rights, resources and opportunities.

## FIGURE 4

### Important keys

#### Sex

**Male:** Born with a penis and other biological characteristics associated with a 'male body'

**Female:** Born with a vagina and other biological characteristics associated with a 'female body'

**Intersex:** Born with both

#### Gender

**Feminine:** Socially constructed characteristics and attributes that are tied to being born a female. Females who subscribe to this feminine construct are referred to as women

**Masculine:** Socially constructed characteristics and attributes that are tied to being born a male. Males who subscribe to this masculine construct are referred to as men

#### Sexual orientation

Refers to whom an individual is sexually attracted to. There are three main types:

**Heterosexual** (attraction to different sex or gender)

**Homosexual** (attraction to same sex or gender)

**Bisexual** (attraction to both sexes or genders)

#### Gender identity

Identification with a particular gender, which might be the same or different from your sex:

- Males who identify as masculine (cisgender)
- Females who identify as feminine (cisgender)
- Males who identify as feminine (transgender)
- Females who identify as masculine (transgender)





# ■ PART 2.

## LEGAL AND CONCEPTUAL FRAMEWORK

2.1. THE PRINCIPLE OF EQUALITY

2.2. THE PRINCIPLE OF NON-DISCRIMINATION

2.3. THE PRINCIPLE OF STATE OBLIGATION

2.4. JUDICIAL IMPARTIALITY



# PART 2.

# LEGAL AND CONCEPTUAL FRAMEWORK

CEDAW's core principles to ensure the effective realization of gender equality will provide the conceptual and legal framework for this Protocol. The Convention's three core principles are **equality, non-discrimination and state obligation**. The **rule against bias in judicial decision-making** will be used alongside these core principles to provide the overarching framework for the document.

The Protocol will deal with the four principles in the following manner:

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*“At the current stage of the evolution of international law, the fundamental principle of equality and non-discrimination has entered the realm of jus cogens. The juridical framework of national and international public order rests on it and it permeates the whole juridical system.”*

*Yatama v Nicaragua (2005) (IACHR), paragraph 184, p.82*

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## EQUALITY

Defines the legal principle of equality and illustrates its application in Belize's domestic law.



## NON-DISCRIMINATION

Outlines how gender-based stereotypes can lead to gender and/or sex discrimination as well as how gender discrimination intersects with social status or identities to create particular vulnerabilities for women and men.



## STATE OBLIGATION

Illustrates how state obligation gives rise to an expectation that Belizean judicial officers will interpret domestic law to accord with international standards regarding gender equality.



## JUDICIAL IMPARTIALITY

Recognizes that judicial officers may be affected by hidden or implicit biases in relation to gender and identifies measures they can adopt to reduce the negative impact gender stereotypes and biases can have on outcomes in court cases.

## Recommended approach to interpreting Belize’s equality provisions

- To give full effect to Belize’s equality provisions, courts are encouraged to use a substantive approach.
- The substantive approach encourages the courts to consider the impact/effect of the law or conduct on either the individual or a group.
- Looking at the impact/effect of the law or conduct will entail the court considering, among other things, 1) the social context within which the law operates, 2) any existing power imbalances and 3) whether there is a need for the court to step in to ameliorate disadvantages that serve to hinder the ability of the individual or group to have equal opportunity to access resources or socially valued goods.
- This may mean the court will give 1) equal treatment to equals, 2) different treatment to those who are differently situated or 3) special treatment designed to alleviate disadvantage and put everyone on the same level.

### 2.1. The Principle of Equality

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*“Applying the concept of equality, as both a principle and a right, does not mean seeking some kind of a mathematical formula to calculate and achieve absolute homogeneity. Instead, the concept of equality must be understood substantively. It requires equal treatment for equals, different treatment for those who are differently situated, and special treatment for groups whom, though they are considered equal from one perspective, from another perspective merit special treatment from the State.”*

*Case C-862/08 (2008) (Constitutional Court of Colombia)*

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The combined effect of paragraph (e) of the Preamble and sections 3, 6(1) and 16 of the Constitution is a guarantee of the rights of equality and protection under the law. This guarantee encompasses the rights of women and men to equal opportunity to access justice and an expectation of equitable outcomes from the justice system. Equality can be understood either formally (treating everyone the same regardless of circumstances) or substantively (treatment that is calculated to provide equality of opportunity to all despite differences).

The Protocol promotes a substantive approach towards gender equality. This approach, which is firmly established in CEDAW, BdP and equality jurisprudence, recognizes that treating women and men in an identical manner may at times fail to address the systematic and social factors that prevent women from achieving true equality. A substantive approach recognizes that women and men experience the world differently and that these differences are usually heightened by other social statuses, such as race, socio-economic position, ethnicity and sexual orientation.

Using a substantive approach to gender equality helps us understand the underlying cultural norms and assumptions about gender. This type of gender analysis helps us 1) understand how such assumptions produce and perpetuate disadvantages that prevent women from experiencing life on the same footing with men and 2) map out strategies to correct those disadvantages.

In assessing whether a law provides for gender equality, the substantive approach requires the court to look at the effect or impact of the law and not whether the law is applied to all who are similarly situated (formal equality). In eschewing formal equality, McIntyre J in *Andrews v Law Society of British Columbia* held that formal equality could lead to grave injustices and defeat the spirit of the equality provisions:

*“It may be said that a law which treats all identically and which provides equality of treatment between ‘A’ and ‘B’ might well cause inequality for ‘C’, depending on differences in personal characteristics and situations. To approach the ideal of full equality before and under the law -- and in human affairs -- the main consideration must be the impact of the law on the individual or the group concerned.”<sup>10</sup>*

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**60% of Belizean judicial officers believe equality is about treating everyone the same.**

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In cases where a structural barrier denies individual access to resources or opportunities, treating everyone the same (formal equality) may produce unfair outcomes and fail to achieve the goal of providing equality of opportunity to all. This is because the different abilities and social positions of individuals will affect their ability to benefit from the same measure designed to guarantee access for

everyone. In these circumstances, it will be necessary to use equitable or ameliorative measures. These measures will demand that we treat people differently, depending on their circumstances and needs, to ensure everyone can overcome the challenges the structural barrier poses. Once the structural barrier to access is lifted, then the equitable or ameliorative measure should be removed as well.

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<sup>10</sup> Supreme Court of Canada (1989)

**FIGURE 5**

**Using equitable measures to achieve substantive equality**



In the first image, it is assumed that everyone will benefit from the same supports. They are being treated equally.



In the second image, individuals are given different supports to make it possible for them to have equal access to the game. They are being treated equitably.



In the third image, all three can see the game without any supports or accommodations because of the inequity was addressed. The systemic barrier has been removed.

Source: CAWI (2015), ‘Advancing Equity and Inclusion: A Guide for Municipalities’

## FIGURE 6

### Caribbean cases applying the substantive approach to gender equality

#### *Wade v Roches* Civil Appeal 5 (2004) (Belize)

- The Catholic school in question had a policy of dismissing teachers who had had children out of wedlock. The school argued that both female and male teachers were subject to this policy. Chief Justice Conteh found that, since pregnancy shows on women, they were more vulnerable to the policy, and the practice of dismissals confirmed this. Men on the other hand, Chief Justice Conteh said, could ignore the policy with impunity. The policy was therefore ruled to be discriminatory towards women.

#### *Johnson and Balwant v AG UKPC 53* (2009) (Trinidad and Tobago)

- A regulation of the Police Service Commission said that the Commission could terminate the appointment of a married police officer on the grounds that her family obligations were affecting the efficient performance of her duties. The Privy Council found that, but for the existence of the savings law clause, it was clear the regulation amounted to discrimination on the grounds of sex. The regulation affected female officers' decision to marry; male officers are not similarly affected when deciding whether or not to marry.

### Role of judicial officers in correcting imbalances between parties

Power is the ability to influence events, outcomes or the actions of others. Power, and how it is distributed, have significant impacts on the ability of parties to a dispute to benefit from legal mechanisms designed to administer justice equitably. It is therefore very important for judicial officers to be aware of the power relations between the parties in a dispute.

Power does not exist of itself. It comes from having a resource to use as a lever to help get what you want. In most cases, power involves an ability to utilize wealth, authority, violence or superior knowledge. Rarely, if ever, will power be equally balanced between the parties to a dispute. Judicial officers should always endeavour to recognize imbalances of power between parties and, where appropriate, treat that imbalance as an important factor in dispensing justice.

### Situations where power imbalances exist

- **Where one party has personal skills/resources substantially greater than the other**  
*Example: A custody dispute between an eloquent and wealthy father and an unemployed mother from a low-income community*
- **Where one party has detailed technical knowledge/information not held by the other**  
*Example: A child support dispute where one side is represented by an experienced lawyer and the other side is unrepresented*

- **Where the number of people on each side is unbalanced**

*Example: A LGBTIQ rights case involving a gay applicant on one side and several anti-LGBTIQ groups on the other*

- **Where one party is perceived to have higher status**

*Example: A dispute between a well-off, middle-aged businessman and an unemployed youth*

- **Where one party is intimidated/threatened by the other**

*Example: 1) A 12 year old as a complainant in a sexual assault case involving her step-father as the alleged perpetrator or 2) an applicant bringing a protection order application against a partner on whom the applicant is economically and psychologically dependent*

- **Where one party has no interest in resolving a dispute**

*Example: A committed homophobe living next door to a gay couple*

Source: SCMC, 'Power Imbalances in Mediation', Briefing Paper 9

## Recommendation for applying the principle of equality

Judicial officers should strive in their judicial decision-making to incorporate a **substantive approach** towards equality, which consists of:

- Understanding that gender equality does not mean we always treat women and men the same or that we use a “mathematical formula to calculate and achieve absolute homogeneity”;
- Embracing the difference between women and men in society, and recognizing that justice lies in appropriate differential treatment to achieve equal opportunities for all;
- Ensuring their decisions result in gender-equitable outcomes by considering the historical disadvantages women have and continue to face in accessing justice;
- Appreciating the fact that judicial officers are in the business of providing justice and therefore have an obligation to both consider the distribution of power between parties and factor power relations into court processes and their decision-making;
- Reordering the power dynamics between parties before the court by:
  - Making the courtroom less intimidating in family and gender-based violence cases;
  - Appreciating that parties can feel humiliated or silenced by harsh or insensitive interaction with judicial or court officers;
  - Recognizing and giving practical effect to the inherent dignity of each person who appears before them.

## Rethinking the hierarchical structure of courts

Mindie Lazarus-Black (2002) argues that, rather than offering redress to vulnerable litigants, the hierarchical structure of the courts, with its emphasis on domination and subordination, tends to perpetuate social inequalities and undermine the spirit of legal reforms designed to offer protection to vulnerable groups. This plays out in a couple of ways, as highlighted below.

**Problem 1:** In the courts, the judge sits as a monarch – literally on a throne looking down at her or his subjects. This can be – and is in fact orchestrated to be – intimidating for victims seeking redress. Having already lost their power and agency, victims are thrown into an arena where they are again made to feel dominated and inept.

**Problem 2:** The practice of humiliation is an ordinary part of people's experiences in the courts, especially in the parish courts, where most of the parties are unrepresented. The judge's power goes largely unchecked in these circumstances. While the law should circumscribe the judge's actions, the unrepresented litigant will hardly have the knowledge or wherewithal to challenge the judge's exercise of her/his authority. The court setting becomes a space within which the judge (the power-holder) can humiliate and dictate without repercussion.

**Problem 3:** Being unable to tell one's story, or to tell it only partially, is a very common experience for litigants in lower courts. This results in the voices of the victims/parties seeking redress being silenced. Silencing also occurs when the parties/victims are given the opportunity to speak but the content of the message is ignored or trivialized. Silencing reinforces the parties' or victims' powerlessness.

**Solution:** The three examples above highlight how a judge's power can be used to demean, perpetuate oppression for and severely undermine the dignity of the persons seeking protection under the law. It is therefore incumbent on judicial officers to exercise their power in a manner that recognizes the inherent dignity of everyone regardless of status. As O'Regan J declared in *State v Makwanyane* CCT/3/94 (1995) (South Africa) paragraph 328, "Recognising a right to dignity is an acknowledgement of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern."

Recognition of human dignity will mean, for example, that:

1. In family matters and in cases of gender-based violence, judicial officers can make the courtroom less intimidating by sitting on the same level as the victims/parties, hearing the case in-camera, removing their robes for child witnesses and using the language of the victims/parties.
2. Judicial officers will foster an environment within which the parties can tell their stories without fear of being mocked or ridiculed.

**Source:** Lazarus-Black, M. (2002), 'Rites of Domination: Tales from the Domestic Violence Court', IGDS Working Paper 7



## 2.2. The Principle of Non-Discrimination

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*“This general prohibition against non-discrimination thus prohibits laws [and practice] that differentiate between people based on their inherent personal characteristics and attributes. A court is entitled to consider granting... relief, where the claim is that a person has been discriminated against by reason of a condition, which is inherent and integral to his/her identity and personhood. Such discrimination undermines the dignity of persons, severely fractures peace and erodes freedom.”*

*Jamadar J, in Sanatan Dharma Maha Sabha of Trinidad and Tobago Inc v AG of Trinidad and Tobago HCA Application 2065 (Trinity Cross) (2004), p.55*

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Commitment to the principle of non-discrimination is a necessary step towards achieving gender equality. The principle of non-discrimination, as reflected and guaranteed by sections 3, 6(1) and 16 of the Belize Constitution, prohibits the state from, inter alia, passing legislation or encouraging conduct that unreasonably differentiates between people based on a status or personal characteristics that form the core of an individual's identity. Sex, gender identity, sexual orientation, social class, race, ethnicity and disabilities fall into the category

of either a status or a personal characteristic that informs an individual's sense of self or identity. These are also statuses or personal characteristics that have historically, and in some cases continue to be, the motivation for discriminatory behaviour by the state and private individuals.

It is important to note that not all differentiation breaches the principle of non-discrimination. Certain social and biological realities may make it justifiable to treat people differently. For example, creating special ramps for the disabled to access buildings amounts to differential treatment. However, this does not breach the non-discrimination principle as it serves a reasonable purpose and promotes equality of physical access to building sites. Similarly, providing sanitary bins in female-only public bathrooms is a differentiation that is justified based on the special needs of women – needs that men do not have.

Conversely, failure to install ramps for the differently abled to access public buildings leads to discrimination. This omission creates a disadvantage, as it is significantly harder for someone in a wheelchair to get up two flights of stairs than it is for an able-bodied person. Additionally, a decision to remove sanitary bins from a public bathroom would amount to discrimination based on sex since it fails to consider women's biological needs.

### Code of Judicial Conduct and Etiquette

**4.1** A judge shall perform his or her judicial duties without favour, bias or prejudice.

**5.1** A judge shall strive to be aware of, and to understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other causes (“irrelevant grounds”).

**5.2** A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

FIGURE 7

Legal analysis to determine if a law/policy/action leads to gender discrimination

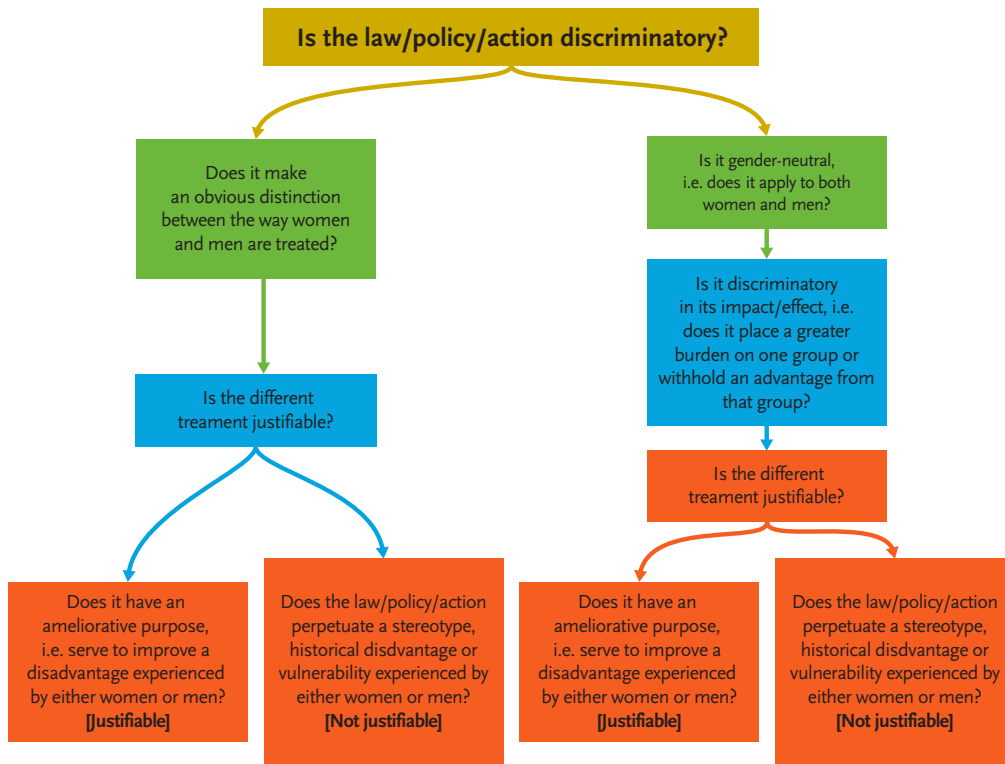
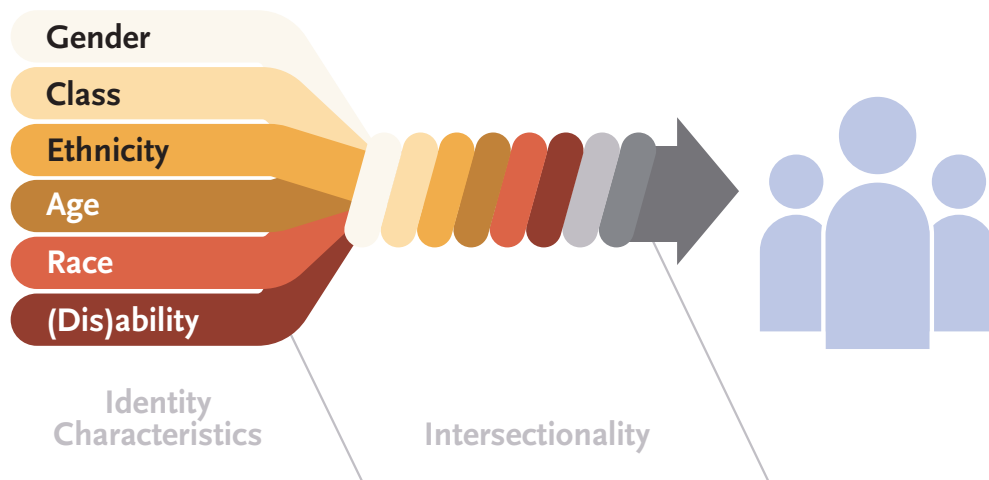


FIGURE 8

The intersection of statuses or personal characteristics to create individual identity



Source: UNDP World Centre for Sustainable Development

No woman or man is ever defined only by her/his gender identity. Discrimination that has its genesis in gender stereotypes can be compounded if discrimination exists on other fronts. It is therefore important for judicial officers to be aware of how gender intersects with other statuses or personal characteristics to create both privileges and vulnerabilities for women and men. This objective is in keeping with article 5.1 of the Code of

Judicial Conduct and Etiquette, which calls on all judicial officers to be aware of and to understand diversity in society and differences arising from various sources, including, but not limited to, gender, race, colour, national origin, religious conviction, culture, ethnic background, social and economic status, marital status, age, sexual orientation, disability and other like causes.

### **National Gender Policy Belize**

“Respect for diversity: Men and women in Belize are not a homogeneous group. Rather, the population is comprised of persons of all ages who come from diverse races, cultures, ethnicities, faiths, sexual orientations, socio-economic situations and behavioural lifestyles.”

#### **2.2.1. The intersection of gender and ethnicity in Belize**

One example of an identity or characteristic that intersects with gender that has particular significance to Belize is the position of Mayan women who reside in “rural” communities. Persons from the Maya community tend to reside in areas classified as rural. Several international

instruments recognize that women from rural (or, as some of these instruments refer to them, indigenous) communities face additional disadvantages in relation to protection under the law and access to justice. These instruments therefore afford special protection to women from such communities.

#### ***General Recommendation 19, CEDAW Committee on Gender-based Violence***

21. Rural women are at risk of gender-based violence because traditional attitudes regarding the subordinate role of women that persist in many rural communities. Girls from rural communities are at special risk of violence and sexual exploitation when they leave the rural community to seek employment in towns.

#### ***American Declaration on the Rights of Indigenous Peoples***

##### **ARTICLE VII**

1. Indigenous women have the right to the recognition, protection, and enjoyment of all human rights and fundamental freedoms provided for in international law, free from discrimination of any kind.
2. States recognize that violence against indigenous peoples and individuals, particularly women, hinders or nullifies the enjoyment of all human rights and fundamental freedoms.

##### **ARTICLE XXII.**

3. ...they are entitled without discrimination, to equal protection and benefit of the law, including the use of linguistic and cultural interpreters

The Maya community makes up a significant part of the Belizean population and maintains its traditional diverse features, including language, a special judicial jurisdiction for minor claims and offences (the *alcalde* jurisdiction) and a social hierarchy based on gender. Further, many members of the community live in remote areas, which presents a physical barrier to accessing social services and the courts. Some members of the community also speak only Mayan dialects and as such can face a language barrier in accessing social services and participating in court proceedings. To prevent these intersecting factors from resulting in further discrimination against women from the Maya community, judicial officers must acknowledge and respect the fact that these cultural differences exist.

Understanding how to address the needs of persons from rural or indigenous communities can prevent

discrimination and improve the protection of their rights as individuals. On the one hand, there is a need to protect their cultures, knowledge and traditional practices; on the other, there is an obligation to guarantee that their rights as individuals are respected.

### **2.2.2. Intersection of gender and sexual orientation**

Another example of an identity or characteristic that intersects with gender is sexual orientation.<sup>11</sup> Although there are no international human rights laws specifically applicable to sexual minorities as there are for women and girls, there are international policies and guidelines that address and advocate for the application of general human rights principles in relation to sexual orientation and gender identity.



LGBTIQ persons are often subject to discrimination, whether direct or indirect, that is directly attributable to their sexual orientation and/or gender identity. The discrimination LGBTIQ people face affects their ability to enjoy basic human rights, including the possibility to access justice and be treated equally before the law. LGBTIQ rights are human rights and are thus to be protected and enforced.

Judicial officers need to be aware of how they can avoid perpetuating discrimination. There are important

and globally recognized international arguments in support of a non-discrimination approach, reflected in international instruments and important court decisions, that can provide guidance. This Protocol will assist in understanding how the rights of LGBTIQ persons are commonly violated in the justice system and, in so doing, will enable judicial officers to view LGBTIQ issues using a human rights-based approach. This will in turn ensure equal treatment and application of laws to give effect to the rights of members of this community.

### **Main violations facing persons as a result of their LGBTIQ identity**

- ▶ **Violation of the right to life** through extrajudicial executions and killings in attacks that are related to perceptions of their sexual orientation or gender identity
- ▶ **Violation of the right to personal dignity/liberty:** Cruel, inhumane and degrading treatment in the context of law enforcement, in sites of deprivation of liberty, prisons, lock-up facilities, police stations and other places of detention.
- ▶ **Rape and sexual violence**
- ▶ **Mob attacks**
- ▶ **Medical violence against intersex persons** forced to conform to socially accepted standards for female and male bodies
- ▶ **Mistreatment when trying to access health care services**
- ▶ **Hate speech and incitement to violence in public and private spheres**
- ▶ **Repression of freedom of expression**
- ▶ **Violation of equality rights**
- ▶ **Violation of the right to privacy**
- ▶ **Violation of the right to non-discrimination**
- ▶ **Violation of the right to family life**
- ▶ **Violation of the right to self-determination**

BELIZE'S Constitution Preamble at (e) and sections 3, 6(1) and 16

3 ... every person in Belize is entitled to the fundamental rights and freedoms of the individual... whatever his race, place of origin, political opinions, colour, creed or sex...

6(1) All persons are equal before the law and are entitled without any discrimination to the equal protection of the law

16(1) ... no law shall make any provision that is discriminatory either of itself or in its effect

16(2) ... no person shall be treated in a discriminatory manner by any person or authority

16(3) ... discriminatory means affording different treatment... wholly or mainly to their... sex, race, place of origin, political opinions, colour or creed...

In *Toonen v Australia* Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, Communication 488 (1992), the United Nations Human Rights Committee held that the word “sex” in articles 2 and 26 of the ICCPR was to be interpreted as including “sexual orientation”.

The Belize Supreme Court held that “Belize has acceded to the ICCPR in 1996, two years subsequent to *Toonen*,... doing so, it tacitly embraced the interpretation rendered by the Human Rights Committee... to the effect that the word “sex” in section 16(3) of the Constitution is to be interpreted to extend to “sexual orientation” (*Caleb Orozco v Attorney General of Belize* Claim 688 (2010), paragraph 94).

Belize is bound by the international treaties ratified, signed or acceded to, and their interpretations, to the extent that a person in Belize cannot be discriminated against on the basis of her or his sexual orientation.

### The dignified treatment of transgender individuals in the courts

Respect for human dignity is recognition of the inherent dignity of everyone regardless of status. As O'Regan J declared in *State v Makwanyane* CCT/3/94 (1995) (South Africa) paragraph 328, “Recognising a right to dignity is an acknowledgement of the intrinsic worth of human beings: human beings are entitled to be treated as worthy of respect and concern.” The right to dignity is “the fundamental right which underlies all other fundamental rights” (per Wit J in *AG v Joseph and Boyce* CCJ Appeal CV2 and BB Appeal 29 (2006) (Barbados)). Therefore, respect for human dignity underpins the need for judicial officers to refrain from engaging in or failing to censure conduct that discriminates against transgender individuals (equality and non-discrimination). Consequently, judicial officers have a duty to recognize the dignity of transgender individuals by doing the following:

- **Judicial officers should make every effort to use pronouns and salutations that affirm the party's gender identity.** If the person presents themselves as female, they should be addressed using she/her/Ms/Mrs. If the party presents themselves as male, they should be addressed as he/him/Mr. If the judge or court personnel are not sure how the party identifies their gender, it is preferable to ask which pronouns the party would prefer to use. This could be done in a bench conference or sidebar.
- If the individual has not had a legal name change, **the judge may put the preferred name on the court list as an AKA and a notation can be made in the file to use that name to address the party.**
- **Where appropriate, judicial officers should hear matters with LGBTIQ individuals in-camera.** There is a tendency on the part of society as a whole to mock the “otherness” of LGBTIQ individuals. Such alienating or disparaging treatment is humiliating and harmful for sexual minorities, and more so when it occurs or is allowed to occur within a court environment.
- **Judicial officers should ensure they and court staff do not deny transgender people access to the court** on the basis that they are dressed in attire that does not conform to their assigned sex at birth.
- **Judicial officers should consider the impact of structural inequality on the life choices of transgender people.** Many transgender people, solely by changing their gender, are subjected to circumstances that non-transgender people do not experience. Workplace discrimination may result in long periods of unemployment and failure to get jobs, and may influence the decision to engage in criminal activities to survive. Transgender people are disproportionately homeless and disproportionately likely to be arrested as a result. These factors are especially severe among low-income and low-skilled individuals.
- **Judicial officers should consider the disparate impact of imprisonment on transgender individuals and ensure special provisions are made for transgender individuals who must be incarcerated.** Our present penal system does not make provisions for transgender individuals. Transgender people are assigned to prison based on their sex at birth and not the gender they identify with. This type of treatment can be humiliating and increases their risk of being assaulted by guards and inmates.

Source: Sylvia Rivera Law Project, 'Transgender 101 Terms and Considerations for Officers of the Court': [www.nycourts.gov/ip/judicialinstitute/transgender/220B.pdf](http://www.nycourts.gov/ip/judicialinstitute/transgender/220B.pdf)

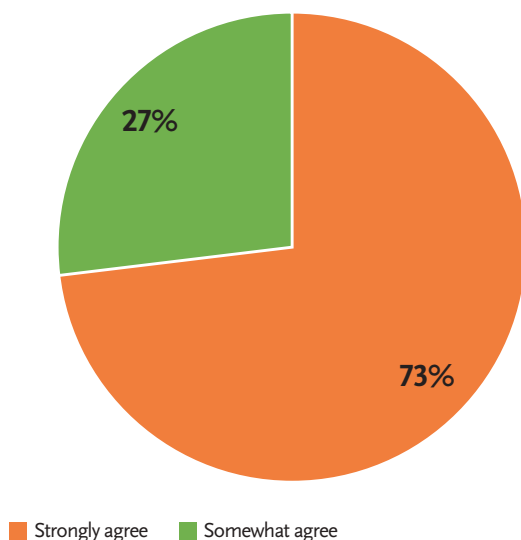
## Recommendations for applying the principle of non-discrimination

- The judiciary should not make decisions that unjustifiably differentiate between people based on status or personal characteristics that form the core of an individual's identity.
- Judicial officers should be aware that not all differentiation is a breach of the principle of non-discrimination. Certain social and biological realities may make it justifiable to treat people differently.

- No woman or man is ever defined only by her/his gender and it is therefore important for judicial officers to be cognizant of how gender intersects with other statuses or personal characteristics to create both privileges and vulnerabilities for women and men.
- Judicial officers should recognize the dignity of transgender individuals by doing the following:
  - Make every effort to use pronouns and salutations that affirm the party's gender identity;
  - Potentially put the preferred name listed as an AKA with a notation made in the file to use that name to address the party;
  - Where appropriate, hear matters with transgender and other LGBTIQ individuals in-camera;
  - Not deny transgender people access to the court on the basis that they are dressed in attire that does not conform to their assigned sex at birth;
  - Consider the impact of structural inequality on the life choices of transgender people;
  - Consider the disparate impact of imprisonment on transgender individuals and ensure special provisions are made for transgender individuals who must be incarcerated.

### 2.3. The Principle of State Obligation

**73%** of Belizean judicial officers agree international treaties should be used to interpret domestic legislation



Source: CAJO/UN Women/JURIST 2017 Survey on Gender and Judicial Decision-making in Belize

Having ratified CEDAW and other treaties dealing with gender equality and fundamental human rights, the Government of Belize has a duty to protect the rights of women and girls. For example, in article 2, CEDAW requires state parties to take measures to eliminate discrimination against women and girls. This means Belize has a legal obligation to remove all impediments that bar women and men from equal access to justice, education, health care and the political process.

The judiciary, as one of the arms of the state, has a responsibility to take positive steps to improve women and men's access to justice. CEDAW's General Recommendation 33 states that perpetuation of gender stereotypes, gender inequalities and discriminatory practices hinders access to justice. Consequently, to ensure they are promoting gender equality in their decision-making, Belize's international obligations calls on judicial officers to:

- ▶ Consider whether cases before them show elements of gender discrimination or stereotyping;



- ▶ Apply laws in a manner that considers how gender or sex intersects with other social statuses to create disadvantages for both women and men;
- ▶ Be cognizant of how their own personal notions or biases can affect their decisions from the bench;<sup>11</sup> and
- ▶ Ensure their decisions do not perpetuate gender stereotypes.

<sup>11</sup> “All human beings have preconceptions, beliefs, attitudes and prejudices on many subjects... Many people are unable or unwilling to admit even to themselves that actions of theirs may be racially motivated” (Lord Nicholls of Birkenhead in *Swiggs and others v Nagarajan* Opinions of the Lords of Appeal (1999) (UK))

### National Gender Policy Belize

Accountability of Outcomes: Rights entail corresponding duties and obligations. As a signatory to the Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC) and various ILO [International Labour Organization] Conventions, the Government of Belize is accountable for progress made in achieving gender equity, equality and women’s empowerment among its citizens, who are the holders of these rights.

### Code of Judicial Conduct and Etiquette

6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms and, within any applicable limits of constitutional or other law, shall conform to such norms as far as is feasible.

#### 2.3.1. Relevant international instruments, conventions and treaties

Belize is a state party to these conventions and treaties, which promote gender equality:

Treaty/convention	Date of ratification/ accession	Relevance
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)	16 May 1990	The main convention on gender equality is CEDAW, adopted by the United Nations General Assembly in 1979 and regarded as an international bill of rights for women

Treaty/convention	Date of ratification/ accession	Relevance
<b>International Covenant on Economic, Social and Cultural Rights (ICESCR)</b>	9 March 2015	Adopted by the United Nations General Assembly in 1966 and the main convention on economic, social and cultural rights.
<b>International Covenant on Civil and Political Rights (ICCPR)</b>	10 June 1996	The ICCPR is Considered the main convention for promoting civil and political rights. This Covenant was adopted in 1966 by the United Nations General Assembly.
<b>Convention on the Right of the Child (CRC)</b>	2 May 1990	Human Rights rights treaty which that sets out the civil, political, economic, social health and cultural rights of children. Adopted in 1989.
<b>Caribbean Community (CARICOM) Charter of Civil Society</b>	19 February 1992	This Convention is The Caribbean's own declaration of human rights, and was adopted in 1997.
<b>Caribbean Community (CARICOM) Charter of Civil Society</b>	25 November 1996	This is a Convention that Specifically deals with gender equality and the protection of women's human rights. This Convention was adopted in 1995, and which regulates the prevention, punishment and eradication of violence against women.
<b>Inter-American Democratic Charter</b>	11 September 2001	Charter that specifies the entitlements of a democratic society. Adopted in 2001.
<b>United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol)</b>	26 September 2003	The Protocol Commits ratifying states to prevent and combat trafficking in persons, protecting and assisting victims of trafficking and promoting cooperation among states in order to meet those objectives.
<b>United Nations Convention against Transnational Organized Crime (UNTOC)</b>	25 December 2003	This is a multilateral treaty against transnational organized crime.

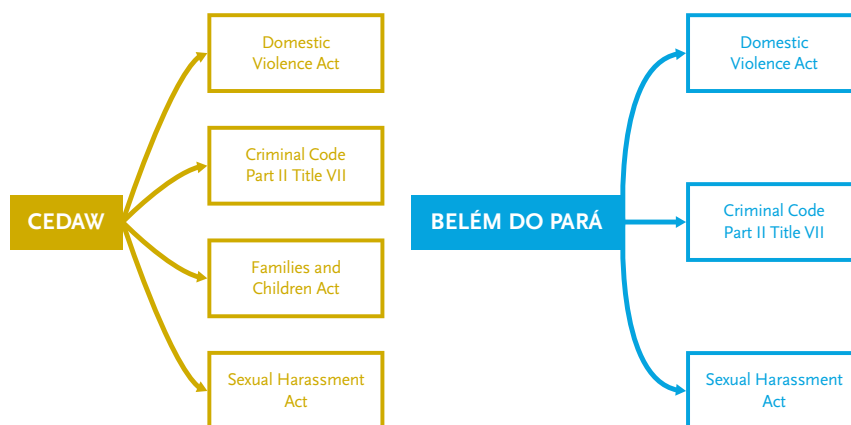
#### Other relevant international guidelines:

- Georgetown Recommendations and Strategies for Action on the Human Rights of Women and the Girl-child 1997
- Victoria Falls Declaration of Principles for the Promotion of the Human Rights of Women 1994

- Bangalore Principles on the Domestic Application of International Human Rights Norms 1998
- Hong Kong Conclusions 1996
- Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity

FIGURE 9

Belize’s domestic legislation that incorporates some of the principles of gender equality from CEDAW and BdP



**Note:** The legislation mentioned does not always in its entirety reflect the principles from CEDAW and BdP. For example, under sexual offences, the Criminal Code recognizes marital rape only under limited circumstances.

### 2.3.2. Incorporating international standards into domestic law

Once Belize incorporates its international obligations into domestic law, the judiciary is bound to apply, where applicable, the terms of the international treaty. As a source of international law, customary international law is also available to be applied in domestic law, in circumstances where appropriate to do so.

Judicial officers may, however, refer to international treaties and conventions even where the state is yet to incorporate its international obligations into domestic law. In *Caleb Orozco v AG of Belize* Claim 688 (2010), paragraph 94, the court held that, because Belize had ratified the ICCPR subsequent to the *Toonen* case, which included “sexual orientation” within the meaning of “sex” in the non-discrimination clauses of the Covenant, Belize had “tacitly embraced” the interpretation rendered by the Human Rights Committee.

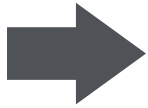
Thus, Belize should follow not only the wordings of the human rights treaties ratified but also their interpretations by the monitoring bodies. Belizean judicial officers should follow the evolution of these interpretations, being in line with the most updated guidelines, recommendations and developments. Furthermore, the final appellate court of Belize, the Caribbean Court of Justice (CCJ), has acknowledged the application of the jurisprudence from international bodies to domestic law.<sup>12</sup>

In the absence of domestic legislation that is clearly inconsistent with the relevant international law, judicial officers may legitimately apply international human rights law or standards in their judicial decision-making in any of the following four ways:<sup>13</sup>

<sup>12</sup> AG v Joseph and Boyce (2006) (Barbados), paragraph 106

<sup>13</sup> SEA, ‘Judicial Colloquium’, final draft, p.14

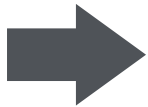
To aid in resolving ambiguity in domestic law



**Example: *Matthew v The State of Trinidad and Tobago* (2004)**

The Privy Council held that the courts would always construe domestic law so as to avoid creating a breach of the state's international obligation, and where the "provision of a state's domestic law is ambiguous and permits two interpretations, one of which will accord with the state's international obligations and the other of which will involve a violation of those obligations, a court will as far as possible adopt that interpretation which will accord with the state's international obligations".

As a source of legitimate expectation to rights or benefits created by international law instruments



**Example: *AG v Joseph and Boyce* (2006) (Barbados), paragraph 56**

In a case dealing with the death penalty, the CCJ stated that, when the Barbados government accepted, through ratification, the American Convention on Human Rights (ACHR) and publicized this acceptance, and as citizens acted in conformity with this treaty, the Court would "uphold the citizens' legitimate expectations" to the fruits of the Convention, despite the treaty not yet being officially a part of domestic law.

As an interpretive guide to domestic legislation



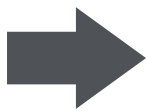
**Example: *Reyes v R* UKPC 11 (2002) (Belize), paragraph 28**

In another case concerning the death penalty, the Privy Council stated that courts must seek to interpret domestic legislation as far as possible to conform to "international standards of humanity and individual right".

**Example: *Caleb Orozco v AG of Belize* (2010), paragraph 94**

In this recent case, the Belize Supreme Court used the United Nations Human Rights Committee’s interpretation of articles 2 and 26 of the ICCPR to conclude that non-discrimination on the basis of sex in the Belize Constitution also extended to a prohibition on discrimination based on sexual orientation. The Supreme Court concluded that Belize, having acceded to the ICCPR, had “tacitly embraced” the interpretation rendered by the Human Rights Committee.

**To fill gaps in domestic law**



**Example: *Stockhausen v Willis, SC 83* (2008) (Jamaica)**

In this Supreme Court decision from Jamaica, Anderson J referred to article 9 of the CRC to illustrate the development of the principle that children have a right to a relationship with both parents and that it is generally in the best interest of a child to have a relationship with both parents.

**Example: *Grant v Grant, HC 30* (2002) (St Lucia)**

In this supreme court decision from St Lucia, Hariprashad-Charles J observed that there was no statute in St Lucia directing the court to have regard to children’s views but she noted its prominence in the CRC, which St Lucia had ratified. She therefore accepted that it was a principle to be applied in St Lucia.

**Recommendation for applying the principle of state obligation**

In relation to enforcing international treaties that are concerned with promoting gender equality, judicial officers are advised to consider:

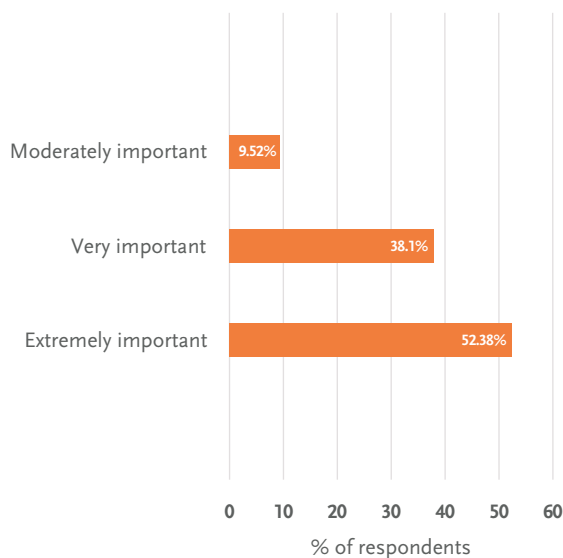
- Whether Belize has incorporated into domestic law its obligations under such treaties and, if it has, to consider further the jurisprudence of the international tribunals established to interpret and enforce these treaty provisions;

- How international human rights standards dealing with gender equality can be used as an interpretative guide or to resolve ambiguity in domestic legislation;
- How international human rights standards concerned with gender equality can be used to fill gaps in domestic legislation;
- How international human rights standards on gender equality can be used to assist in defining the concepts of discrimination and equality in domestic legislation;
- Whether the citizen has derived any legitimate expectations arising from governmental conduct in its acceptance of treaties promoting gender equality.

## 2.4. Judicial Impartiality

*“A judge shall perform his or her judicial duties without favour, bias or prejudice.”*  
*Belize Judicial Code of Conduct, paragraph 4.1*

**100%** of Belizean judicial officers agreed it was important to identify their gender biases when adjudicating cases



Source: CAJO/UN Women/JURIST 2017 Survey on Gender and Judicial Decision-making in Belize

Judicial impartiality does not require judicial officers to be devoid of bias. To expect judges to be free of bias is naïve. They are “ensnared by the same prejudices that afflict us all—prejudices attributable to the influences of their class, gender, race, ethnicity, and life experiences”.<sup>14</sup>

However, judicial impartiality, as encapsulated in section 4.1 of the Code of Judicial Conduct and Etiquette, demands that all judicial officers practise impartiality in the performance of their judicial function.

Heuristic studies have revealed that judicial officers are inclined to unconsciously use mental short cuts, such as stereotyping, to make decisions.<sup>15</sup> Additionally, research has shown how gender and race affect judicial officers’ decision-making in discrimination cases.<sup>16</sup>

When judicial officers make decisions that are affected by stereotypes or biases, which perpetuate inequality, they undermine the integrity of the justice system and its ability to provide just and equitable outcomes. The conscious practice of impartiality is necessary to counteract bias and prejudice.

<sup>14</sup> Gardner Geyh, C. (2016), *Counting Peril: The Political Transformation of the American Judiciary*. Oxford: OUP

<sup>15</sup> Morant, B. (2001), ‘Introductory Essay: The Relevance of Gender Bias Studies’, *Washington and Lee Law Review* 58(3)

<sup>16</sup> Ibid.

FIGURE 10

### The what and why of judicial impartiality

#### What it means to be judicially impartial

Judicial impartiality demands, at a minimum, that a judicial officer:

- 1) is aware of her/his own prejudices and biases; and
- 2) thereafter puts in place measures to ensure a fair-minded and informed observer could not reasonably deem her/his judgement to be partial.

#### Why judicial impartiality is important

- 1) To preserve public confidence in the courts and administration of justice;
- 2) To ensure procedural fairness for parties in the litigation process;
- 3) To ensure judicial officers conduct themselves honourably and ethically.

#### 2.4.1. Stereotypes, prejudices, biases and judicial decision-making

*The reliance on heuristic (stereotypes or rules of thumb) causes predictable biases or systematic errors in judgements.*

*2002 Nobel Laureate in Economics, Daniel Kahneman*

Gender stereotypes and implicit or explicit gender bias in judicial decision-making can significantly impede women's and men's rights to access justice. Gender bias, whether conscious or unconscious, is problematic when it intersects with prejudices regarding other social identities and statuses such as sexual orientation and socio-economic status.

In the CAJO/UN Women/JURIST survey on the role of gender in judicial decision-making, 60 per cent of Belizean judicial officers surveyed believed women should generally be given custody of children and 67 per cent believed a man's primary role was to provide financial support for his family. Notwithstanding these statistics, judicial decisions reflect the peculiar facts of each individual case as well as

other factors relevant to the well-being of the child. Judicial officers should be vigilant in ensuring such stereotypes are not the basis for their decisions.

Almost 14 per cent of judicial officers surveyed believed that women who dressed in skimpy clothes were more likely to be sexually assaulted. This is a stereotype that operates to blame the survivors of sexual assault and tends to absolve perpetrators of the responsibility for their actions.

***60% of Belizean judicial officers surveyed believed women should generally be given custody of children and 67% believed men's primary role was to provide financial support to his family. These responses reflect deep-seated stereotypes regarding the proper role of men and women.***

**TABLE 1**

Non-exhaustive list of stereotypes about men and women

Type of stereotype	Definition	Example of Stereotypes
<b>Sex stereotype</b>	Based on physical and biological differences between women and men	Women, by virtue of having a womb and the ability to give birth to a child, are “naturally” better nurturers and care-givers.
<b>Sexual stereotype</b>	Based on perceived sexual predispositions that women or men are believed to have, as well as on ideas about sexual interactions between the sexes.	There is nothing wrong with men having several sexual partners but a woman must be chaste. Women are seen as sexual objects existing solely for male pleasure.
<b>Gender-role stereotype</b>	Based upon roles or behaviours attributed to, and expected of women and men, arising out of social and cultural constructions or physiology.	Within the family, men should be the primary financial providers, while women should be the primary care-givers for children and should take care of domestic matters.

**FIGURE 11**

Non-exhaustive list of compound or intersectional stereotypes

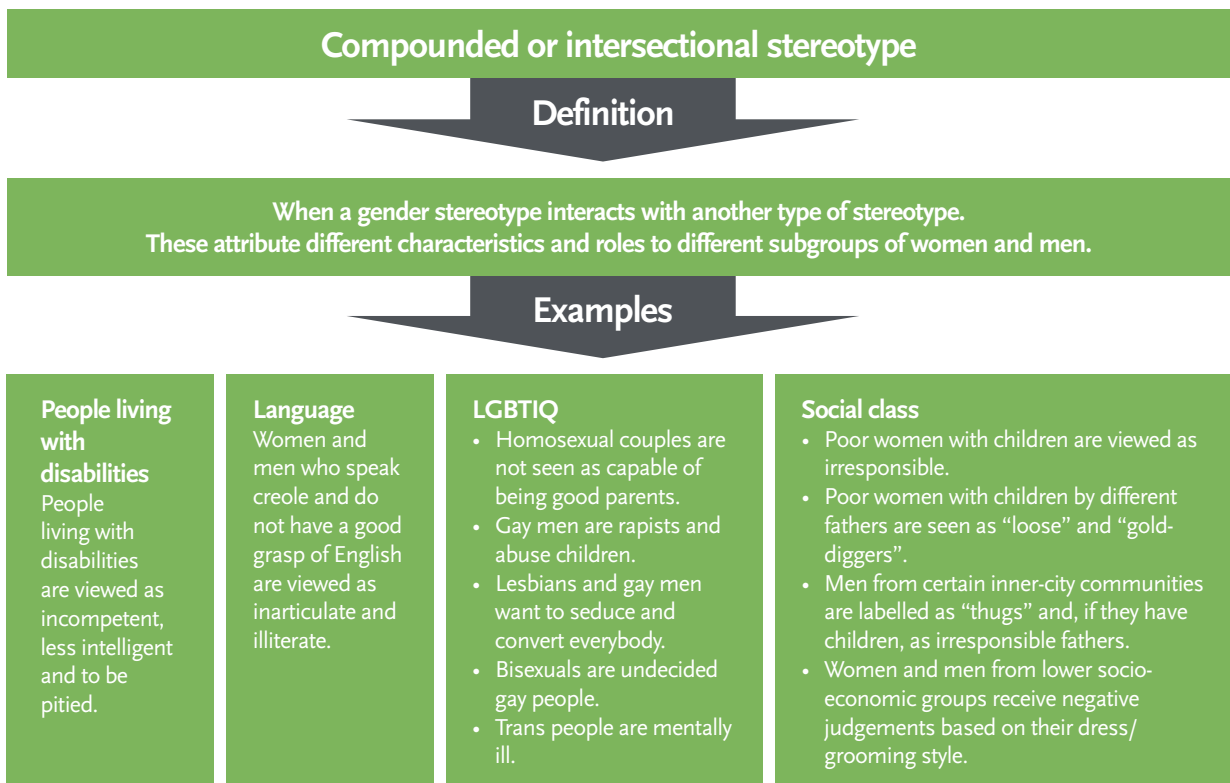
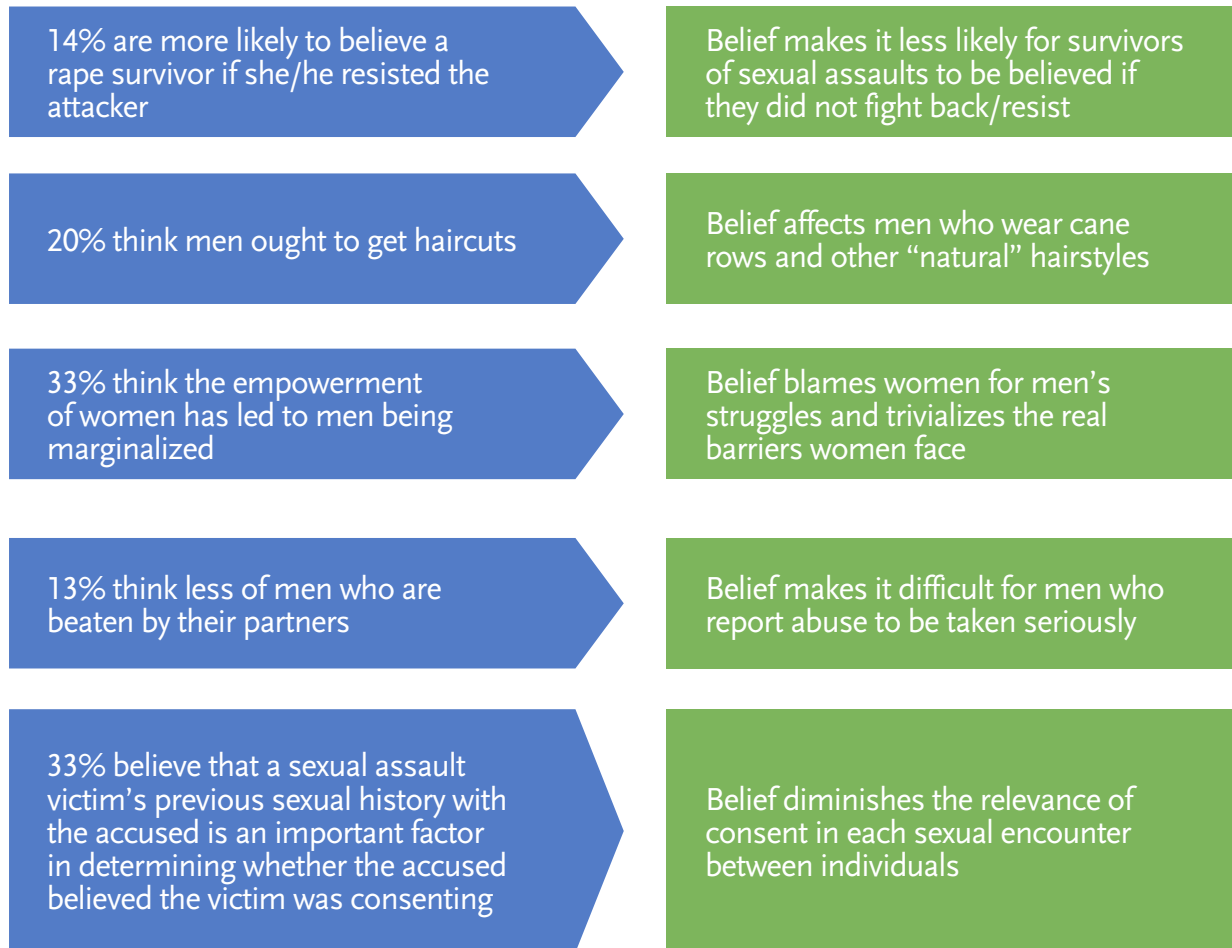
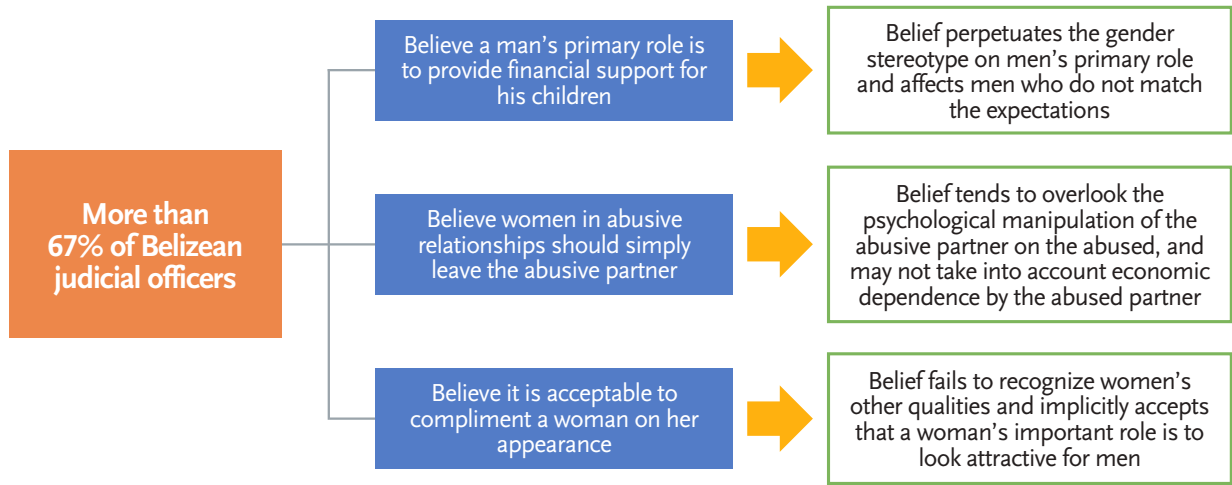




FIGURE 12

Gender perceptions of Belizean judicial officers and the potential impact



**FIGURE 13**

**Analysis of Belizean judicial officers' attitudes towards sexual orientation**



Source: CAJO/UN Women/JURIST 2017 Survey on Gender and Decision-making in Belize

### Analysis

On the surface, most judicial officers seem to have a tolerant attitude towards homosexuality BUT only if the homosexuality does not exist within their private space. While 80 per cent do not have a problem with someone being gay, 40 per cent of those surveyed would be uncomfortable with either their daughter or their son being gay.

One of the best indicators of whether an individual has a favourable attitude towards something or someone is whether it is something or someone they would invite in their personal space or recommend to their loved ones. Based on the survey results, it appears that a majority do not have a favourable attitude toward homosexuality.

It appears that this bias stems from religious beliefs. More than 67 per cent of those surveyed believed that homosexuality was against God's laws.

### Recommendation for applying the principle of judicial impartiality

- Judicial impartiality requires that a judge 1) is aware of her/his own prejudices and biases and 2) thereafter puts in place measures to ensure a fair-minded and informed observer could not reasonably deem her/his judgement to be partial.
- Judicial officers must make every effort to identify their own gendered biases, particularly when those biases intersect with other social identities and statuses such as sexual orientation and socio-economic status.
- Judicial must ensure their decisions do not perpetuate stereotypes that reinforce discrimination against specific subgroups of Belizean men and women.

## 2.4.2. Provocation and men who kill female intimate partners

One of the strongest and most persistent criticisms of the defence of provocation is its perpetuation of gender biases and its protection of men who kill their intimate female partners (Ramsey, C., 2010, 'Provoking Change: Comparative Insights on Feminist Homicide Law Reform', *Journal of Law and Criminology* 33). The criticism of the provocation defence as sexist is made on three fronts.

First, its emphasis on "immediate loss of self-control" often privileges male expression of anger. It is only recently that the "slow burn" doctrine, which considers battered women's reaction to provoking acts, was accepted in law.

Second, the empirical evidence demonstrates that the provocation defence has disproportionately benefited men in getting charges for murdering their intimate partners reduced to manslaughter. This is particularly true in cases where the woman is said either to have been unfaithful or to have questioned the man's sexual prowess. Underlying the acceptance that is justifiable for men to kill their unfaithful partners is the sexist presumption "that men have proprietary rights in women's bodies and sexuality" (Robinson, T., 2013, 'Gender, Equality, Justice and Caribbean Realities – The Way Forward', CAJO Third Biennial Conference, 26 September).

Third, the large numbers of men who kill their partners and get their murder charge reduced to manslaughter send the message that domestic violence is justifiable if the victim "provoked" the situation.

## 2.4.3. Gay panic defence

The "gay panic defence" is used when a perpetrator claims that an unwanted homosexual sexual advance resulted in murder. This argument is used when the defendant relies either on the defence of provocation or on that of justifiable homicide to answer a charge of murder. It has been used successfully in a number of Caribbean cases (see *Marcano v The State* (2002) (Trinidad and Tobago); *Philbert v The State* (2017) (Dominica)).

The defence is particularly problematic because it relies on stereotypes regarding gay men's sexual proclivities. It assumes gay men are promiscuous, intent on converting other men to their "lifestyle". It has also been used successfully to justify murder of gay men because there is an acceptance that it is perfectly normal for men to use violence to ward off perceived sexual advances from gay men.

Source: Wheatle, S. (2016), 'The Constitutionality of the Homosexual Advance Defence in Commonwealth Caribbean', *Equal Rights Review* (16)



# ■ PART 3.

## APPLYING GENDER ANALYSIS TO ADJUDICATION

3.1. INTIMATE PARTNER VIOLENCE

3.2. SEXUAL OFFENCES

3.3. CHILD CUSTODY AND SUPPORT

3.4. HUMAN TRAFFICKING



# PART 3. APPLYING GENDER ANALYSIS TO ADJUDICATION

Gender analysis exposes the ways in which the application of certain norms, rules or standards can yield disparate outcomes for different people. It offers judicial officers a tool that they can use in their adjudication to respond to inequality. A gender analysis should be used in any case in which there are asymmetrical power relationships or structural inequalities that involve sex, gender, socio-economic status

sexual preference/orientation<sup>17</sup> or any other social status that creates vulnerability for the individual or groups. By way of example, the Mexican Gender Protocol sets out the following general approach that judicial officers can use to apply a gendered perspective in their adjudication.

<sup>17</sup> Mexican Protocol, p.77

FIGURE 14

## Gender analysis and adjudication



- Identify whether there is an unequal power relationship at play, and if any person involved is facing a situation of vulnerability or of formal, material, and/or structural inequality.
- Apply strict scrutiny if suspect classes, such as sex, gender and/or sexual preference or orientation, are implicated.
- Pay particular attention to cases in which two suspect classes overlap – such as sex and socio-economic position – and that occur in contexts such as poverty, homelessness and migration.
- Read and interpret the facts without discriminatory stereotypes, and take into account any contextual inequality already identified.
- Question the supposed neutrality of laws or norms, and evaluate disparate impacts that facially neutral laws may impose.
- Determine whether stereotypes are reinforced or relied upon in the law, norm or behaviour of authorities, and make sure to combat those stereotypes in the judicial decision.
- Establish the proper legal framework by applying the principles of equality and non-discrimination as identified in domestic law, the terms of international human rights treaties, general observations from UN treaty-monitoring bodies, including General Recommendations, or Merit Reports from the Inter-American Commission on Human Rights.
- Provide holistic and comprehensive remedies to 1) adequately address all of the different types of harm caused by unequal power relations as well as vulnerabilities and inequalities, which are the result of sex, gender, sexual orientation, race, age, socio-economic position or other social status; and 2) support the ability of the affected individual to achieve her/his life's project or purpose.

Source: This chart summarizes the general approach of the Mexican Protocol, pp.79–90 and 142–143.

The next sections will present judicial officers with a practical guide for applying the general approach to specific types of cases – namely, domestic violence, sexual assaults, maintenance, custody and human trafficking.

### 3.1. Intimate Partner Violence

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*“Violence against women is an appalling human rights violation. In the broadest sense, it is the violation of a woman’s personhood, mental or physical integrity, or freedom of movement through individual acts and societal oppression. It is so woven into the fabric of society to such an extent that many women who are victimized feel that they are at fault. Many of those who perpetuate violence feel justified by strong societal messages that these acts of violence against women, be it sexual harassment, rape, child abuse are acceptable.”*

*The Queen v Vernon Anthony Paddy (2011) (Eastern Caribbean Supreme Court), paragraph 47, p.11*

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#### Defining intimate partner violence

**Emotional or psychological abuse** – defined as a pattern of behaviour, the purpose of which is to undermine the emotional or mental well-being of a person. This includes intimidation, watching and besetting, forceful confinement and use of abusive or threatening language.

**Financial abuse** – defined as a pattern of behaviour used as a means of exercising coercive control over someone or limiting that person’s access to resources in an attempt to ensure the individual’s financial dependence.

**Sexual abuse** – defined as non-consensual sexual contact of any kind, including those that contravene the Sexual Offences Act.

**Physical abuse** – defined as any act or action that causes physical injury.

#### 3.1.1. Granting protection orders promptly

The Domestic Violence Act (DVA) section 4 gives the court the power to “make a Protection Order” and, pursuant to section 11, also to make an interim protection order.

In urgent cases, interim orders are intended to offer a quick albeit temporary remedy to ensure the safety and protection of the applicant or person claiming through the applicant (sections 11(1) to 11(6)). In these cases, protecting an applicant’s safety and security, as well as or including protecting the best interest of a child or dependant, justifies (on an interim basis) the grant of an ex parte order. Interim orders are particularly useful in cases where it is alleged that 1) the applicant has suffered emotional and/or physical abuse,

2) the applicant is fearful of the abuser and 3) it is important to prevent further harm to the applicant, especially where the applicant and the respondent live in the same home.

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*The duration of the interim order should be long enough to give the applicant time to properly plan for leaving the abusive situation and should not lapse before the hearing for the substantive order.*

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The duration of the interim order should be long enough (as permitted by the law)<sup>18</sup> to enable the applicant to make

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<sup>18</sup> DVA section 11(3): 21 days in the first instance or 42 days upon renewal of the interim order



arrangements to secure her/his (or children's/dependants') safety or belongings and a date for the substantive hearing should be fixed before the interim order expires. Nonetheless, in granting the interim order, the court should be mindful not to unnecessarily infringe the abuser's right to be heard or to confront her/his accuser. Consequently, section 11(5) makes it clear that a date for hearing of the substantive matter should be made as soon as possible. In addition to the court's power to dismiss the application upon substantive hearing or non-appearance of the applicant, the respondent can file an application to have the order discharged (section 17(2)). In assessing whether a variation or revocation of the order should be granted, the court must determine whether there has been any substantial change to the conditions set in section 9 regarding the safety of the victim and children involved (section 22(4)).

In urgent cases, the Family Court Policies and Procedures Manual (FCPPM) recommends that an interim order be granted on the same day as the application is made, the first hearing be held within one week of the filing of the application and the application be completed within one month of its filing (FCPPM section 3.2.5(vi)).

Even in cases where an interim order may not be necessary, it is highly desirable that protection order applications be heard promptly. By reporting the matter, applicants place themselves at high risk of being further abused. Moreover, dealing with these cases promptly is in keeping with the object and purpose of the DVA. Additionally, it is consistent with Belize's obligations under article 4(g) of BdP. Courts are therefore strongly advised to treat domestic violence complaints with urgency and sensitivity.

## International and domestic provisions calling for protection and prompt treatment of domestic violence cases

### DVA sections 4 and 11.

**FCPPM section 3.2.5(vi):** In cases of domestic violence requiring interim orders, the interim order should be granted on the same day the application is made and the respondent brought before the court within one week.

**BdP article 4(g):** "Every woman has the right... to simple and prompt recourse to a competent court for protection against acts that violate her rights."

**BdP article 7(f):** "The States Parties... undertake to... establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures."

**CEDAW General Recommendation 33:** States are required to "take steps to guarantee that women are not subjected to undue delays in applications for protection orders and that all cases of gender-based discrimination under criminal law, including violence, are heard in a timely and impartial manner."

**Yogyakarta Principle 5:** Everyone, regardless of sexual orientation or gender identity, has the right to security of the person and to protection by the state against violence or bodily harm, whether inflicted by government officials or by any individual or group.

## European Court of Human Rights

### *Bevacqua and S. v Bulgaria (2008)*

The first applicant claimed that her husband regularly battered her, and that she left him and filed for divorce. Pressing charges against her husband for assault provoked further violence. Her request for interim custody measures was not treated as priority by the domestic courts, and she faced further violence from her husband. Her request for criminal prosecution was rejected on the grounds that it was a “private matter”. The European Court held that there had been a violation of the right to respect for family life, given the cumulative effects of the domestic courts’ failure to adopt interim custody measures without delay, in a situation that affected adversely both the applicant and, above all, the well-being of the child involved.

## Recommended action

Judicial officers should:

- Promptly hear and decide applications for protection orders and hold the substantive hearing before the expiration of the interim protection order. It is highly desirable that protection order applications be heard without delay since, by reporting the matter, applicants may place themselves at high risk of further abuse or death;
- Issue interim protection orders in cases where delay would or might cause serious injury, undue hardship or a risk to personal safety (see *Francois v AG HC 16 (2001)* (St Lucia); and *Bevacqua and S. v Bulgaria (2008)*);
- Be mindful that the DVA has built-in mechanisms to ensure the respondent’s right to be heard is not infringed.

### **3.1.2. Arranging separate waiting areas for parties and making available electronic means of taking evidence for children and vulnerable witnesses**

In cases of domestic violence, an applicant is likely to feel intimidated or threatened by contact with the alleged

perpetrator. Such contact can have a negative impact on the ability of an applicant or witness to testify in court. Family courts can be assisted to ensure the best outcome in cases while safeguarding the comfort of the applicant by, where possible, providing separate waiting areas for parties to a domestic dispute.

Where possible, the family court can make video-link facilities available for use by applicants or vulnerable witnesses, in order to avoid their re-victimization by the alleged perpetrator

(FCPPM section 3.2.6.1). If such technology is not available, the court should utilize a screen to separate the respondent from the applicant or vulnerable witness.



Factors to influence terms of protection or occupation order

- Nature, history and pattern of abuse, including the existence of any previous protection orders made against the respondent
- Need to protect the applicant and other members of the family
- Welfare of any child
- Accommodation needs of applicant and any child/dependant
- Income, assets and financial obligations of respondent
- Any other relevant factor that would lead to the applicant and dependants receiving maximum physical and financial protection

### International obligations on safeguarding the applicant

FCPPM section 3.2.6.1.

**BdP article 7(d):** "... adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the women or using any method that harms or endangers her life or integrity, or damages her property."

**BdP article 7(e):** "The States Parties... undertake to... modify legal or customary practices which sustain the persistence and tolerance of violence against women."

**BdP article 7(f):** "The States Parties... undertake to... establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures."

### Recommended action

Family courts and, where applicable, judicial officers are encouraged to:

- Where possible, designate separate waiting areas for the parties in a domestic violence case, to reduce the likelihood of the respondent either unwittingly or knowingly intimidating the applicant;
- Where possible, make available video-link testimony for cases involving children or vulnerable witnesses.

### 3.1.3. Counselling for the applicant and the respondent

Section 5(1)(d) of the DVA expressly gives the court the power to refer either the respondent, the applicant, the child or any other person involved in proceedings to counselling. Magistrates can therefore order a respondent to attend counselling as one of the conditions of a protection order. It is also important for the magistrate to consider whether any children would need counselling to deal with the effects of the violence in the home.

The applicant's and respondent's attitudes towards domestic violence are often the result of socialization. Counselling is therefore critical to behaviour modification. Sending someone to prison or granting a protection order is only a temporary fix to a deep-seated psychological issue for the abuser and, in most cases, for the applicant as well. Counselling is a useful tool in preventing further abuse and assisting applicants with healing.

Courts should consider whether counselling is an appropriate alternative to more serious forms of punishment in circumstances where 1) the accused has engaged in less serious non-criminal acts and 2) the incident was an isolated one.

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*Counselling cannot be a substitute for criminal sanctions in cases where there has been a pattern of physical and/or psychological abuse. In those cases, counselling should be complementary to the respondent facing the full weight of the criminal law.*

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However, counselling cannot be a substitute for criminal sanctions in cases where there has been a pattern of physical and/or psychological abuse. In those cases, counselling should be complementary to the respondent facing the full weight of the criminal law.

Counselling is not to be confused with mediation. Section 2.4.6 of the Belize FCPPM clearly states that "Mediation proceedings shall not be suitable for domestic violence proceedings."

Perpetrators of domestic violence need specialized counselling. Joint counselling should be avoided as it may place the applicant in a situation where she/he may feel intimidated by the respondent. Specialized counselling is necessary for the respondent to interrogate the causes for her/his abusive conduct and to develop tools to deal with conflict management. As such, where appropriate, judicial officers are advised to ensure the applicant and respondent receive separate and specialized counselling.

When making orders for counselling, the court must ensure the order complies with section 6(a) of the DVA, which requires a counsellor or therapist to inform the court of the respondent's attendance at sessions. Where counselling is ordered under a protection order, judicial officers should remind the respondent that failure to comply with the terms of that order could lead to the imposition of a fine or imprisonment. This will hopefully encourage the respondent to seek the necessary counselling.

Many applicants and respondents will not be able to afford a private counsellor but judicial officers can advise them to use counselling services as referred by the family court and the Family Services Division.

## Domestic and international provisions promoting the use of counselling in domestic violence cases

DVA section 5(1)(d) gives the court the power to refer either the respondent or the applicant to counselling.

**FCPPM section 2.4.6.**

**BdP article 8(b):** “State Parties agree to... modify social and cultural patterns of conduct of men and women, including... stereotyped roles for men and women which legitimize or exacerbate violence against women.”

**CEDAW article 5(1):** “States Parties shall take all appropriate measures... [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices...”

**CEDAW General Recommendation 19** requires state parties to “establish support services for victims of family violence, rape, sexual assault and other forms of gender-based violence, including refuges, specially trained health workers, rehabilitation and counselling.”

**86%** of Belizean judicial officers think the victim and alleged abuser in domestic violence should seek couples' counselling to sort out their issues.

Couples' counselling in isolation can put the applicant in a situation where she/he feels intimidated and may not address the root causes of the abusive conduct.

Couples' counselling ought not to be a substitute for criminal sanctions.

## Recommended action

Judicial officers are encouraged to:

- Ensure that, where required, both applicant and respondent receive separate and specialized counselling in domestic violence cases;
- Consider the effects of domestic violence on the well-being of children and the family unit and mandate counselling for the children and other members of the family as needed;
- Ensure the applicant and the respondent are attending and benefiting from the counselling sessions;
- Refrain from suggesting or ordering mediation in cases of domestic violence.

### 3.1.4. Granting occupation orders

Section 5(1) of the DVA gives the court the power to issue occupation orders where there is a finding of domestic violence. This order can be vital in ensuring the applicant is not left homeless in her/his attempts to escape the abuse. The occupation order is especially useful in cases where there are children involved and the applicant has nowhere else to live. The occupation order can be made against the abuser even if the applicant does not have a proprietary interest in the premises. In addition to the order giving the applicant full possession of the home, the court is advised to complement this with orders giving the applicant exclusive use of household items (DVA section 8(8)) and mandating the respondent to pay rent and/or utilities (section 8(6)). The court should do so especially where paying for rent and utilities was the respondent's responsibility prior to the application for the occupation order.

If, however, the home is situated in an area where the abuser's family is likely to influence or intimidate the applicant, it may be more suitable for the applicant to move out of the home. In such cases, the court can order the abuser to pay for the applicant's rent and utilities. Again, this is useful where the applicant has children and is also financially dependent on the abuser.

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*In granting an occupation order, or any other order provided by the DVA, the court must be cognizant of the real possibility that the application for the order may trigger the abuser to engage in even more abusive behaviour – sometimes resulting in the applicant being killed.*

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In granting an occupation order, or any other order provided by the DVA, the court must be cognizant of the real possibility that the application for the order may trigger the abuser to engage in even more abusive behaviour – sometimes resulting in the applicant being killed. In most cases of domestic violence, the abuser uses violence to control the applicant. The protection or occupation order signals to the abuser that she/he is no longer able to control the applicant. An abuser may go to extreme lengths to regain this control.

It is therefore necessary to ensure that, when granting the occupation order, the court uses the wide range of orders in section 5(1) and cautions in sections 9(b), 9(c) and 9(h) to safeguard the applicant and reduce the likelihood of the applicant encountering the respondent.

#### Recommended action

Judicial officers must:

- Use occupation orders in justifiable circumstances where there is risk of serious harm against the applicant, children or other members of the household;
- Supplement the granting of an occupation order with additional orders to ensure the applicant is sufficiently protected – for example ordering the respondent to pay rent and/or utilities;
- Be aware that, in certain cases, an occupation order may not be appropriate, but the court can still order the abuser to pay for the applicant's rent and utilities by means of a tenancy order.

The goal of the court is to safeguard the applicant's interests and reduce the likelihood of the applicant coming into contact with the respondent. The court must utilize the full range of judicial powers to achieve this aim.

## Domestic and international provisions justifying the use of occupation orders

**DVA section 5(1)(c)(4):** The court can order the abuser to vacate the property that she/he shares with the applicant for a period of not less than three months.

**BdP article 7(f)** demands that state parties put in place “protective measures” for women subjected to violence.

### 3.1.5. Need for protection where the applicant does not leave the abuser

A common factor that has hindered access to justice for survivors of domestic violence is the misperception that the need for protection is not imminent because the victim has failed to leave the abuser.

Judicial officers are advised to be cautious with regard to the belief that protection is not important or less important in cases where an applicant has not left the abuser. Greater understanding of the complexities of the parties' relationship is required. Applicants may be inclined to stay with the respondent for the following reasons:<sup>19</sup>

<sup>19</sup> <http://www.newchoicesinc.org/educated/abuse/DV/whynotleave>

- ▶ **Commitment to the relationship:** Deep emotional ties to the relationship may fuel the applicant's hope that things may change and the abuse may eventually stop.
- ▶ **Economic dependence:** The nature of the relationship may mean the applicant does not have resources or property to relocate. The applicant may also be economically dependent on the respondent to meet the needs of the children and the household.
- ▶ **Threats from the respondent:** The applicant may have been threatened by the respondent and may entertain justifiable fears that the respondent will carry out those threats.

**20%** of Belizean judicial officers believe it is pointless to grant a protection order if the applicant desires to remain with the abuser.

**80%** believe a woman in an abusive relationship should simply leave the abusive partner. Greater understanding of the complexities of the parties' relationship is required.

All judicial officers should appreciate that applicants, even though they are victims of abuse, have many legitimate reasons to remain with or return to their abuser, and this

should not be a factor that militates against the need for protection.

## International provisions on addressing social and cultural patterns in domestic violence matters

**BdP article 8(b):** “State Parties agree to... modify social and cultural patterns of conduct of men and women, including... stereotyped roles for men and women which legitimize or exacerbate violence against women.”

**CEDAW article 5(1):** “States Parties shall take all appropriate measures... [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices...”

**Yogyakarta Principle 13:** Everyone has the right to social security and other social protection measures, without discrimination on the basis of sexual orientation and gender identity.

### **Domestic violence in rural communities**

In some rural communities, for example in Maya communities, women and girls face additional challenges that render them more vulnerable in situations of domestic violence. For example, communities may be far removed from the district court office, and the local alcalde does not have the jurisdiction to deal with any act that constitutes domestic violence. Lack of information on their rights or language barriers may also present challenges to access to justice. In Belize, the situation is alleviated somewhat as district family courts either provide or source interpreters for court users and the Human Services Department has conducted outreach into villages to educate and inform rural women of their rights under the DVA.

### **Recommended action**

Judicial officers are encouraged to:

- Recognize the complexity of abusive relationships and not deny the applicant protection because of stereotypical perceptions of how individuals should react in such relationships;
- Acknowledge that an applicant may want to remain in an abusive relationship because of economic or psychological dependence on the respondent, or fear of stigma from their community;
- Tailor the terms of the protection order to provide the applicant with the resources to lessen or cut her/his emotional or economic dependence on the respondent;
- When issuing protection order, take into account the specific context and reality to ensure safety is guaranteed.



### 3.1.6. Monetary awards to applicant

The DVA makes it possible for the court to impose certain financial obligations on the respondent.

- Section 5(1)(c)(ii) of the DVA gives the court the power to make an order for the respondent to provide compensation for monetary loss incurred by the applicant as a direct result of the domestic violence conduct. Section 5(1)(c)(iii) gives the court the power to order interim monetary relief to the applicant for the benefit of any child, and sections 5(1)(c)(v) and (vi) rent and/or mortgage payments.
- The language of section 7(1) cover orders from the court stipulating that the respondent compensates the applicant for costs such as medical expenses, loss of earnings, cost of accommodation, relocation, moving costs and legal costs, including the cost of the application.

Ordering the respondent to provide financial assistance or compensation to the applicant is in keeping with Belize's international obligations to grant protection orders without placing undue financial burden on the applicant.

In making these orders, judicial officers should consider the following:

- In domestic violence cases, the abuser should be made to make restitution for any losses the applicant

incurred because of the abuse (DVA Section 5(1)(c)(i) and (ii)).

- For medical expenses, it should not always be necessary for the applicant to provide a medical certificate for the court to order that she/he be awarded some compensation. If the injuries are self-evident or there are corroborating witnesses, the court can order that the respondent reimburse the applicant for pain, suffering or injury.
- In addition, when making compensation orders, the court should consider any damage to property or any additional measures the applicant had undertaken to avoid the abuse.
- Economic dependence is one of the reasons women choose not to report domestic violence and do not leave their abusers. Courts must therefore grant maintenance orders that provide sufficient money to cover living expenses for their dependants.
- The court should put in place measures to ensure the applicant can receive the compensation or interim financial relief without having to encounter the respondent. The court has to order the respondent to make the payments directly to the court, as established by section 7(2) of the DVA.

#### Domestic and international provisions justifying monetary awards to applicants

**DVA sections 5(1)(c)(ii) and 7(1):** The court can, as a term of a protection order, oblige the abuser to pay for medical expenses, loss of earnings, cost of accommodation and other reasonable expenses, including the cost of the application.

**DVA section 5(1)(c)(iii):** The court can order the abuser to make maintenance payments for children.

**BdP article 7(g)** demands that state parties ensure women have effective access to restitution, reparations or other just remedies.

**Istanbul Convention article 53** calls for the immediate granting of protection orders without undue financial and administrative burden.

## Protection for LGBTIQ individuals in abusive intimate relationships

- The DVA gives protection to individuals in a wide variety of relationships, including persons living in the same household.
- While the DVA refers only to heterosexual relationship, persons in gay or lesbian relationship who are living in the same household with the alleged abuser can seek protection orders from the court thanks to the wording “any other person who is a member of the household” (section 2, definition of “domestic violence”).
- However, gay persons and lesbians who are involved in a visiting or casual relationship do not fall within the classes of persons who may seek a protection order and as such are precluded from applying for protection orders.
- On the other hand, transgendered persons may arguably seek protection under the DVA on the basis of their gender identity as either female or male.
- Nonetheless, the exclusion based on sexual orientation is discriminatory and breaches sections 3, 6(1) and 16 of the Belizean Constitution. It also goes against the non-discrimination clause of the ICCPR, which bans discrimination based on sexual orientation, as interpreted by the Human Rights Committee in the *Toonen* case, an interpretation accepted by Belize upon ratification (*Caleb Orozco v AG of Belize* (2010))

### Recommended action

Judicial officers are encouraged to:

- Consider whether financial assistance would be an appropriate remedy for applicants in domestic violence cases. Financial assistance could be in the form of the respondent providing interim financial relief pending orders for maintenance or compensating the applicant for “pecuniary loss” suffered, such as medical expenses, loss of earnings, cost of accommodation and other reasonable expenses, including the cost of the application.

### 3.1.7. Assessing the evidence in domestic violence matters

To be able to issue protection orders, courts must receive sufficient evidence from applicants to establish that they need protection. The standard of proof required by the DVA sections 38 and 4(1) is not the criminal standard of proof beyond a reasonable doubt but, rather, the civil standard of proof on a “balance of probabilities”. For issuing interim protection orders, it is sufficient that an application for a

protection order has been made, and an oral statement should be sufficient for an interim order to be made.

Furthermore, the nature of domestic violence sometimes makes it difficult for the applicant to provide corroborating evidence to support their oral testimony. Therefore, the quality of the applicant’s testimony will be of great importance. Judicial officers should be on the alert to guard against the applicant being re-victimized during

cross-examination – such as by ensuring applicants are not unduly subjected to questions that reflect discriminatory perceptions on how victims should act in abusive relationships. For example, questions that equate a woman’s decisions to stay in the relationship either to there being no abuse or to the woman’s consent to the abuse should not be entertained.

For many applicants, the process of approaching the courts can be very intimidating and, as such, their oral evidence may not be very articulate or coherent. Judicial

officers are therefore encouraged to pay significant regard to medical/expert reports as well as initial police reports containing the applicant’s statement (DVA section 29).

In addition, judicial officers should be mindful of any pre-existing biases or judgements they may have regarding the language used and grooming style of the applicants and respondents who appear before them. Judicial officers should not allow these biases or prejudices to negatively affect either their interaction with the parties or the orders they make.

### Domestic provisions on standard of proof in domestic violence matters

**DVA sections 4(1) and 38:** The standard of proof is on a balance of probabilities in domestic violence matters.

#### Recommended action

Judicial officers are encouraged to:

- Ensure that the procedure for obtaining evidence is gender-sensitive and does not re-victimize or traumatise the applicant;
- Be mindful of any pre-existing biases or judgements they may have regarding the language used and grooming style of the applicants and respondents who appear before them. Judicial officers should not allow these biases or prejudices to negatively affect either their interaction with the parties or the orders they make.

### 3.1.8. Custody of children in cases where a protection order is issued

In cases where the applicant and respondent have children together, it is usually advised that the court ensure custody and visitation orders are in place when the protection order is issued. The DVA does not expressly state that the court can also make custody orders during the protection order application. However, section 20 of the Families and Children Act gives judicial officers the jurisdiction to make orders regarding custody, maintenance and visitation. The court therefore has the discretion to make orders with respect to custody or access to a child during a protection or occupation order hearing; this section specifies that

judicial officers must “have regard to the best interests of the child and taking into consideration the conduct and wishes of the parents of the child”. Judicial officers are therefore advised on such occasions to give primacy to the welfare of the children, as per section 4(1) of the DVA and paragraph 1 of the first schedule of the Families and Children Act.

The FCPPM (section 3.2.5) provides that, in custody cases, the first hearing must occur within three weeks of the filing of the application and the application must be completed within three months of its filing.

### **Angela González Carreño v Spain**

#### **CEDAW/C/58/D/47/2012 Communication 47 (2012)**

A seven-year-old girl was murdered by her father during a court-approved visit in a context where her mother had repeatedly sought protection against her husband for threatening and physically abusing them. The CEDAW Committee observed that the authorities had not conducted a comprehensive evaluation of possible benefits or harms of this regime to a child; on the contrary, they indicated a pattern of action that responded to a stereotyped conception of visiting rights that is based on formal equality.

In domestic violence cases, the important point to consider is whether the children have been abused or are at risk of being abused. If so, courts should grant custody to the guardian or parent where the abuse is less likely to occur. Courts should also consider the likelihood of the child being abused when giving rulings on visitation rights. Even though the court may not want to sever the parental ties between

the abuser and her/his children, visitation rights must not be given unless the court is satisfied that measures have been put in place to protect the children from any potential abuse. Courts must not feel themselves constrained to always allow the abuser access to her/his child in cases even where it is obvious that the child may have been subjected to violence or an abusive environment.

### **Domestic and international provisions supporting custody orders in domestic violence matters**

**Families and Children Act section 20** gives judicial officers the jurisdiction to make orders regarding custody, maintenance and visitation, taking into account the best interest of the child and the conduct of parents.

**DVA section 4(1) and paragraph 1 of the first schedule:** Judicial officers have to give primacy to the welfare of children.

**FCPPM section 3.2.5:** In custody cases, the first hearing must occur within three weeks and the application must be completed within three months.

**CRC article 3(2):** “States Parties undertake to ensure the child is given such protection and care as is necessary for his or her well-being...”

### **Recommended action**

Judicial officers are encouraged to:

- Ensure measures are put in place to protect children from abuse when issuing protection orders – for example ordering supervised visits and assigning a probation officer to make follow-up reports on the family situation of the child during the term of the protection order.

## The Yogyakarta Principles

Principle 24: Everyone has the right to found a family, regardless of sexual orientation or gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members.

### 3.1.9. Masculinity and violence

#### Masculinity

Masculinity is a social construct that teaches men and boys about the socially appropriate or acceptable ways of being a man. Since it is socially defined, there can be many masculinities or ways of performing manhood. Consequently, a man's performance of his masculinity will depend on, among other things, socio-economic position, age and sexual orientation.

To the extent that “manhood is [performed] for other men's approval” (Kimmel, 1994, p.128), males' performances of their masculine gender roles also tend to be heightened when they are in the company of their male peers. In these instances, males reject performances that may make them appear feminine, weak or unmanly (James, C. and Davis, A., 2014, 'Jamaican Males' Reading of Masculinities and the Relationship to Violence', *Caribbean Review of Gender Studies* 8: 79–112).

In Belizean society, there is a “dominant masculinity” that calls for men to be (or appear to be) powerful, providers, “gyallist”, leaders, protectors and admirers of women's sexuality. Depending on their class, age and sexual orientation, men will perform these qualities differently and the strength and success of their manhood will hinge on their ability to perform this dominant masculinity to “obfuscate any form of tenderness or effeminacy”.

#### ... and violence

While men in the upper and middle classes can express their power through “respectable” means, poor young men react to the situation of unemployment and poverty by giving expression to their power through either violence (against women and weaker men) or sexual performance (Groes-Green, 2009, p.286)

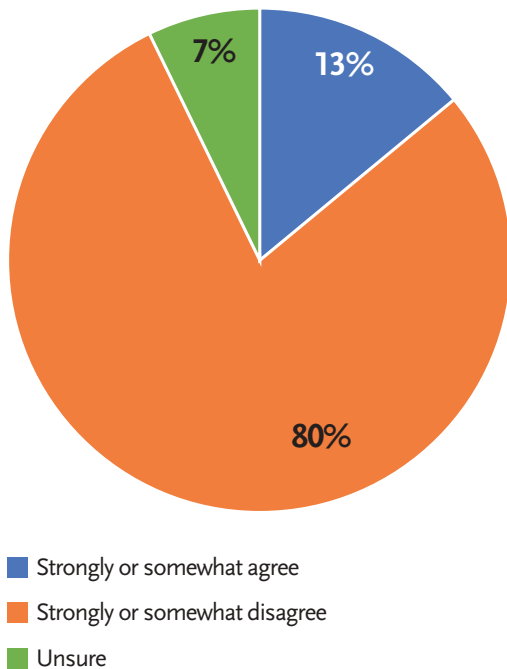
Loss of power or feeling less of a man, whether in an intimate context or in a larger social space, can trigger men to use of violence to re-establish power and their identity as men.

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*Masculinity is associated with strength and power. Any deviation from this script renders the abused man as “less of a man”. This belief makes it difficult for men who report abuse to be taken seriously.*

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### Opinion of Belizean judges on the statement "I think less of men who allow their partners to beat them"



#### 3.1.10. Breach of protection orders and relationship between protection orders and punishment

The DVA section 23(1) states that, if a person against whom an order or interim order has been made contravenes any provision of the order or fails to comply with any direction or prohibition stated in it, then she/he is liable, on a first conviction, to a fine up to \$9,000 and/or imprisonment for a term not exceeding 12 months; on a second conviction, to a fine up to \$15,000 and/or imprisonment up to 24 months; and, on any subsequent conviction, to a period of imprisonment of five years.

Section 23(2) of the DVA gives the power to judicial officers to make the respondent undergo probation in a re-education or rehabilitation programme for persons in a similar situation (“rehabilitation order”), and to engage in community service each weekend for one year. The rehabilitation order can substitute for the imprisonment under subsection 23(1) but not the fine. A rehabilitation order can be made only where a person has no previous convictions for offences under the DVA, where she or he has not previously breached an order and where a suitable programme is actually available to her/him. A rehabilitation order may be particularly useful to make the offender understand the nature of her/his behaviour, to address the root causes of her/his actions and to seek long-term solutions rather than exclusively punishing her/him for the wrongful actions. A rehabilitation order shall substitute for imprisonment only when this does not pose a risk to the safety and well-being of the applicant and any children. When a rehabilitation order is breached, the court should pass a sentence in accordance with section 23(1) of the DVA.

The FCPPM (3.4.3.2.(iii)(a)) provides that, when a protection or other order is breached in cases of domestic violence, the court shall consider whether visitation and access to children in the care of the person sought to be protected should be restricted or discontinued until the court is satisfied that the person is willing to abide by the terms of the protection order, and/or no longer poses a safety threat to the applicant.

Judicial officers ought to bear in mind that punishing a breach of the protection order is not discretionary. The only discretion the court has is whether to impose a fine or to imprison the respondent, or both. Alternatively, the respondent could be fined and a rehabilitation programme might be imposed, when available and appropriate. In exercising this discretion, the court must assess whether 1) a fine is sufficient deterrence, 2) there is a risk of the applicant being violated if the abuser escapes a prison sentence and 3) the respondent’s conduct, which resulted in the breach, amounts to a criminal offence.

Although a protection order offers legal protection to the applicant, judicial officers must be cognizant that perpetrators of domestic violence must also be held responsible for their actions in criminal proceedings. Dealing with domestic violence in the justice system is not solely about protecting the victim from the abuser, but also about criminally sanctioning the abuser's reprehensible conduct. The fact that the violence occurred in an intimate context does not and should not make it less criminal.

Holding the abuser criminally liable for her/his actions sends the signal that the state, including the judiciary, has a zero tolerance policy towards domestic violence. Consequently, where the breach of the protection order amounts to a non-indictable criminal offence under any relevant law, judicial officers should deal simultaneously with the breach of the order and the criminal act.

**“Breaches of orders may indicate an increased level of danger for a woman or her children. Criminal accountability of perpetrators for the breach of an order must be delivered alongside all other initiatives, including the provision of domestic violence shelters and protection orders. Indeed, several cases at the international level show that, perpetrators who continue to breach protection orders can eventually kill their victims. This points out that it is absolutely necessary that breaches of orders are criminalized to enable police to arrest the perpetrator.”**

Report of the Special Rapporteur on Violence Against Women to the UN Human Rights Council 2017, paragraph 85

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*“It is now the duty of the courts to send out a strong message that domestic violence in any form will not be tolerated... The only way the courts can effectively show this is by the sentences that are passed which are aimed at ensuring that the wrongdoer does not repeat the offence and that potential offenders get the message that society will not condone such behaviour.”*

*Hariprashad-Charles J in The Queen v Vernon Anthony Paddy (2011) (Eastern Caribbean Supreme Court)*

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### **Domestic and international provisions justifying criminal sanctions for perpetrators of domestic violence**

**DVA section 23(1):** The court can imprison and/or fine individuals who breach the terms of a protection order.

**DVA section 23(2):** In special circumstances, the respondent can be sent to rehabilitation if this is available.

**FCPPM section 3.4.3.2.(iii)(a):** In case of breach of protection or other order, visitation access to children should be restricted or discontinued.

**BdP article 7(d):** “States Parties... undertake to... adopt legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property.”

## Recommended action

Judicial officers are encouraged to:

- Punish a breach of the protection order to deter the respondent from further harming the applicant;
- Consider whether breach of the protection order also amounts to a non-indictable criminal offence under any relevant law and thereafter deal with both in the same hearing;
- Consider restricting or discontinuing visitation access to children in the care of the person sought to be protected;
- Encourage applicants to seek professional help before discontinuing proceedings and follow through with criminal proceedings if the nature of the abuse also constitutes a criminal offence;
- Consider imposing a rehabilitation order, together with a fine, when rehabilitation programmes are available and when this does not constitute a risk to the safety and well-being of the applicant and children.

### 3.1.11. Granting bail to the accused in cases of domestic violence

Section 30 of the DVA specifies that, where an offence under the DVA has occurred, and the court is requested to determine whether to grant bail to the accused, the following factors should be carefully considered:

- The need to protect the applicant from domestic violence;
- The welfare of the child under the custody of the victim or member of the household;
- Any hardship that may be caused to the defendant or members of the family if the bail is not granted;
- The defendant's record of commission of violent act or evidence/record of abuse to children, physical or emotional;
- Any other relevant matter.

In granting the bail, the court may in conjunction order that the defendant:

- Not harass or molest or cause anyone else to harass or molest the victim of the alleged offence;
- Not be on the premises of work or residence of the victim;
- Not be in a locality in which the premises of work and residence of the victim are;
- Where the defendant continues to reside with the victim, not enter or stay in the premises while under the influence of alcohol or drugs.

Survivors of sexual violence often experience retaliation at the hands of an accused person who is on bail. It is also not uncommon for the accused in some cases – namely those involving minors – to make a payment or offer other inducements to the relatives of the minor in exchange for the complainant dropping the complaint. Additionally, it is sometimes the case that persons accused of domestic violence are repeat offenders. In any such circumstances, a refusal of bail would be justified.



## Provisions supporting judicial officers refusing bail to the accused

DVA section 30 regulates the possibility to grant bail in cases of domestic violence.

**BdP article 7(f):** “The States Parties... undertake to... establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures.”

### Recommended action

Judicial officers are encouraged to:

- Not grant bail to an accused if it puts the complainant, children or witnesses in danger of being harmed and/or there is a real possibility that the accused will commit a similar offence.

## 3.2. Sexual Offences

### Disability, language, age, stereotypes and preconceived ideas about rape: An example of intersectionality

*R.P.B. v. Philippines CEDAW/C/57/D/34/2011 (2014)*

*The case:*

The author, a 17-year-old Filipino girl, deaf and mute at birth, was raped by her 19-year-old neighbour. Because the education system for the deaf is based almost exclusively on written English, the main language she could speak, read and understand was English, not Filipino.

The court did not provide her with interpretation in court. She had to arrange interpreters and they were not available for every hearing attended. The case before the trial court of the Philippines took many years, from 2006 to 2011. **Eventually, the trial court dismissed the accused of rape and lack of consent, on the following bases:**

1. **No use of force by the accuser:** The accused allegedly did not use force or intimidation, as he did not cover her mouth, he “only” pulled her arms and he did not use any object or instrument that would create a real apprehension of dangerous consequences of serious bodily harm.
2. **A stereotypical Filipina would have fought:** The author’s “demeanour was inconsistent with that of an ordinary Filipina whose instinct dictates that she summons every ounce of her strength and courage”.

**3. The author did not attempt to escape or scream:** The author “did make any feeble attempt to free herself... she could have tried to escape or shout for help... her being deaf mute does not render her incapable of creating noise... she could have slapped, punched, kicked and pushed the accused.”

***Consideration of the merits of the CEDAW Committee:***

The domestic remedies having been exhausted, the author turned to the CEDAW Committee, which found that the **Philippines had failed to fulfil articles 2(c), (d) and (f) read in conjunction with article 1 of the Convention and General Recommendations 18 (Disability) and 19 (Gender-based Violence)**, giving the following reasons:

1. Cases involving rape and sexual offence claims should be dealt with in a **fair, impartial, timely and expeditious manner**.
2. **Disabled women are considered a vulnerable group**, who suffer from double discrimination linked to their special living conditions; the author’s disabilities were completely ignored when her reactions to the rape act or her ability to express or not consent were assessed.
3. **Free assistance of an interpreter** in cases where the parties concerned cannot understand or speak the language used in court is a **fundamental fair trial guarantee** enshrined in **human rights** treaties and further developed in the jurisprudence of treaty bodies.
4. **Stereotyping affects women’s right to a fair and just trial** and the judiciary must take caution not to create inflexible standards as to what women or girls should be or should do when confronted with a situation of rape based merely on preconceived notions of what defines a rape victim, and in, this case, also what is **expected from a Filipina female victim of rape**.
5. There should be no assumption in law or in practice that a woman gives her **consent** because she has not physically resisted, regardless of whether the perpetrator has threatened to or used physical violence.

**3.2.1. Psycho-social support for survivors and rehabilitation for offenders**

Pre-trial and trial processes usually require survivors of sexual assaults to relive the traumatic experience of being violated. This can be emotionally and psychologically taxing and have a negative impact on the quality of the evidence given in sexual assault cases.

As part of the court’s inherent power to control its process, judicial officers can safeguard a virtual complainant’s well-

being by ordering that prosecutors and investigators make available to complainants such psycho-social support services as may be offered through departments responsible for victim and witness support. The objective is to provide virtual complainants with a space where they can voice their experiences in confidence and obtain guidance on how to navigate the criminal justice system.

Judicial officers should ascertain whether a complainant has been referred to a support officer, who ideally will be

responsible for providing information on the criminal justice process, explaining to the virtual complainant her/his legal rights and arranging transportation to and from court.

In keeping with Belize’s obligations under BdP article 7(f), which requires that state parties put in place “protective measures” for survivors of sexual violence, judicial officers should ensure as far as practicable that available support is

being provided or facilitated by the prosecuting authorities. Recognizing that the commission of sexual offences is likely driven by deep-rooted ideas, beliefs, stereotypes and socialization, section 65 of the Criminal Code prescribes that a person convicted of a sexual offence shall be ordered, in addition to the penalties prescribed for the offence, to be subject to counselling and medical or psychiatric treatment.

### International provisions justifying survivors’ access to psycho-social support services

BdP articles 7(f) and 8(d) demand that state parties put in place “protective measures”, including providing appropriate specialized services for women subjected to violence.

#### Recommended action

Judicial officers are encouraged to:

- Where appropriate, remind prosecutors and investigators to refer virtual complainants to psycho-social support organizations;
- Ensure that an appropriate officer has been assigned to the virtual complainant to assist in keeping the complainant informed on the progress of the proceedings as well as in navigating the justice system.

### 3.2.2. Friendly courtroom environment for survivors and other vulnerable witnesses

#### *In-camera hearings*

Judicial officers should ensure all sexual offence cases are heard in-camera to provide a courtroom environment that promotes respect for the dignity of the virtual complainant and vulnerable witnesses. In-camera in this case means only officers of the court, parties to the case, their attorneys and persons directly concerned with the case should be present in the courtroom. The media is entitled to be present but should be reminded by the court to restrict their reporting to protect the privacy of the complainant or other vulnerable parties or witnesses.

#### *Use of video evidence/screens*

The giving of evidence via video and screens is a measure used to protect the dignity of the virtual complainant in sexual assault cases. It is often difficult for virtual

complainants, including children, to give evidence while in the same physical space as the alleged perpetrator. Virtual complainants often feel intimidated and re-victimized by the trial process. Additionally, they sometimes feel unjustified guilt in cases where the accused is a family member or an adult in a position of authority.

Section 64(1)(b)(iii) of the Evidence (Amendment 2017) Act provides the possibility to take oral evidence out of court for future use in the Supreme Court. Section 64(c) makes giving evidence by video-link admissible.

Video-link facilities shall be used in all court matters in the Family Court in its criminal, civil and hybrid court cases, to avoid re-victimization and trauma for children and vulnerable witnesses (FCPPM section 3.2.6.1) (see also common law case *Riat and Ors v R*.<sup>20</sup>)

<sup>20</sup> *Riat and Ors v R* (2012) (England and Wales Court of Appeal (Criminal Division))

In deciding where either video-recorded evidence or the use of screens might be suitable, judicial officers should consider the need to protect the dignity of the survivor while at the same time safeguarding the accused's right to a fair hearing. In *Brown and Grant v R*,<sup>21</sup> the court held that, to adequately protect the defendant's right to a fair hearing, the judge must provide a warning to the jury before the witness gives evidence using the special measure. In particular, the judge should indicate to the jury the purpose of using the

special measure and indicate that they should not use it to draw a negative inference of either the defendant or his case.<sup>22</sup>

#### ***Separate waiting rooms for accused and survivor***

The practice of providing separate waiting areas for the accused and the virtual complainant is very important in putting the virtual complainant at ease and preventing the use of intimidating tactics.

<sup>21</sup> *Brown and Grant v R* (2004) (England and Wales Court of Appeal (Criminal Division))

<sup>22</sup> Criminal Bench Book (2016), p.37

### **Domestic and international provisions justifying survivors' access to a friendly courtroom environment**

**Evidence Act 2017 section 64(1)(b)(iii)** provides that oral evidence may be taken out of court for future use in the Supreme Court.

**Evidence Act 2017 Section 64(c)** makes live video-link or any electronic means of oral evidence possible.

**BdP article 7(f)** demands that state parties put in place "protective measures" for women subjected to violence.

***Riat and Ors v R*** permits the use of screens.

***Brown and Grant v R***: The judge must provide warning to the jury before the witness gives evidence using any special measure.

#### **Recommended action**

Judicial officers are encouraged to:

- Ensure that all sexual offence cases are heard in-camera and that the accused and the virtual complainants are placed in separate waiting areas;
- Use video evidence and screens, where available and appropriate, to protect the virtual complainant's dignity and to prevent the virtual complainant from being intimidated by either the defendant or the court process.

### 3.2.3. Men and boys as survivors of sexual violence

- Men and boys experience similar effects of sexual violence as women and girls. They will feel emotions such as shame, grief, anger and fear.
- In addition, the experience of being violated may lead some men and boys to question their sexual orientation (“Am I gay?”), especially if they experience erection or ejaculation during the assault.
- Erection and ejaculation are merely physiological reactions and they cannot be used to argue or imply that the victim was enjoying the sexual act, or that he was consenting. This can also be a reason for a man or boy not reporting the violence, as they may fear being disbelieved.
- Like all survivors of sexual violence, men and boys will be unlikely to report the assault and will be extremely reluctant to speak about the violation.
- Further, being open and vulnerable about such an experience is especially difficult for men and boys because of gender socialization issues. Men and boys are socialized to see themselves as powerful, assertive and in control of their bodies. Being violated questions this assumption and the assault may lead men and boys to question their manhood.
- Society will also find it challenging to accept that men – not so much young boys – can be victims of sexual violence. In most cases, society will consider these survivors “not to be men”. This socialization can make it less likely for men to seek services and can make it less likely that appropriate services are available.

### 3.2.4. Resolving cases promptly

It is important that sexual offence cases are dealt with promptly. Sexual offence cases should not be made to linger on the cause list for four main reasons.

1. The trauma from a sexual assault is not “easily forgotten, [but] the speedier the trial the quicker recovery can begin”.<sup>23</sup>
2. The longer it takes for the case to reach the trial, the more likely it is that witnesses will be unable to remember facts clearly.
3. If the case is protracted, witnesses will become more reluctant to testify, and in some cases it is harder for the investigators to keep track of the witnesses.

4. In cases involving minors, the longer it takes for the case to reach trial, the more opportunity arises for the accused or persons on her/his behalf to offer inducements to the complainant’s family to abandon the case or otherwise interfere with the trial process.

Delays in dealing with sexual assault cases affect not only the complainants but also the defendant’s right to a fair hearing within a reasonable time. In exceptional cases, the delay may be substantial enough to result in a stay of proceedings as an abuse of process. For any complainant, this will understandably be perceived as a denial of justice for them. To avoid such an occurrence, judicial officers should consistently hold prosecutors accountable for delays in bringing matters to trial and impose sanctions where appropriate.

<sup>23</sup> Bernard, D. (2006), *Confronting Gender-Based Violence in the Caribbean*. Mona: Centre for Gender Studies, p.21

## International provisions calling for prompt treatment of sexual assault cases

**BdP article 4(g):** “Every woman has the right... to simple and prompt recourse to a competent court for protection against acts that violate her rights.”

**BdP article 7(f):** “The States Parties... undertake to... establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures.”

### Recommended action

Judicial officers are encouraged to:

- Endeavour to place high priority on sexual offence cases and deal with them promptly;
- Make orders that will encourage prosecutors, investigators and defence counsel to carry out their duties to the court within prescribed or stipulated timeframes;
- Grant adjournments to prosecutors or defence counsel for good reason only.

### 3.2.5. Evidence presentation and cross examination

Sexual offence cases should be treated with the utmost sensitivity to avoid further traumatizing the virtual complainant. Judicial officers have a responsibility during cross examination to prevent repetitive questions and character assassinations. Section 70(2) of the Evidence Act requires that judicial officers forbid questions that are needlessly offensive or not relevant.<sup>24</sup> Additionally, the judge should always explain to the jury the reason for her/his interruption of a defence counsel's line of questioning.<sup>25</sup>

It is not uncommon for child witnesses, complainants or other vulnerable witnesses to become distressed during cross examination in a sexual assault case. In appropriate cases, it may be appropriate for the judge to intervene to safeguard the fairness of the trial process.<sup>26</sup>

Judicial officers may also remind the jury that it is usually unrealistic to expect the survivor to recollect every detail, or to precisely match any previous testimony she/he had previously given. The Inter-American Court of Human Rights (IACHR) in *Rosendo Cantu et al. v Mexico* held that “... it is not unusual that the retelling of acts of this nature... may contain some aspects that could be considered, a priori, as inconsistencies”.<sup>27</sup> The IACHR further held that the traumatic experience that the complainant suffered, and the impact, when recalling it, could lead to determined imprecisions in the testimony given.

With particularly vulnerable witnesses, defence counsel will be able to point out inconsistencies but it may be more appropriate for this to be done after the witness gives evidence rather than through the normal cross examination process.

<sup>24</sup> Magistrate Lisa Ramsumair-Hinds, speech at CMJA Annual Conference, Georgetown, Guyana, September 2016

<sup>25</sup> *Wills v R* (2011) (England and Wales Court of Appeal (Criminal Division)); Criminal Bench Book (2016), p.139, p.18

<sup>26</sup> Criminal Bench Book (2016), p.139, p.18

<sup>27</sup> Judgement of 31 August 2010

### 3.2.6. Corroborating complainants' evidence

**33%** of Belizean judicial officers believe the sexual assault victim's previous sexual history with the accused is an important factor in determining whether the accused believed the victim was consenting. Such a belief carries the risk of leading to harmful conclusions, such as that consent to sex on one occasion necessarily means consent on another occasion, and of confusing consent with submission.



Source: <http://www.boredpanda.com/consent-rape-comics-alli-kerkham/>

#### Domestic and international standard supporting dignified treatment of complainants

**Evidence Act section 70(2):** Judicial officers shall forbid questions intended to annoy, or to be needlessly offensive in form, or that are not relevant in determining whether facts occurred.

**Evidence Act section 74:** In cases of rape or attempted rape, no evidence and no question in cross examination shall be adduced or asked at trial by a defendant about any sexual experience of the complainant with a person other than the defendant.

**Evidence Act section 74:** The sexual history of the complainant not with the accused cannot be used or questioned,

**Rosendo Cantu et al. v Mexico:** Judicial officers should remind the jury that it is unrealistic to expect the complainant to recollect every detail or precisely match any previous statement.

### 3.2.7. Sexual history of complainant

Historically, defence counsel relied on **stereotyped and unfounded prejudices** regarding women's sexuality to either attack the complainant's credibility or establish that consent was given. The stereotypes deemed that 1) a woman's sexual experience was indicative of a general willingness to consent and 2) a woman who engaged in pre-marital or extra-marital sex was more likely to lie about the encounter out of shame.

#### WITH PERSONS OTHER THAN ACCUSED

- The **Evidence Act** section 74(1) precludes a defendant from relying on evidence or putting questions in cross examination about any sexual experience of a complainant **with a person other than the defendant** in cases of rape or attempt to commit rape.
- However, the Act gives the judge the discretion to allow evidence of the complainant's sexual history with persons other than the accused but **only on an application made to her/him in the absence of the jury, and only when refusing the application will be unfair to the defendant** (section 74(2)).

#### WITH THE ACCUSED

- There is nothing in the law that prohibits defence counsel from relying on the aforementioned stereotypes when using the complainant's **sexual history with the accused** to attack credibility and/or establish consent.
- Recounting someone's sexual history can be perceived as intimidating and distressing, especially if this is done through interrogating questions in an adversarial setting. This is so even where the cross examination is done during an in-camera hearing.
- Judicial officers are therefore encouraged that, where evidence of the complainant's sexual history is allowed, cross examination be conducted in such a way that ensures the complainant is not re-victimized and that her/his dignity is preserved.
- Additionally, judicial officers should warn jurors or themselves be mindful 1) not to conclude that consent to sex on one occasion means consent to sex in another setting and 2) that an intimate partner is just as likely to commit rape as a stranger.

#### Recommended action

Judicial officers are encouraged to:

- Prevent repetitive questions and character assassinations "which serve no useful purpose apart from traumatising victims" during cross examination;



- Admit evidence of a complainant’s sexual history with persons other than the accused only on applications made in absence of the jury and when refusing the application would be unfair towards the defendant;
- If they decide it is necessary to admit evidence of the complainant’s sexual history, ensure the complainant is not re-victimized and that her/his dignity is preserved;
- Warn jurors 1) not to conclude that consent to sex on one occasion means consent to sex in another setting and 2) that an intimate partner is just as likely to commit rape as a stranger;
- Ensure the use of evidence relating to the complainant’s sexual history with the accused does not lead to gender discrimination by, for example, promoting stereotypes regarding women’s sexual activity or history;
- Be mindful of the underlying prejudices of the original corroboration rule;
- Ensure that, in exercising their discretion to give the corroboration warning, they are also warning the jury about the dangers of relying on stereotypes regarding the propensity of women and girls to lie about having sexual intercourse.

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*“For much of our history the ‘good’ rape victim, the ‘credible’ rape victim has been a dead one. There are many misguided conceptions of what constitutes a ‘real’ rape or how a ‘real’ victim of sexual violence should behave (ie scream, struggle to the utmost and report immediately).”*  
*R v Ururyar ONCJ 448 (CanLII) (2016) (Canada), paragraphs 514 and 386*

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### 3.2.8. Warning juries against relying on gender stereotypes

When giving instructions to the jury regarding the assessment of evidence, judicial officers should as far as possible warn the jury about relying on stereotypes of female and male sexuality when determining the credibility of the accused and the complainant. In 2008, the UK Court of Appeal in *R v Doody* held that it was perfectly permissible for judicial officers in sexual assault cases to give balanced directions “aimed at correcting misconceptions where there is a danger of a jury coming to an unjustified conclusion without an appropriate warning”.<sup>28</sup>

Examples of stereotypes include the following:

- Women who dress provocatively make themselves the target of male lust.
- A woman who takes money from a man must expect that he will want to have sex.
- It is hard for a man to control his sexual urges once he is turned on.
- Women should physically fight back when threatened with rape.
- Consent given under the influence of alcohol or drugs is the same as consent given when sober.
- Women can implicitly – through their actions – consent to sex.

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<sup>28</sup> Rook, P. and Ward, R. (2010), *Sexual Offences: Law and Practice*, 4th edition. London: Sweet and Maxwell, chapter 1

- Under-aged girls who willingly have sex with older men are “force ripe”.
- A man cannot rape his wife.

and perpetuate the offensive idea that men lack control of their sexual urges. More importantly, these ideas incorrectly suggest rape is about sexual desire, when it is in fact about using sex as a means of exercising power over the victim.

These ideas about female sexuality make it extremely difficult for women to prove they have not consented to sexual relations. Conversely, these ideologies tend to give men a free pass for violating a woman’s sexual autonomy

Judicial officers should therefore impress upon juries that they should treat these ideas with the utmost scepticism and, instead, independently assess, without prejudice, the facts in each case.

**15%** of Belizean judicial officers believe that a woman can implicitly consent to sex and that a woman who dresses in skimpy clothes is more likely to be raped. These beliefs allow perpetrators to rely on stereotypical excuses to establish consent to sexual intercourse.



Source: <http://www.boredpanda.com/consent-rape-comics-alli-kerkham/>

### Need to warn the jury against relying on stereotypes

“The experience of judicial officers who try sexual offences is that an image of stereotypical behaviour and demeanour by a victim or the perpetrator of a non-consensual offence such as rape, held by some members of the public can be misleading and capable of leading to injustice... Judicial officers have, as a result of their experience, in recent years adopted the course of cautioning juries against applying stereotypical images of how an alleged victim or an alleged perpetrator of a sexual offence ought to have behaved at the time, or ought to appear while giving evidence, and to judge the evidence on its intrinsic merits. This is not to invite juries to suspend their own judgement but to approach the evidence without prejudice.”

Pitchford L. J, Crown Court Bench Book (2010)

## 80% of Belizean judicial officers agree young girls should not be having sex.

This belief is a double-edged sword. On the one hand, it means judicial officers will be very vigilant in protecting young girls against sexual predators. On the other hand, it means teenage girls who willingly have sex may be condemned for doing so. Also, there is usually less sympathy for these girls when they are manipulated by older predatory men.

## In 2015, the Family Court received 52 intakes for uncontrollable behaviour, 46 regarding females and 6 regarding males.

Judicial officers and magistrates should be aware of how the ideologies surrounding young girls' sexuality often lead parents to seek the detention of their supposed "uncontrollable" daughters under the age of 16 when they start to show an interest in boys (section 16 of the Children's Reformation Act).

Unless satisfied that there is a danger of criminal conduct, judicial officers should avoid granting applications arising out of sexual activity alone as this will perpetuate the discriminatory belief that girls who engage in sexual activity are "bad".

Detention under this provision has no limits in terms of time and it goes against article 37(b) of the CRC: *"The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."*

## TRIAL WITHOUT A JURY

Sections 65(b) and (c) of the indictable act provide that the prosecution may apply to the judge for the trial to be conducted without a jury in other special cases:

- If, in view of the nature and circumstances of the case, **there is a risk of jury tampering or the intimidation of jurors or witnesses;**

- **If a material witness is afraid or unwilling to give evidence before a jury;**
- If the case involves a criminal gang element;
- If the length of the trial is burdensome to the jury;
- **If pre-trial publicity attracted by the case can hamper the fair trial with a jury.**

Judicial officers are asked to recognize that, in an exceptional case, it may be appropriate to grant an application for a sexual offence trial to be conducted without a jury.

### Domestic and international provisions supporting judicial officers warning the jury about relying on gender stereotypes

**Criminal Code section 71(2):** The jury has to consider the presence or absence of reasonable grounds for a man to believe there was consent in penetrating a woman, in conjunction with other relevant matters.

**BdP article 8(b):** “State Parties agree to... modify social and cultural patterns of conduct of men and women, including... stereotyped roles for men and women which legitimize or exacerbate violence against women.”

**CEDAW article 5(1):** “States Parties shall take all appropriate measures... [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices...”

### Recommended action

Judicial officers are encouraged, where appropriate, to:

- Include in their directions to the jury a warning about relying on stereotypes of female and male sexuality when determining 1) the credibility of the accused and the complainant and 2) whether consent had been given to the sexual activity;
- Warn the jury that the absence of corroborating evidence in sexual offence cases is normal;
- Warn the jury that inconsistencies or imprecision in evidence given by complainants in sexual offence cases may arise as a result of trauma suffered as a consequence of the commission of the offence.

### 3.2.9. Defining consent for the jury

Judicial officers should assist the jury in understanding the meaning of consent. While there is no statutory definition of consent in Belize, the UK Sexual Offences Act 2003 represents the current accepted standard for consent in a sexual context.

Section 74 of the UK Sexual Offences Act defines consent as 1) an agreement to engage in sexual activity that is given by choice where 2) the individual has the freedom and capacity to make that choice.

While the Belizean Criminal Code does not define what consent means, section 53A of the Criminal Code (Amendment) Act 2 2014 provides a list of circumstances that, if in existence at the moment of the sexual offence, result automatically in a situation where consent was not given, and the accused person did not believe that the complainant consented.

These circumstances are:

- Violence was used at time of offence or before the act began.

- The accused was causing the complainant to fear that violence was being used or would be used against her/him or another person.
- The complainant was unlawfully detained at the time of the offence.
- The complainant was asleep or otherwise unconscious.
- The complainant had a physical disability that made her/him unable to communicate if consent was given.
- The complainant was administered to or forced to take a substance causing her/him to be stupefied or overpowered at the time of the alleged offence.

Judicial officers and the jury should be aware that these are situations where non-consent can be presumed but do not function as an exhaustive list of circumstances where consent is not given. Consent, as defined by the Canadian courts, is a “voluntary or freely given and mutually understood agreement to engage in sexual activity”.<sup>29</sup>

There are three questions a judge should ask the jury to address its mind to:<sup>30</sup>

29 R v Ururyar ONCJ 448 (CanLII) (2016) (Canada), paragraph 389  
30 Jamaica Criminal Bench Book (2016), pp.317–322

Did the complainant have the capacity (age and understanding) to choose to engage in sexual activity?	Was the complainant's choice freely or voluntarily made (not constrained in any way)?	Is there factual evidence from which the accused could reasonably assume the complainant was consenting?
<p>No capacity to make a choice if:</p> <ul style="list-style-type: none"> <li>• Child (under 16);</li> <li>• Person with physical disability that made her/him unable to communicate if consent was given;</li> <li>• Person with disability that impaired her/his ability to understand the nature of the activity or made her/him vulnerable to being manipulated;</li> <li>• Person incapacitated by drug, alcohol or other means.</li> </ul>	<p>Consent must be voluntary and freely given. There is a difference between submission and consent.</p> <p>Consent is not freely given if a person is being subjected to:</p> <ul style="list-style-type: none"> <li>• Violence (to her/him or another person);</li> <li>• Emotional, psychological, physical, reputational or financial pressure;</li> <li>• Threat, intimidation, force or coercion to her/him or another person.</li> </ul>	<p>The accused cannot use the following circumstances to assume the complainant was consenting:</p> <ul style="list-style-type: none"> <li>• The way the complainant dresses, smiles, looks or acts;</li> <li>• Having a relationship or previous sexual activity with the complainant or any other person;</li> <li>• Silence, passivity, lack of resistance or immobility;</li> <li>• Accepting money prior to or after sexual activity with the accused.</li> </ul>

## European Court of Human Rights' updates the standard of consent in rape cases

### *M.C. v Bulgaria* app. 39272/98 (2004)

*"The Court observes that, historically, proof of physical force and physical resistance was required under domestic law and practice in rape cases in a number of countries. The last decades, however, have seen a clear and steady trend in Europe and some other parts of the world towards abandoning formalistic definitions and narrow interpretations of the law in this area (para 156)... in common-law countries, in Europe and elsewhere, reference to physical force has been removed from the legislation and/or case law (para 159)... the Court is persuaded that any rigid approach to the prosecution of sexual offences, such as requiring proof of physical resistance... risks leaving certain types of rape unpunished and thus jeopardising the effective protection of the individual's sexual autonomy (para 166)."*

## Domestic and international provisions relevant to consent in rape cases

**Criminal Code section 71(2):** In considering whether a man believes a person was consenting to sexual intercourse the jury should consider the present or absence of reasonable grounds in conjunction with other relevant matters.

**Criminal Code section 53A** lists the circumstances in which consent cannot be given or believed to be given.

### Recommended action

Judicial officers must:

- Understand or, where applicable, clearly explain to the jury that the choice to engage in sexual activity must be freely given (not constrained in any way) and the complainant must have the capacity (age and/or understanding) to make that choice.

### 3.2.10. Granting bail to the accused

Section 56(2) of the Indictable Procedure Act provides that the accused person charged with a felony may be admitted to bail at the discretion of the magistrate.

Overarching considerations for magistrates and judicial officers when granting bail are 1) the need to protect the survivor of the sexual assault; 2) the likelihood that the accused will endanger the complainant's safety; and 3) the

possibility of the accused committing another offence or interfering with the course of justice while on bail.

Survivors of sexual violence often experience retaliation at the hands of the accused who is out on bail. This is especially the case where the accused is known to the complainant or belongs to the same community. It is also quite common for the accused, in some sexual offence cases involving minors, to make a payment or offer other inducements to

the relatives of the minor in exchange for the complainant dropping the complaint.<sup>31</sup> Additionally, it is sometimes the

case that persons accused of rape are repeat offenders. If these circumstances exist or are likely to occur, judicial officers would be justified in refusing bail.

31 US Department of State (2013), 'Barbados Human Rights Report', p.8

### Domestic and international provisions supporting judicial officers refusing bail to the accused

**Indictable Procedure Act section 56(2):** Magistrates have discretionary power in granting bail.

**Criminal Justice and Crime Control Act section 16:** Magistrates may not grant bail for certain scheduled offences including unlawful sexual intercourse, but the defendant may be granted bail by the Supreme Court.

**BdP article 7(f):** "The States Parties... undertake to... establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures."

#### Recommended action

Judicial officers must:

- Not grant bail to an accused if it puts the complainant or witnesses in danger of being harmed and/or there is a real possibility that the accused will commit a similar offence.

#### 3.2.11. Pre-trial publicity precautions

Consideration must be paid to the impact the media and social media can have on the parties involved in sexual offence cases. There may be three types of impact. First, for complainants, such exposure could cause embarrassment, and this can in turn lead to them not wishing to pursue the case. Second, in small societies, high levels of publicity can "infect" the jury pool, causing the jury to make up their minds before the trial begins. And third, this may give rise to claims by the accused that she/he is unable to receive a fair trial.

In *Boodram v AG of Trinidad and Tobago*,<sup>32</sup> the Privy Council found that, in cases where publicity is an issue, the judge could take certain measures to neutralize any threats posed

to a fair trial process. The court can consider using gag orders to prevent prosecutors, witnesses, law enforcement officials, jurors and others from talking to or making comments in the media. She/he can decide whether measures such as "warnings and directions to the jury, peremptory challenge and challenge for cause, will enable the jury to reach its verdict with an unclouded mind, or whether exceptionally a temporary or even permanent stay of the prosecution is the only solution".

Section 268 of the Criminal Code establishes the crime of misdemeanour for anyone who publishes in writing or otherwise anything concerning the proceedings or any party thereto, with the intent to excite any popular prejudice for or against any party to such proceedings.

32 *Boodram v AG of Trinidad and Tobago* AC 842 (1996)

*“No other crime is looked upon with the degree of blameworthiness, suspicion, and doubt as a rape victim. Victim blaming is unfortunately common and is one of the most significant barriers to justice and offender accountability.”*

*R v Ururyar ONCJ 448 (CanLII) (2016) (Canada), paragraph 491*

### Domestic and international provisions supporting special measures to protect the complainant from media scrutiny

**Criminal Code section 268:** Every person who publishes in writing or otherwise concerning the proceedings or the party thereto is guilty of misdemeanour.

**BdP article 7(f):** “The States Parties... undertake to... establish fair and effective legal procedures for women who have been subjected to violence which include, among others, protective measures, a timely hearing and effective access to such procedures.”

#### Recommended action

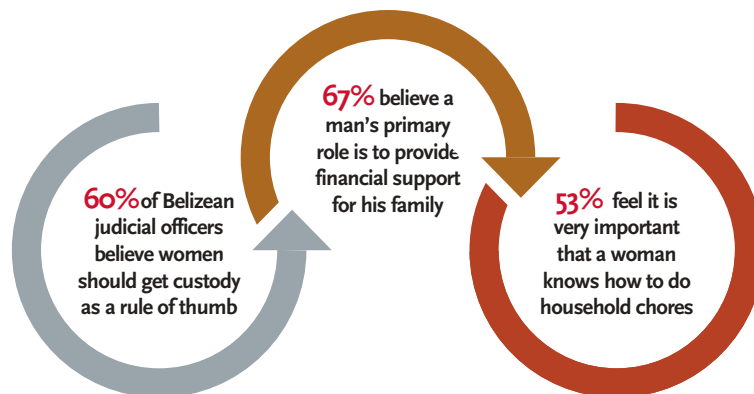
Judicial officers are encouraged to:

- Utilize appropriate measures to neutralize any threats that publicity from the media, including social media, may pose to the fair administration of justice or the accused’s right to a fair trial;
- Remind counsel and officers of the court of the section 268 prohibition and the corresponding punishment for breaching the section.

### 3.3. Child Custody and Support

FIGURE 15

Attitudes of Belizean judicial officers towards traditional gender roles in the family





### 3.3.1. Custody of children

Paragraph 1(a) of the first schedule of the Families and Children Act states that, in deciding issues concerning the upbringing of a child, the welfare of the child shall be the first and paramount consideration. Paragraph 3 sets out the criteria that the court or any other person shall have with regard in particular to 1) the wishes and feelings of the child, in light of her/his age and understanding; 2) the child's physical, emotional and educational needs; 3) the likely effects of any changes in the child's circumstances; 4) the child's age, sex, background and any other circumstances relevant in the matter; 5) any harm this child has suffered or is at risk of suffering; 6) the parents, guardians or others involved in the care of the child in meeting her/his needs.

Sections 3 and 4 of the Married Persons Protection Act gives both wife and husband the equal right to submit an application for legal custody of any children of a marriage.

Section 30 of the Families and Children Act provides that the claim of the mother and the father are equal. Judicial officers should be careful not to rely on stereotypes regarding the role of women as care-takers to make decisions regarding custody. Judicial officers should, for example, refrain from acting on a supposed general rule that custody, either of children generally or of a young child in particular, should be given to the mother. This type of analysis discriminates against men and further entrenches the notion that a man's primary role in the family is to provide financial support.

Judicial officers and magistrates should also avoid relying on ideas that a man is more suited to raising boys and a women, girls. Instead, they should take into account the best interest of children to grow up with their siblings and not be separated on the base of gender (see *Friesen v Friesen*, paragraph 27).<sup>33</sup>

<sup>33</sup> *Friesen v Friesen* COA (2003) (USA)

### It's not always black and white

It is not uncommon for judicial officers in custody matters to impute malicious intentions to fathers who file for custody of children, especially very young children. The assumption that a man would want custody of his child only to satisfy some ulterior motive is based largely on the belief that the nurturing role is ordained for women.

Nonetheless, judicial officers should also be mindful that there are instances where men use custody applications to maintain power or control over their ex-partners. This can manifest where the man uses it either to defeat a maintenance claim or to hurt his ex-partner. Judicial officers must also “confront the possibility that the very judicial system in which they make family decisions can become weapons of further abuse” in already violent relationships (Fineman, M., 2001, ‘Domestic Violence, Custody, and Visitation’, *Family Law Quarterly* 36(1)).

**“Violent men will seek new means of control when old ones fail. Batterers use the legal system as a new arena of combat when they seek to keep their wives (or partners) from leaving”** (Mahoney, M., 1991, ‘Legal Images of Battered Women, Redefining the Issue of Separation’, *Michigan Law Review* 90(1): 1–94).

FIGURE 15

Attitudes of Belizean judicial officers towards traditional gender roles in the family



### Sexual orientation and custody

There is no provision in the Families and Children Act to address the issue of custody in same-sex relationships. The issue is one that nonetheless must be decided if presented to the court. There are examples of how the issue has been treated in regional courts. In *Atala Riffo and Daughters v Chile*,<sup>34</sup> the IACHR essentially found that the sexual orientation of either parent was not a relevant factor in determining which parent should have legal custody of the child. The IACHR found that the Chilean court's decision to award custody to the father on the sole basis that the mother was a lesbian breached the mother's right to equality.

Further, in the case of *E v A*,<sup>35</sup> the petitioner made an application for sole custody and requested that the

respondent be given supervised access to the children of the marriage, on the basis that the respondent's homosexuality would be injurious to the welfare of the children. Thompson J rejected the petitioner's accusations as "unsubstantiated fears based on ill-informed reactions to homosexuality". He also rejected the suggestion of the social worker, who had asked that the court to warn the respondent "not to expose the children to his alternate life style". Thompson J went on to further find that, "notwithstanding his sexual orientation the respondent is entitled to equal treatment in the matters relating to custody of and access to his children". These examples may offer useful guidance to judicial officers to the extent that the mere fact of a person's sexual orientation should not preclude an award of custody in her or his favour, and that each case is entitled to be determined on its own peculiar facts and merits.

34 *Atala Riffo and Daughters v Chile* (2005) (IAHCR)

35 *E v A* SC 43 (2007) (The Bahamas)

### Deciding on the best interest of the child

The welfare of the child must be construed in its widest sense to include not only her/his physical comforts but also her/his moral, religious and emotional well-being.<sup>36</sup> With regard to factors that are relevant in determining the best interest of the child, the relevant but non-exhaustive factors are listed in section 18 of the Children (Guardianship and Custody) Act and section 2 of the Child Care and Protection Act, and have also been developed in local jurisprudence.

Judicial officers must also endeavour to be open to the idea of granting joint custody in appropriate cases. Joint custody

should be granted only if 1) the parents can cooperate and amicably discuss the arrangements to be made in the best interest of the child<sup>37</sup> and 2) both parents can provide an environment that is conducive to the child's healthy development.

To properly assess the best interest of the child, judicial officers would be best aided by a report issued by a social worker who has investigated and assessed the living and family situation of both parents. The social worker's report should consider the factors listed below in addition to any other relevant factor or circumstance.

<sup>36</sup> *In Re (McGraths Infants)*: CA 1893, 1, ch 143, p.148 per Lindley LJ; *Dennis Forsythe v Idealin Jones* SCCA 49 (1999) (Jamaica), p.8

<sup>37</sup> *Fenton v Fenton* F2003/D1797 (2003) (Jamaica); *Michelle Angella Johnson v Lawrence Michael Passley* JMSC Civ.135 (2015) (Jamaica)



- Benefit to the child of having a meaningful relationship with both parents (section 2 of Child Care and Protection Act);
- The child's happiness, moral and religious upbringing, social and educational influences, psychological and physical well-being and physical and material surroundings (*Dennis Forsythe v Idealin Jones* SCCA 49 (1999) (Jamaica));
- Whether application for custody was genuine or made out of spite (*F v B* Cl. No. 2010 HCV-2702 (unreported));
- The conduct of each parent (section 18 of Children (Guardianship and Custody) Act);
- Protecting the child from physical and physiological harm, especially where violence is present in the home;
- The view of the child based on her/his maturity level and understanding (article 12 of CRC; section 2 of Child Care and Protection Act);
- The relationship of the child with each parent (section 2 of Child Care and Protection Act);
- Each parent's ability to provide for the child's needs (*Lidstrom v Lidstrom* MO3930 (2007) (Jamaica));
- The attitude of each parent to the child and to the responsibilities of parenthood;
- To what extent each of the parents participates in the decision-making about major long-term issues about the child (*Williams v Williams* JMSC Civ. 209 (2016) (Jamaica));
- How much time each of the parents spends with the child;
- To what extent they met their obligation to maintain the child while in the relationship (*Lidstrom v Lidstrom* (2007) (Jamaica));
- Whether relocation will have a detrimental impact on the child's welfare and the child has developed positive and deep familial and social bonds in her/his current environment – in cases where one parent desires to relocate to another jurisdiction with the child (*Patterson v Patterson* HCV 0811 (2003) (Jamaica)).

### Child born out of wedlock

Section 16 of the Families and Children Act states that a mother of any child born out of wedlock shall be the guardian of that child and section 16(2) that she shall have and be entitled to the custody of the child until the latter reaches the age of 18. However, section 16(3) provides that a mother may be deprived of custody for prescribed reasons or where a father applies for and is granted custody for prescribed reasons pursuant to section 85.

Section 85 provides that a father of a child born to a single woman can apply to be granted access rights to or legal custody of his child. Section 85(5) provides that, before granting the application, the court shall assess the best interest of the child, possibly giving due consideration to her/his wish, having regard to her/his age and understanding.

Thus, judicial officers can exercise these powers to always protect the best interest of the child before anything else.

Section 33 clarifies that all children have equal status irrespective of whether her/his mother and father are or have been married to each other. One of the objectives of the Families and Children Act is to minimize the differences between a child born out of wedlock and one born in wedlock (*Leslie v Noble* BZ SC 14 (2005) (Belize)).

### Domestic and international standards supporting equal rights of both parents to custody and best interest of child

**Families and Children Act sections 1(a) and 3:** The court or any other person shall have regard to the wishes and best interest of the child.

**Families and Children Act section 33:** Every child has equal status before the law regardless of whether her/his parents have married or not.

**Married Persons Protection Act sections 3 and 4:** The wife and husband have equal right to submit an application for legal custody.

**Married Persons Protection Act section 30:** The claims for custody of the mother and the father are equal.

**CRC articles 9(4) and 12** detail the right of the child to maintain personal relationships and ties with both parents (9(4)) and to have her/his views considered during custody hearings (12).

***Atala Riffo and Daughters v Chile:*** Sexual orientation cannot be used as a basis for refusing custody.

## Recommended action

Judicial officers are advised to:

- Remain cognizant that custody is to be determined ultimately in the best interests of the child and the gender of the parent should never be the main decisive factor in determining which parent should be awarded custody;
- Apply section 3 of the First Schedule of the Families and Children Act and case law when determining the factors relevant to protecting the best interest of the child in each case;
- Be mindful that their decisions do not perpetuate stereotypes regarding gender roles that are harmful to the cultivation of the child's bond with both parents (see figure 17);
- Be mindful that the sexual orientation or gender identity of either parent is not to be used as a basis for refusing custody (see IACHR decision *Atala Riffo and Daughters v Chile*);
- Before relying on social inquiry reports, ensure social workers have taken into account all that is relevant to the granting of custody to either parent.

### 3.3.2. Child support

#### Courts as sites of “gender wars”

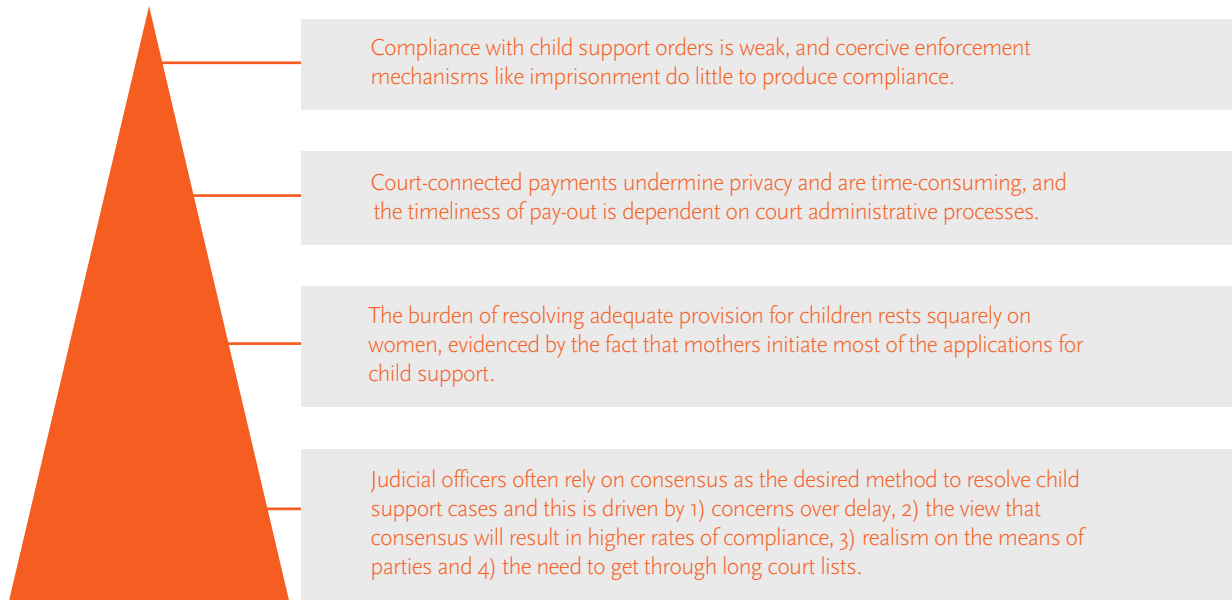
Child-support proceedings are routinely described in ways that **suggest gender conflict between women and men with the courts as battleground**, negotiating the detritus of failed and fragile intimacies.

Mothers are often the **recipients of the strong reactions of hostility and resentment on the part of fathers** who prolong court proceedings by making service difficult, denying paternity or failing to appear in court.

**The spectre of domestic violence lurks in child support cases** and the threat and/or experience of abuse effectively interferes with the ability and will of mothers to demand timely, reliable and fair monetary contributions for the care of children

Child support proceedings generate strong hostility and resentment on the part of **many men. Many complain that it was motivated by the vindictiveness of the mother and was fundamentally unfair where the father had been providing some support**, and that the process made them **feel like a criminal**.

*Source:* Clark, R., Sealy-Burke, J. and Robinson, T. (2008), 'Child Support, Poverty and Gender Equality: Policy Considerations for Reform'



### Double standards

- ▶ “There is also harsh censure amongst some judicial officers and social service personnel of men deemed to be deviant fathers, usually described as men who are young and unemployed with ‘rasta hairstyles.’ Conversely, considerable effort is made to support and accommodate men who are not deemed hopeless ‘low-lives’ and are engaged in activities that are viewed as worthy, progressive ones for ‘men’ and that will improve their ‘future.’
- ▶ “Men get rewarded and are applauded for being attentive to their children. On the other hand, the caring work of women is both assumed and discounted while at the same time the expectation that they are equal economic providers has gained ascendance.”

Source: Clark, R., Sealy-Burke, J. and Robinson, T. (2008), ‘Child Support, Poverty and Gender Equality: Policy Considerations for Reform’

### Counselling and support services pre- and post-order

When custody and child support applications follow an acrimonious breakdown in the relationship between the parents, it is not unusual for the hearings to exacerbate tensions between the parties. The outcome of such applications can result in one parent feeling dissatisfied or alienated from the process. Additionally, studies have shown that, the more hostile the legal proceedings, the greater the likelihood that the non-custodial parent will decrease her/his contact with the child,<sup>38</sup> which in most cases is to the detriment of the well-being of the child.

To assist parents who are embroiled in acrimonious proceedings, judicial officers may refer them to counselling. Where circumstances so dictate, the court may also order one or both parties to receive counselling in the course of determination of custody or child maintenance proceedings. In such cases, judicial officers are to bear in mind that separate as opposed to joint counselling should normally be ordered.

Additionally, parties in acrimonious family proceedings should not normally be ordered to mediation for custody, given that the parties’ relationship is already significantly broken down. Further, mediation is unwise where there

<sup>38</sup> Clark, R., Sealy-Burke, J. and Robinson, T. (2008), ‘Child Support, Poverty and Gender Equality: Policy Considerations for Reform’

is a history of abuse or an obvious power imbalance between the parties. Judicial officers should always be on the lookout for abuse or difficult power dynamics between

parties to determine whether mediation or counselling would be an effective option.

**73%** of Belizean judicial officers believe an unemployed non-custodial father should be made to pay child support.

The enforcement of a child support order against a father genuinely unable to obtain employment may lead to non-compliance, unnecessary criminalization and feelings of resentment against the justice system, and decrease contact with children.

### Encouraging shared care and promoting the welfare of the child

A tendency has been observed on the part of some fathers to view provision of financial support to their children as being dependent on the availability of their disposable income. On the other hand, women are automatically regarded as primary care-givers for children and at the same time expected to split financial contributions equally.<sup>39</sup> These notions result in a double burden being placed on women, as their role as primary care-givers is often not factored in when quantifying financial contributions – whereas fathers are often not held fully accountable in discharging their responsibilities to their children.

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*Judicial officers can aid in promoting a paradigm shift away from inequalities arising from harmful gender stereotypes by, for example, adopting a wider definition of child support to include not only financial contribution but also in-kind contribution and care work.*

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Judicial officers can aid in promoting a paradigm shift away from inequalities arising from harmful gender stereotypes by, for example, adopting a wider definition of child support to include not only financial contribution but also in-kind contribution and care work. This can mean that:

- Children’s emotional, psychological and spiritual needs will be given greater importance in child support hearings. These hearings tend to focus too much on the financial needs of children to the detriment of other important needs.
- The definition of child support will be expanded beyond financial payments, which may assist the court in coming to a better and fairer determination of how much financial support each parent is ultimately responsible for.
- It will be possible to acknowledge the non-financial contributions parents make to the child’s welfare and use these as a factor in determining financial contribution weight. Custodial parents who usually provide the largest portion of non-financial child care contributions may not be expected to provide 50/50 financial contributions in maintenance proceedings.
- Conversely, non-custodial parents who genuinely cannot provide financial support to their children will still feel they can make a valuable contribution to their children’s lives if their non-financial contribution to the child’s welfare is given greater weight and respect.
- Compliance with child support orders should increase if non-custodial parents are acknowledged as being more than providers of money for their children. When parents understand that their contribution to their child’s life is more than financial, they may be more willing to accept

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39 Clark, R., Sealy-Burke, J. and Robinson, T. (2008), ‘Child Support, Poverty and Gender Equality: Policy Considerations for Reform’

that their children must be afforded the highest priority when it is time to apportion their income.

### **Not relying solely on consensus to determine child support orders**

In the summary family court, the majority of parties appearing before the courts in child support matters are unrepresented, and there is usually a large number of cases to be heard. Absence of legal representation coupled with a high volume of cases can sometimes result in the court employing an approach of awarding a middle ground between the amount requested by an applicant and the amount a respondent offers to pay. This approach may be useful for the speedy disposal of applications for maintenance, but it may not always provide a fair solution for the parties or be in the best interest of the parties' children.

An order for maintenance should always be made after the court has properly assessed the financial resources of the parents, their respective non-financial contributions and the financial, psychological, emotional and spiritual needs of the children. This assessment should ideally be based upon a social inquiry report obtained from a social worker, but such a report will take time to complete. If a judicial officer is of the opinion that a social inquiry report is necessary, an interim order for maintenance can be made until the report is completed. In all cases, however (even where the parties have agreed to an amount), judicial officers should award maintenance only after engaging the parties in order to assess their means and the needs of their children.

### **Ensuring greater privacy and confidentiality for family law proceedings**

All family matters should be conducted in-camera or in chambers so that only the parties involved and court officers be present during the proceedings.

### **Rethinking the role of imprisonment for non-compliance and the existing collections system**

There are high rates of non-compliance with child support orders, and summary courts can spend a significant

amount of judicial time dealing with arrears. The sanction of committal to prison provided by the legislation (Families and Children Act section 69) is an unsatisfactory mechanism for enforcement for non-compliance with a maintenance order. The reasons for non-compliance have little to do with criminal intent on the part of the defaulter and, ultimately, imprisonment of a parent is not in the best interest of the child. It is acknowledged, however, that there is a judicial obligation to find a way to improve enforcement of the court's orders for maintenance.

Three alternatives to increasing compliance with support orders that judicial officers can consider employing are 1) where possible (Families and Children Act section 65), making attachment orders against the non-custodial parent; 2) making orders for the unemployed or financially challenged non-custodial parent to make non-monetary contributions to the child's needs; and 3) ordering non-custodial parents to make direct payments to fill the needs of the child – for example paying for school fees and medical expenses directly rather than giving the money to the custodial parent.

In Belize, applicants need no longer come to the court office to receive monies as monies are deposited directly into their bank accounts. Although the system is now less inconvenient, applicants must have a bank account into which the court can deposit monies, and delays arise between the time of payment and the receipt by the applicant, as a result of the administrative processing that must be carried out by the court. The centralized nature of the government's financial system means that a delay in processing is inevitable; however, magistrates should ensure administrative policies are in place to ensure the processing of payments is initiated immediately upon receipt, so as to minimize the delay to receipt of payments by applicants.

### **Understanding bias and the treatment of parties before the court**

It is important for judicial officers to recognize that bias may unconsciously play a part in their decision-making. For example, parties' physical appearance (grooming,



hairstyle, mode of dress), manner of speech (creole, standard English), gender identity/expression, sexual orientation or socio-economic status could unconsciously elicit biases by a judicial officer against them (the parties). If a man wears braids, wears tight jeans with his underwear exposed and speaks creole but struggles with standard English, for example, this should not give rise to any doubt as to his ability to be a good father to his children. Similarly, women who have children by several men should not be pre-judged as not being able to be a good mother to all their children. The welfare of the child should always be the paramount consideration, and judicial officers should be alerted to dismiss as irrelevant any factors arising from perceptions, stereotypes or biases.

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*The fact that a man wears braids, wears tight jeans with his underwear exposed and speaks patois fluently but struggles with English should not affect his ability to be a good father to his children and certainly does not make him a “lowlife”. Similarly, women who have children by several men are not to be scorned and denigrated as “loose women giving away easy favours to men they barely know”.*

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### Recommended action

Judicial officers are advised to:

- Always place the welfare of the child as a primary concern in child support cases;
- Understand that the welfare of the child cannot be sufficiently advanced until the parents are given the support and tools they need to be better parents;
- Be cognizant that the court can support the parents by doing the following:
  - Encourage and where appropriate order parties to undergo counselling to assist them in improving their relationship with each other;
  - Be aware of abuse of power dynamics between parties so that appropriate orders can be made that help correct the imbalances;
  - Be mindful that gender-sensitive adjudication favours a paradigm shift towards women and men sharing the nurturing responsibilities; where appropriate, judicial officers should make orders that can help promote such a shift;
  - Promote equality of child-rearing responsibility by making orders that include not only financial contribution but also in-kind contribution and care work. For example:
    - In apportioning child care expenses, 50/50 is not always appropriate, as the caring and nurturing provided by a custodial parent must be considered equally important to any financial contribution (*Stonich v Stonich* SVG 2003 CA 6 (2003) (British Virgin Islands), paragraph 29);
    - Unemployed or seasonally employed non-custodial parents can make non-monetary contributions to their children’s welfare. These non-financial contributions can either be used to significantly lessen their monetary obligations or be accepted temporarily in lieu of financial contributions;

- Not rely on imprisonment as the only means to encourage compliance with child support orders;
- Instead encourage compliance with child support orders by:
  - Avoiding contributing to a non-custodial parent's perception of being only a financial provider for their children and ensuring the order is understood as necessary for the provision and well-being of the child;
  - Considering three alternatives to increase compliance with support orders: 1) making attachment orders mandatory in cases where the non-custodial parent works in the formal sector; 2) making orders for the unemployed or financially challenged non-custodial parent to make non-monetary contributions to the child's needs; or 3) ordering non-custodial parents to make direct payments for the needs of the child;
- Conduct all family matters in private: only the parties involved and court officers directly involved in the case should be present during the proceedings;
- Ensure their decisions do not perpetuate stereotypes regarding gender roles that are harmful to the cultivation of the child's bond with both parents;
  - Do not allow the grooming style, speaking style, gender identity, sexual orientation or socio-economic status of the parents to determine the process and outcome in child support and custody cases. For example, it is important that judicial officers do not:
    - Denigrate men who are not formally employed, have unconventional hairstyles or clothing and speak creole but struggle with English; or
    - Reproach women with low skills or low levels of education or disapprove of women who have children by several men;
- Bear in mind that custody is decided based on the best interest of the child and the gender of the parent is not a relevant factor in determining which parent should have legal custody;
- Ensure they do not use the sexual orientation or gender identity of either parent as a basis for refusing custody (see IACHR decision in *Atala Riffo and Daughters v Chile*);
- Inform probation officers/social workers of the relevant factors to be used in their assessment of which parent should get custody.

### 3.4. Human Trafficking

Belize's Constitution forbids human trafficking in section 5(1) by guaranteeing the right to personal liberty. The Trafficking in Persons (Prohibition) (TIP) Act 2013 also provides protection to persons who are exploited and imposes

higher sentences on those who have taken advantage of a person's vulnerabilities (part 4 and section 28(1)(f)). Belize is also a state party to the United Nations Convention against Transnational Organized Crime (UNTOC) and the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons (the Palermo Protocol).

Belize is a source, transit and destination country for both women and men, as well as children, for sex trafficking and forced labour. The United Nations Special Rapporteur on Trafficking in Persons reports that family members facilitate the sex trafficking of Belizean women and men. Children may be subjected to sex trafficking for the purposes of being exploited in child sex tourism. This kind of trafficking, not only of children but also of women, occurs mainly in bars, nightclubs, brothels and domestic service. LGBTIQ women, men and children are also vulnerable to sex and labour trafficking in Belize.<sup>40</sup>

Foreign women, men and children, often from Central America, Mexico and Asia, migrate to Belize to find better jobs, often having been promised high salaries and employment, to end up exploited by their traffickers. They may instead end up in forced labour situations, in restaurants, shops, agriculture, fishing or sex work. Language barriers are a big issue for these people, in both trying to escape the situation of exploitation and enforcing their rights during criminal proceedings. Judicial officers are therefore strongly encouraged to ensure that interpreters are available throughout the whole length of the proceedings, and that this does become a reason for delayed sentencing and trials.<sup>41</sup>

Judicial officers are also advised to take into account the level of literacy of trafficked persons, regardless of their mother tongue, as many are not able to read and write – which is a major reason traffickers are able to exploit them. Illiteracy, constrained access to justice and scarce employment possibilities combine to make it easier to persuade people to put themselves in dangerous situations, often without them realizing it until it is too late. These factors make indigenous women and women from rural areas extremely vulnerable to trafficking, with little possibility to escape the situation they find themselves in.

Another aspect to take into consideration is that women may work in bars as waitresses but be exploited at the same time for prostitution – but often law enforcement targets such women rather than those who are behind the exploitation chain, including bar owners. The same is true for migrant workers on farms, who are often subjected to exploitation and targeted by law enforcement while the land-owners are left unpunished. This is in some cases the result of corruption among police officers and government officials. Judicial officers are advised to consider this aspect and address it accordingly.<sup>42</sup>

<sup>40</sup> United States Department of State (2017), 'Trafficking in Persons Report', June

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.



## 11 Noteworthy Points for Sensitive Adjudication in Human Trafficking Cases

1

Vulnerability can be a critical indicator when identifying survivors. An accurate assessment of vulnerability can help ensure survivor witnesses are appropriately supported and protected. **Section 2 of the TIP Act** provides guidance.<sup>43</sup>

*Abuse of a position of vulnerability is one of the means used to facilitate human trafficking. It occurs when an individual's personal, situational or circumstantial vulnerability is intentionally used or exploited.*

2

In trafficking cases involving child survivors, **section 11(3) of the TIP Act** makes it unnecessary for the prosecution to prove “means”.

*TIP section 2(a): “... the person abused believes he has no reasonable alternative but to submit to the labour or service demand of him...”*

3

Judicial officers should be alert, when dealing with prostitution cases, to determine whether persons charged with soliciting are in fact human trafficking survivors. A distinction ought to be made in prostitution cases, between wilful prostitution and prostitution that is coerced. Usually, coerced prostitution involves:

*2(b): “... vulnerabilities... resulting from the abused person*

- (i) Having entered Belize illegally or without proper immigration documents;*
- (ii) Being pregnant;*
- (iii) Having disease whether physical or mental;*
- (iv) Having a disability; or*
- (v) Being addicted to alcohol or any illegal drugs...”*

- o Foreign women who may not have their passports in their possession, may speak little or no English and may have been lured to travel on false promises of being placed in mainstream work; or
- o Local young women and girls with low levels of education and from poor or working-class backgrounds.

4

Although most trafficked survivors are women and girls, men also can be subjected to human trafficking. Gender stereotypes that label men as “strong” often mean men are less inclined to report or speak about being trafficked. In addition, these gender stereotypes make it less likely that male trafficked survivors will be given sufficient protection.

5

**Section 27 of the TIP Act** provides immunity to the trafficked person from being prosecuted for violating immigration procedures or for any other criminal offence that is a direct result of that person being trafficked. This is important as it encourages survivors to report without being in fear of being incarcerated.

6

**Sections 25(1) of the TIP Act** states that the alleged consent of any trafficked person cannot be used as a defence by the accused. Once the “means” element of the offence is established, it vitiates consent and makes consent irrelevant as a defence. In cases involving children, consent is wholly irrelevant, even where the “means” element has not been established.

<sup>43</sup> United Nations Office on Drugs and Crime (2017), “Abuse of a Position of Vulnerability” as a Means of Trafficking in Persons in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons’, Guidance Note

- 7** Section 25(1) of the TIP Act provides that, in the prosecution for an offence of trafficking, the evidence of a survivor's past sexual behaviour is irrelevant and inadmissible for the purpose of proving that the survivor engaged in other sexual behaviour or to prove the sexual predisposition of the survivor.
- 8** All human trafficking cases must be heard in-camera (**section 30 of the TIP Act**). This is to preserve the privacy of the survivors, to protect survivors from being intimidated and to pay due attention to the sensitivity of the issues surrounding sexual violence. Furthermore, during the hearing, the identity of the survivor and her/his family must remain confidential, and no information on the identity can be given to the media or put in press releases. **Section 49 of the TIP Act** puts strict limits on the extent to which the media can publish information about a trafficking case.
- 9** Cases should be dealt with promptly, as, the longer the cases languish in the court system, the less likely it is that the survivor will be available to testify at trial. Most survivors choose to return to their home country once the trafficker is arrested.
- 10** Where appropriate, interpreters should be available at the committal hearing and trial. Many of those trafficked in Belize are from Spanish-speaking countries and there are therefore significant language barriers when they are giving their testimony (**Palermo Protocol article 6(3)(b)**).
- 11** Judicial officers should use their case management powers to provide a friendly courtroom environment for the survivors of human trafficking. Being trafficked is a traumatic and shameful experience, especially for women forced into prostitution. It is therefore important for the court to utilize survivor-friendly measures employed in sexual offence cases. The testimony of a survivor must be given from behind a screen or by video-link, ensuring no face-to-face contact with the perpetrator occurs (**section 30 of the TIP Act**).

### Domestic and international provisions protecting victims of human trafficking

**TIP Act section 27** provides immunity to trafficked persons from being prosecuted for violating immigration procedures or for any other criminal offence that is the direct result of that person being trafficked.

**TIP Act section 30:** All human trafficking cases must be heard in-camera and should make use of screens or video-links for the survivor's testimony.

**TIP Act section 49L:** The media can publish information on trafficking cases only in a restricted way, to protect survivors.

**Palermo Protocol article 6(3)(b):** Language barriers should be avoided through the use of interpreters.

**Yogyakarta Principle 11:** "... everyone is entitled to protection from trafficking, sale and all forms of exploitation, including but not limited to sexual exploitation, on the grounds of actual or perceived sexual orientation or gender identity..."

## Recommended action

Judicial officers are advised to:

- Protect victims of human trafficking by regarding them not as criminals but as individuals who need protection;
- Determine whether the facts of a prostitution case indicate forced or wilful prostitution;
- Ensure that interpreters are available at the committal hearing and trial;
- Give priority to hearing human trafficking cases;
- Conduct human trafficking cases in-camera;
- Provide a friendly courtroom environment and special measures of protection for the survivors of human trafficking;
- Deal with human trafficking cases promptly as, the longer the cases languish in the court system, the less likely it is that survivors will be available to testify at trial;
- Provide interpretation for those who are non-English speakers.



# ■ PART 4.

## CHECKLIST







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