

REVISED MODEL GUIDELINES FOR SEXUAL OFFENCE CASES IN THE CARIBBEAN REGION

SENSITISATION TRAINING FOR JUDICIAL OFFICERS
AND COURT ADMINISTRATORS



JUDICIAL REFORM AND
INSTITUTIONAL STRENGTHENING
(JURIST) PROJECT

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Module One: Guidelines for the Pre-Trial Process

Part Two: Case Management Hearings
Focus Area: Survivor Care and Protection

The Justice Chain

REPORTING

Complainant reports crime to police or other authority

INVESTIGATION

Alleged crime is investigated by the police

PROSECUTION

Prosecutor brings the case to court

ADJUDICATION

Judge/Jury makes a determination based on evidence presented in court

The Key Stakeholders in the Justice Chain



Case Management in Summary Jurisdiction Offence Cases

Magistrates also have an oversight role that requires them to manage proceedings to minimize delays by reducing adjournments and setting effective timelines for the production of documents while giving directions at the earliest stages of the proceedings for survivor care and production.

Where there is no specific legislative guidance on the timelines for Magistrate's Courts, the Magistrate can give specific directions and take any step necessary to effectively manage the cases before the Court.

Trinidad and Tobago's Criminal Procedures Rules 2016 of Trinidad and Tobago R. 5.2 (4) requires proceedings in the Magistrate Court to be brought within 6 months of the alleged offence and other timelines for other actions in the proceedings as well as empowers to give specific directions to manage any aspect of the case including times within certain things must be done. Retrieved from https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/12.02.pdf

Case Management in Summary Jurisdiction Offence Cases

The Magistrate should also enquire whether the defendant has legal representation and strongly encourage the defendant to secure such legal representation at the earliest stages to prevent any delays later on.

Where the defendant remains undefended, the Magistrate may ask any Attorney-at-law present in the Court to agree to conduct the cross examination of the defendant to prevent any unrepresented defendant cross examining a vulnerable witness.

Best Practice – Antigua and Barbuda – An attorney-at-law present may be asked to agree to conduct the cross examination to prevent an unrepresented defendant from cross examining a vulnerable complainant.

Best Practice – Belize – Passage of the Protection of Witnesses Act makes provisions prohibiting an unrepresented defendant from cross examining a vulnerable complainant. See <https://www.agm.gov.bz/wp-content/uploads/2022/05/Act-No-8-of-2022-Protection-of-Witnesses-Act-2022.pdf>

Case Management in Summary Jurisdiction Offence Cases

All the needs of the complainant as well as the defendant should be considered in case management. The question of vulnerability of the complainant and any special measures that may be required must also be considered.

The Guidelines also give guidance on bail applications including the need to consider the survivor care and protection needs of a complainant who has been declared a vulnerable or intimidated witness.

Further, the need to ensure that case management should be done within a reasonable time and set future dates for hearings to ensure the defendant is not held too long on remand.

Case Management in Summary Jurisdiction Offence Cases

Further, the Court should issue directions to monitor the progress of the case and complaint to ensure that pre-trial detention does not extend beyond a reasonable time especially where delays are caused by failure to support documents to the Court within a reasonable time.

In addition, case management at the Magistrate Court should involve early identification of the real issues, the needs of the witness (including the need for special measures as well as the need to be informed of the progress of the proceedings), and directions to ensure that as many aspects of the case are dealt with in the same hearing as possible.

New Criminal Procedure Rules and Practice Directions issued since COVID-19 to allow for electronic filing of documents, virtual hearings and should also be included in the directions given during case management and consider given as to how technology can reduce delay and make the proceedings more accessible.



Survivor Care And Protection

Must begin with the Police, who should be guided by the need to prevent re-victimization of the complainant by ensuring the statement taking process is victim-centered. Collaborations with CSOs should be considered where station facilities are not conducive as happens in Guyana where the statements from vulnerable witnesses are recorded at a facility operated by an NGO.

Survivor care and protection considers the vulnerability of the complainant and how that vulnerability may impair the ability to give best evidence and what facilities or tools are needed to enable the vulnerable complainant to give evidence through special measures

Survivor Care and Protection for Persons with Disabilities

- Will require access to support persons, intermediaries, interpreters and other communication tools as well as procedural accommodation such as adapting the venue, pace of questioning, using screen readers and magnifying apps.
- Access to justice for persons with physical disabilities will include physical access to the facilities of Police Stations and also Court buildings via ramps or the placement of entrances at ground level to facility such access.
- Persons with disabilities have a right to access to justice and have legal capacity to pursue that justice as complainants and must be provided all facilities to by the Court to give effect to that legal capacity.

Survivor Care and Protection for Indigenous Persons

- Complainants from indigenous communities may face language barriers in accessing court proceeding and may find Court structures and processes difficult to navigate.
- In addition, practices within the indigenous communities affecting how women interact with others outside of the community such as law enforcement may cause complainant to be hesitant to interact with law enforcement and Court officers.
- In regards to persons from indigenous communities, as with the Magistrate Court, the Court must be mindful that experiences of trauma will not just be based on the impact of the sexual assault on the complainant but on such issues as: loss of identity where the complainant is blamed or rejected by the community; significant stress from having to come outside the community to interact with police, court officials and other agencies in structures that may oppose male/female interaction established by the indigenous community; and loss of spiritual or social support due to separation from traditional cultural norms during the trial period and concerns about how the decision to go to court may impact family and community relationships.

Survivor Care and Protection for Indigenous Persons

- Assessing whether the indigenous witness or complainant is vulnerable will require:
 - a. examination of the level of isolation of the particular complainant or defendant;
 - b. examination of available support systems or persons;
 - c. examination of level of understanding of the court process;
 - d. examination of any specific trauma needs
 - examination of specific protection needs of the complainant;
 - f. examination of any language barriers challenges;
 - g. examination of the supports for transportation, residence and other practical needs of persons from remote communities to enable them to access the proceedings;
 - h. examination feasibility of technological aids including access to internet, electricity and level of familiarity with the technological aid.

- The court shall hear applications at the case management hearing in the high court for directions to be given on the following:
 - a. Attendance of a support person with the complainant at the trial.
 - b. Questioning of the complainant through the use of an intermediary or other communications specialist.
 - c. Arrangements for the complainant or other vulnerable witness to access the court building through a private entrance.
 - d. Restrictions on disclosure.
 - e. Use of video link facilities if appropriate.
 - f. Directions for restriction on certain lines of questioning such as previous sexual history.
 - g. Directions for concurrent family proceedings.
 - h. Other special arrangements such as interpreter, need for breaks, etc. as may be needed to facilitate the trial process.

Case Management in the High Court

- The court shall also give directions for the protection of any witness deemed particularly vulnerable to threats or intimidation especially where their testimony is likely to be diminished by reason of fear or distress. The factors considered by the court in determining the level of fear or distress include:
 - a. The nature and circumstances of the offence.
 - b. The age and circumstances of the witness.
 - c. The behavior of the defendant or their family and associates.
 - d. Any known threats or intimidation tactics used against the witness.
- The directions given for protection of the witness may include protection orders, orders prohibiting contact, relocation of the witness, or other measures as requested by the prosecutor.

Case Management in the High Court

Group Activity – Directions for Bail and Timelines

- Go to the groups you have been assigned to. Discuss the following:
 -
 - 1. C, a magistrate, is leading a summary jurisdiction hearing into a charge against K for human trafficking offence for an advertisement recruiting young women that was affixed to the wall of a secondary school. This is the first hearing of the matter in the magistrate court. The court does not have a specified case management process, but C has in the past used the first hearing as a case management hearing. K is now applying for bail.
 - 2. What inquiries should be made in the case management hearing? What directions may be made? What aspects of the model guidelines can provide guidance.

Choose a presenter for your group.



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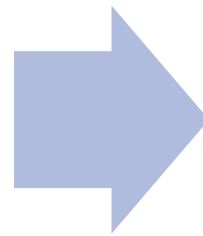
Module Two: Guidelines for the Trial Process

Part Three: Guidelines for the Trial Process
Focus Area: Judge Alone Trials, Unrepresented
Defendants, Special Measures

Guidelines for the Trial Process



Sexual offence cases should be heard in camera even where no specific legal mandate is provided. This can be done as part of the duty of the court to manage its proceedings and also in recognition that owing to the sensitivity of the nature of sexual offences cases and the need to protect complainants and defendants from harassment or intimidation.



Though most of the jurisdictions in the Caribbean had made provisions for remote live link testimony during face-to-face trials, only a few courts held entire trials virtually. As a result of COVID-19, this has now become an aspect of criminal and civil proceedings in the Caribbean.

Guidelines for the Trial Process



Practice Directions should also make provision for how oaths should be taken and how physical evidence will be presented in virtual settings.

One of the COVID-19 adjustments made that has now become standard practice in some jurisdictions is the establishment and expansion of e-filing options through e-litigation portals. Practice Directions can allow e-filing for both criminal and civil proceedings where a dedicated and secure litigation portion has been established or through email at designated email addresses.

Guidelines for the Trial Process



Another important change that has become more prominent since COVID-19, is the move towards Judge alone trials. Judge alone trials can be useful in sexual offence cases to minimize the impact of stereotypes and bias that have been associated with some jury trials in the past, though Judge alone trials is not a guarantee against such bias if the Judicial officer has not had specialized training.

Judge alone trials may also move matters quicker to Court and reduce the long delays that have been reported in some jurisdictions in sexual offence cases as well as reduce the number of nolle prosequis where victims abandon cases due to delay.


Best Practice – Judge Alone Trials – Belize





In 2011, Belize through amendments to the Indictable Procedures Act, judge alone trials were allowed for murder and some other offences.

This category was further expanded in 2022 through further amendments to Indictable Procedures Act to allow for Judge alone trials in additional offences including sexual offences, trafficking in persons cases, commercial sexual exploitation of children cases, abduction of children and manslaughter.

Belize now has over 10 years of enacted laws and experience in Judge alone trials. Judge alone trials in Belize have also withstood appeals, all the way to the CCJ, which ruled that a Judge alone trial in which a judge ruled against a defendant's voir dire application and then later found him guilty could not impute bias against that defendant as the Judge had properly directed herself, had properly explained why she accepted the evidence of the witness and that the application of the test where there was a fear of prejudgement did not reveal any such prejudgment.



Guidelines for the Trial Process

- **Special measures may include:**
 - a. Screens – so that the witness does not have to see the defendant in the court room.
 - b. Live link – allowing a witness to give evidence from a facility outside the courtroom.
 - c. Supporter – there may be a designated supporter for the witness in the live link room or in the court room.
 - d. Video-recorded examination-in-chief – allowing a previously recorded interview with the vulnerable witness being admitted in court as the examination-in-chief.
 - e. In camera proceedings – where this is not automatically provided for, both the magistrates’ court and the high courts must consider whether to clear the court of members of the public and other witnesses before the evidence of a vulnerable witness is taken.
 - f. Removal of wigs and gowns by judges and advocates.
 - g. Intermediary – allowing an approved intermediary (a communications specialist) to help a vulnerable adult or child witness to communicate with the police, legal representatives and the court.
 - h. Aids to communication – allowing a witness to use communication aids such as a symbol book or alphabet boards.
 - i. Use of anatomically correct dolls – consideration must be given as to what specialist assistance will be needed for dolls to be used.
 - j. Use of interpreters – where the complainant or witness has language barriers, an interpreter must be provided.
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Best Practice – Use of Intermediaries

- Consideration can be given to whether the examination in chief of a vulnerable witness may be done with the assistance of an intermediary chosen by the court pursuant to proper directions being given. This has been used effectively in cases where the defendant in a sexual offence case is unrepresented to prevent the defendant directly questioning a child complainant.
- The process is similar to a Judge vetting the jury questions and then asking the questions from the jury on their behalf. However, intermediaries serving in this capacity must be trained beforehand so that they understand the processes and terminology of the court.
- See Best Practice from St Vincent and Grenadines (Special Measures) Act, 2013

Guidelines for the Trial Process



The use of the previously recorded statement as the examination in chief will also minimize recanting and minimize having to treat complainants as hostile witnesses.

Where a previously video recorded statement will be submitted for the examination in chief, the court will require a separate hearing to discuss any applications to exclude inadmissible portions from the recording, giving directions as to how the recording will be presented in court and whether a transcript of the recording will be used to assist.

Guidelines for the Trial Process



Where the judge intends to warn the jury about stereotyping or unfair assumptions, he or she should indicate that to counsel before their speeches so that they may address that in their final remarks to the jury if needed. Moreover, it is desirable that directions should be discussed with counsel and their precise content agreed in advance.

It may also be prudent for the judge to raise with counsel, in the absence of the jury, the specific legal issues which need to be the subject of specific references in the summing-up.

Best Practice – Summing Up Directions

UK, The Crown Court Bench Book, 2010 provides the following sample directions to the jury on unfair assumptions;

- **“It would be understandable if one or more of you came to this trial with assumptions as to what constitutes rape, what kind of person may be the victim of rape, what kind of person may be a rapist, or what a person who is being, or has been, raped will do or say. It is important that you should leave behind any such assumptions about the nature of the offence because experience tells the courts that there is no stereotype for a rape, or a rapist, or a victim of rape. The offence can take place in almost any circumstances between all kinds of different people who react in a variety of ways. Please approach the case dispassionately, putting aside any view as to what you might or might not have expected to hear, and make your judgement strictly on the evidence you have heard from the witnesses.”**

Trinidad and Tobago Bench Book , 2015:

- **The Bench Book adopts the UK guidelines but also goes further to indicate that the direction of the Judge should not be given without discussion between the Judge and the advocates before speeches. In particular, the Judge should not appear to be endorsing argument for one side at the expense of the other and the direction must be fair and balanced.**
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Group Activity – Summing Up Directions

Go to the groups you have been assigned to. Discuss the following:

1. The trial for K, who is charged with rape is almost completed. The Prosecution and the Defence will be giving their closing remarks tomorrow and J, the High Court Judge is preparing for the summing up. What basic considerations should be considered in preparing the summing up? What matters should be raised with the prosecutor and the defence? What aspects of the revised model guidelines can provide guidance.
- You have 10 minutes to discuss. Choose a presenter for your group



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Module Three: Guidelines for Sentencing and Offenders Management

Part Three and Four: Sentencing and Offenders Management

Focus Area : Sentence Indications, Determining Sentences, Child Offenders

Guidelines for Sentencing



- In addition, in some jurisdictions, Practice Directions now require sentence indications to be given on the basis of the principles set out in *R v Goodyear*. The Court may give a sentencing direction as to the maximum sentence that may be applied if a guilty plea is submitted by the defendant at the beginning of the trial or during the trial process.
- The Judge may request a pre-sentencing report and shall give both sides the opportunity to be heard. The Judge may reserve the right to give an indication until the Judge has the requisite information to give such indication. Where an indication is refused a later request for an indication later in the proceedings may be filed by the defendant.

Guidelines for Sentencing

The steps typically followed by the court in determining the appropriate sentence for each circumstance include:

- a. Determining the category of the offence and the high and low ranges in that category.

- b. Determining what is the starting point for sentencing for the particular offence.

- c. Determining if there are any aggravating circumstances and the dangerousness of the offence before the court.

- d. Identifying if there are any mitigating circumstances and which should be taken into account.

- e. Determining what would be the reduction in sentence where the defendant pleaded guilty.

- f. Determining the dangerousness of the offender.

- g. Determining totality of the sentence to be served, where there are multiple convictions in the same trial to determine which sentences will run concurrently and which will run consecutively to ensure that the total sentence to be served is just.

- h. Determining what ancillary orders may be needed especially in cases involving children and persons with a disability.

- i. Preparing reasons for the decision being made.

Guidelines for Sentencing

- Determining whether there will be any reduction for time spent on bail or on remand. However, it is to be noted from the direction of the CCJ in ***Da Costa Hall v The Queen*** that the Judge should explain how time spent on remand has been dealt with in the sentencing process. In addition, if the Judge chooses to depart from the prima facie rule, of giving full credit for time served prior to sentencing, the Judge must set out reasons for such departure.

Best Practice – Sentencing Directions

- ***Pompey Guidance – Linton Pompey v D.P.P. [2020] CCJ 7 (AJ) GY***
- The CCJ heard an appeal in Pompey against a conviction for sentences, involving 2 counts of rape and 1 count of sexual assault of a child, to run consecutively for a total of 37 years. The CCJ held that the sentence was excessive having regard to the principle of totality. The totality principle requires that a sentence for more than one offence must reflect all the offending behaviour before the Court, but the total or overall sentence must be just and proportionate. Thus, while consecutive sentences were appropriate in the instant case, the total of 37 years was excessive.
- The Court also provided the following general guidance to Courts in determining sentences:
- 1. Sentences should not be passed immediately after verdict (especially where a long sentence is likely) instead a separate hearing should be set to allow for mitigating and aggravating factors to be presented as well as victim impact statements.

Best Practice – Sentencing Directions - Pompey

- 2. With regards to the totality principle in sentences for multiple serious offences;
- a. consider what is appropriate for each individual offence;
- b. ask whether, if the sentences are served concurrently, the total length of time to be served will reflect the overall seriousness of the criminality;
- c. if yes then the sentences may run concurrently, if no then the sentences may run consecutively but test the overall sentence against the requirement that it be just and proportionate;
- d. if the sentence running consecutively would be excessive and thus not just and proportionate, the Judge must go back to the drawing board and restructure the sentences with the totality principle in mind;
- e. the Judge must carefully explain the rationale for the sentence and its structure in a way that will be best understood by the parties and the public.

Best Practice –Sentencing Directions - Pompey

- 3. Judges should be guided by any available Sentencing Guidelines ranges for the most prevalent crimes.
- 4. Recommendations : Sentencing Handbook of Trinidad and Tobago ; Criminal Bench Book for Magistrates and Parish Court Judges in the Caribbean Region; Sentencing Guidelines Jamaica; Eastern Caribbean Supreme Court Sentencing Guidelines; Calvin Ramcharran v D.P.P.

Orders that May be Made at Sentencing

- The court may also consider whether ancillary orders need to be made such as:
 - a. Orders barring contact between the offender's family and the complainant.
 - b. Compensation or restitution payments to the complainant.
 - c. Mandatory counseling for the defendant especially where non-custodial sentences are considered. Such counseling should consider the specialized needs of the defendant with appropriate orders for the submission of progress reports as well as the appearance of the defendant before the Court.
 - d. Such apologies to the complainant in non-custodial sentences only as the Magistrate may deem appropriate.
 - e. Confiscation of property such as a financial benefit derived from the offence, such as publishing private images or disseminating child pornography.
 - f. Deprivation or destruction of property such as equipment used in the commission of the crime, for example a phone or computer or car
 - g. Directions relating to the listing of the offender's name on a sexual offender's register.

Sentences in Cases Involving Child Offenders

There may be cases where custodial sentences are not allowed or are inappropriate for certain types of sexual offences if committed by child offenders.

In such cases, orders effecting restorative justice may be considered and may include:

a. An apology letter - where the offender writes a letter of apology to the complainant. The offender may be required to read this to the complainant and their support person in court. This may be attached to an order for counseling with provisions for the court to be updated on the progress of the counseling.

b. A survivor-offender conference - where the survivor is able to confront the offender about what happened and share the negative impacts of the offender's actions and receive an apology from the offender. This will require supervision and support from the child protection services to ensure the trauma needs of the complainant are met during such conferences.

c. Accountability worksheet – this may include specific steps and a series of actions to be taken by the child offender which then must be evaluated and reported to the court. This will require supervision by the department or agency with responsibility for child offenders.

d. Community service – this will include some non-compensatory acts of service that the offender will be required to provide to the community. The community service will require supervision to ensure the safety of the offender and compliance with the terms of the service required to be done by the court. The completion of community service will also be required to be reported to the court.

Group Activity – Non-Custodial Sentences and Juvenile Offenders

- Go to the groups you have been assigned to. Discuss the following:
 1. G, a 15-year-old boy has been convicted of an indecent exposure for sending a nude photograph of himself to M, a 13 year old girl in his class. G entered a guilty plea, this is his first offence. Both the parents of G and M have requested that the court give a non-custodial sentence as G will be enrolled in an education and rehabilitation program on the recommendation of the prosecutor and he has expressed remorse for his actions.
 2. What considerations should the Judge apply in considering a non-custodial sentence for a sexual offence involving juvenile offenders? What ancillary orders may be made? What aspects of the revised model guidelines can provide guidance?
- You have 10 minutes to discuss. Choose a presenter for your group



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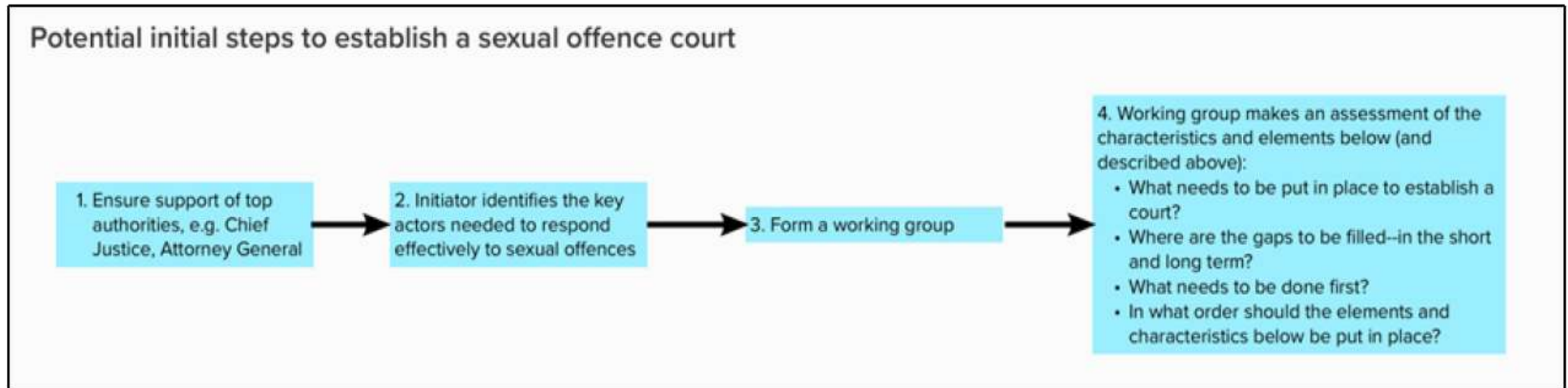
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Module Four: Guidelines for Establishing A Specialised Sexual Offences Court

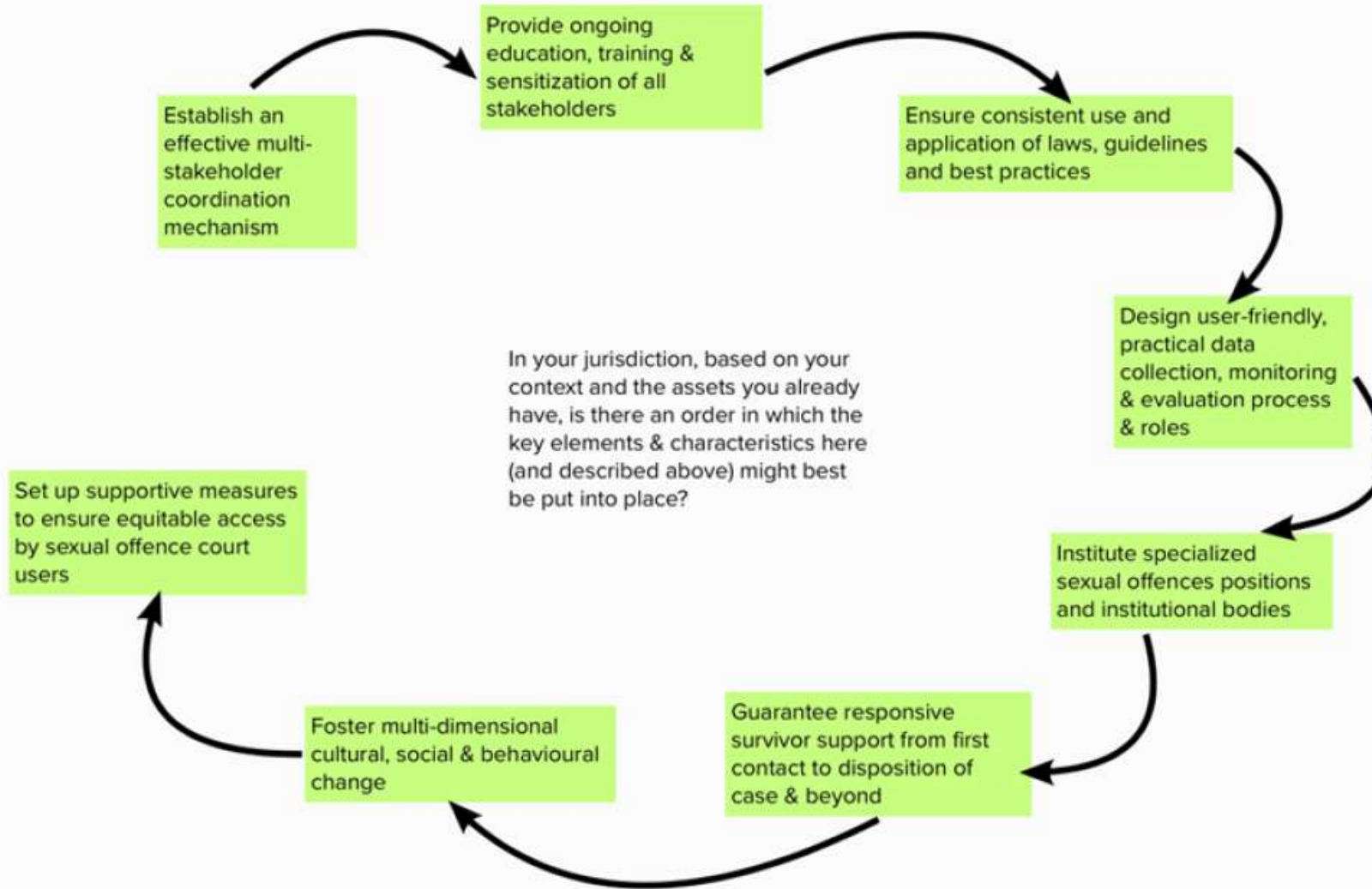
Part 5 : Guidelines for Establishing a Specialised Sexual Offences Court
Focus Area: Stages for Establishing a Court and Areas for
Strengthening an Existing Court

Guidelines for Establishing A Specialised Sexual Offences Court



Source: Responding Effectively to Sexual Offence Cases in the Caribbean: Systems and Practices

Likely further steps to establish/strengthen a sexual offence court



Guidelines for Establishing A Specialised Sexual Offences Court

1. The establishment of an effective multi-sectoral coordination mechanism: This may be the working group repurposed. There should be a guidance document setting out the roles and responsibilities of each representative and setting timelines for actions to be taken by the group, data collection procedures, laws and guidelines.

2. Provision of ongoing education, training and sensitization of stakeholders: In particular Judicial as well as non-judicial stakeholders and members of the multi-sectoral coordination mechanism need orientation as well as ongoing training on relevant laws, the Revised Model Guidelines, gender sensitivity, biases in treatment, care and support of survivors.

3. Ensure consistent use of the Guidelines and other laws and policies: The effective establishment of a court that works will depend on the culture and practice it embodies. The Revised Model Guidelines present standardized set of guidelines on all aspects of the adjudication process that will inform and improve practice.

4. Design user friendly, practical data collection and monitoring and evaluation system: Efficient and accurate data collection on the disposal rates, outcomes of cases, delays and adjournments can ensure that the Court remains responsive to the needs of both complainants and defendants and the needs of justice. Data collection can be costly and time consuming, so the most effective way to ensure it will be done is to integrate it into any existing systems the Court already uses. It is also helpful, if there is a designated staff member assigned with responsibility to oversee data collection.

Guidelines for Establishing A Specialised Sexual Offences Court

5. Institute specialised sexual offences positions and institutional bodies: “One stop shop” services such as exists in Jamaica through CISOCA and the coordinated services through SARC in Antigua and Barbuda offer the best option to reduce re-victimization and the provision of victim-centered services. Through these mechanisms survivors can make reports to the Police, get medical checks and treatment, receive counseling and services for other victim care and protection needs in one location or from a trained team of agencies.

6. Training and selection of Judicial Officers and Court Staff: Judicial Officers and Court Staff serving in specialised sexual offence courts must be selected with care and be trained on all aspects of their duties to ensure that they possess understanding of gender-based violence, addressing bias and trauma needs of survivors.

7. Responsive survivor support from reporting to disposition of case. While the specialised services that support Court proceedings is important, there is a need for responsive survivor support arises from the time the report is made and must be provided from the first interaction with law enforcement to the disposal and post-disposal of the case.

8. Multi-dimensional cultural, social and behaviour change at the community level. Public opinion on issues connected to stereotypes and bias can negatively affect the outcome of cases especially in jury trials, therefore, it is necessary to continually address and influence changes in public perception of complainants as well as defendants.

9. Supportive measures to ensure equitable access by sexual offence court users. Sexual offence complainants are often vulnerable complainants and so, will usually require some special measure in Court to be able to properly give evidence. Consideration must be given to ensuring that the Court is outfitted with the various special measures provided for in the Revised Model Guidelines.

Best Practice: Model Sexual Offence Court – Antigua and Barbuda

The JURIST Project in 2018 Antigua and Barbuda in the establishment of a specialized Sexual Offences Model Court (SOMC). The SOMC was established as a High Court under the jurisdiction of the Eastern Caribbean Supreme Court. The SOMC utilizes the Model Guidelines as the Procedural Guidance for the Court and is equipped with mechanisms for the use of the special measures provided for in the Model Guidelines. The SOMC is staffed with specialized experts including a dedicated judicial officer, support staff and a multi-disciplinary monitoring team.

The Multi-Stakeholder Steering Committee (MSSC) for the Court allows for ready access to and collaboration with key stakeholders who are required to support the processes of the court such as law enforcement, medical, social services and civil society partners. Further, the MSSC provides a space for advocacy for the Court and public education mechanism on the role of the Court and the rights of complainants and defendants to support law and policy developments on sexual offence cases. The experience of the SOMC has also provided valuable experiential data on the areas for reform of the Model Guidelines. The SOMC is a continuous learning tool on the adjudication of sexual offences and how to properly engage government and non-government stakeholders in the development and sustainability of the Court.

Wrap Up and Dismissal

- **Closing Remarks**

- **Thank you !!**

- **Contact Information**

- **Diana Shaw**

- diacafe@yahoo.com



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